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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1236]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the low reserve tranche and of the reserve requirement exemption amount for 2006. The Regulation D amendments increase the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2006 from $47.6 million to $48.3 million. This amount is known as the low reserve tranche. The Regulation D amendments also increase the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2006 from $7.0 million to $7.8 million. This amount is known as the reserve requirement exemption amount. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing increases in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must submit deposit reports. These amounts are indexed annually in order to reduce reporting burden for smaller depository institutions.

DATES: *Effective date:* November 7, 2005.

Compliance dates: For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, November 22, 2005, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 22, 2005. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 20, 2005, and the corresponding seven-day reserve maintenance period that begins Thursday, January 19, 2006. For all depository institutions, the nonexempt deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used for 2006 deposit report screening to determine reporting frequency for the twelve-month period that begins in September 2006.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Senior Counsel (202/452–3565), Legal Division, or Gretchen Weinbach, Senior Economist (202/452–2841), Division of Monetary Affairs; for user of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

1. *Reserve Requirements.* Pursuant to section 19(b)(2) of the Federal Reserve Act, transaction account balances maintained at each depository institution up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche is $47.6 million. Net transaction accounts of all depository institutions rose 1.8 percent (from $700.4 billion to $713.1 billion) between June 30, 2004 and June 30, 2005. Accordingly, the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for net transaction accounts by $0.7 million, from $47.6 million for 2005 to $48.3 million for 2006.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount.

Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. Unlike the low reserve tranche, which can be adjusted upward or downward, no adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased by 13.7 percent (from $2,946.2 billion to $3,350.0 billion) between June 30, 2004, and June 30, 2005. Accordingly, the Board is amending Regulation D to increase the reserve requirement exemption amount by $0.8 million, from

$7.0 million for 2005 to $7.8 million for 2006.[1]

For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, November 22, 2005, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 22, 2005. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the seven-day reserve computation period beginning Tuesday, December 20, 2005, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 19, 2006.

2. *Deposit Reports.* Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control the monetary and credit aggregates. The Board screens depository institutions each year and assigns them to one of four deposit reporting panels (weekly reporters, quarterly reporters, annual reporters, or nonreporters). An institution's panel assignment is effective with the annual deposit panel shifts in September of the screening year.

In order to ease the reporting burden, the Board permits institutions with net transaction account above the reserve requirement exemption amount but with total deposits below a specified level (the ''nonexempt deposit cutoff'') to report quarterly. The Board requires certain large depository institutions to report weekly regardless of the level of their net transaction accounts if their total deposits exceed a specified level (the ''reduced reporting limit''). The annual adjustment to the first amount, the reserve requirement exemption amount, is described in Section 1 above. The nonexempt deposit cutoff level and the reduced reporting limit are also adjusted annually, by an amount equal to 80 percent of the increase, if any, in total deposits of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total deposits at all depository institutions increased 8.3 percent (from $6,962.1 billion to $7,540.4 billion) between June 30, 2004 and June 30, 2005. Accordingly, the Board is adjusting the nonexempt deposit cutoff level upward by $11.3 million, from its current level of $169.8 million for 2005 to $181.1 million for 2006. The Board is also adjusting the reduced reporting limit upward by $75 million, from its current level of $1.131 billion for 2005 to $1.206 billion for 2006.[2]

Beginning in September 2006, the boundaries of the four deposit reporting panels will be defined as follows. Those depository institutions with net transaction accounts over $7.8 million (the reserve requirement exemption amount) or total deposits greater than or equal to $1.206 billion (the reduced reporting limit) are subject to detailed reporting, and must file an FR 2900 report either weekly or quarterly. Of this group, those with total deposits greater than or equal to $181.1 million (the nonexempt deposit cutoff level) are required to file the FR 2900 report each week, while those with total deposits less than $181.1 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $7.8 million (the reserve requirement exemption amount) and with total deposits less than $1.206 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $7.8 million (but less than $1.206 billion) are required to file the FR 2910a report annually, while those with total deposits less than or equal to $7.8 million are not required to file a deposit report. A depository institution that manipulates its reporting, however, in an attempt to qualify for less frequent reporting or to reduce its reserve requirement may be required to report the FR 2900 on a weekly basis and maintain appropriate reserve balances with its Reserve Bank, regardless of its most recent panel assignment.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The increases in the reserve requirement exemption amount, the low reserve tranche, the nonexempt deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve requirement ratios are prescribed for all depository institutions, banking Edge and agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $7.8 million	0 percent of amount.
Over $7.8 million and up to $48.3 million	3 percent of amount.
Over $48.3 million	$1,215,000 plus 10 percent of amount over $48.3 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

[2] Consistent with Board practice, the nonexempt deposit cutoff level has been rounded to the nearest $0.1 million, while the reduced reporting limit has been rounded to the nearest $1 million.

By order of the Board of Governors of the Federal Reserve System, October 4, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–20299 Filed 10–6–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM330; Special Conditions No. 25–301–SC]

Special Conditions: Raytheon Model HS.125 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for a Raytheon Model HS.125 airplane modified by LJSC Ltd. This modified airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of two Air Data Display Units and two Air Data Sensors manufactured by Innovative Solutions and Support. These systems perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 29, 2005.

Comments must be received on or before November 7, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM330, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM330.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 11, 2005, LJSC Ltd., 8847 West Monroe Circle, Suite 300, Wichita, Kansas 67209 applied for a supplemental type certificate (STC) to modify a Raytheon Model HS.125 Series 600A airplane, S/N 256066. This model is currently approved under Type Certificate No. A3EU. The Raytheon Model HS.125 airplane is a small transport category airplane powered by two turbine engines. It operates with a 2-pilot crew and can seat up to 15 passengers. The modification incorporates the installation of two Air Data Display Units (ADDUs) and two Air Data Sensors (ADSs) manufactured by Innovative Solutions and Support (IS&S). The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, LJSC Ltd. must show that Raytheon Model HS.125 Series 600A airplane S/N 256066, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Raytheon Model HS.125 airplane includes CAR 10, British Civil Airworthiness Requirements and Special Conditions. This certification is equivalent to CAR.4b dated December 1953, Amendment 4b–1 through Amendment 4b–11, exclusive of CAR 4b.350(e) and includes Special Regulations SR.422B. Type Certificate No. A3EU was amended to include HS.125 Series 600A on January 6, 1976. Compliance over and above certification basis requirements has been met with CAR Amendment 4B–12 and Amendment 4B–14. Compliance has been established with the special retroactive requirements of 14 CFR 25.2 through Amendment 25–20, 14 CFR 21 Amendment 21–27, and 14 CFR 36 (1)(c)(2).

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Model HS.125 Series 600A airplane, S/N 256066, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Raytheon Model HS.125 Series 600A airplane, S/N 256066, must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type

certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should LJSC Ltd. apply at a later date for a STC to modify any other model included on Type Certificate No. A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, Raytheon Model HS.125 airplane, S/N 256066, modified by LJSC Ltd., will incorporate two ADDUs and two ADSs manufactured by IS&S that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Raytheon Model HS.125 Series 600A airplane, S/N 256066, modified by LJSC Ltd. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to a Raytheon Model HS.125 Series 600A airplane, S/N 256066, modified by LJSC Ltd. Should LJSC Ltd. apply at a later date for a STC to modify any other model included on Type Certificate No. A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on a Raytheon Model HS.125 Series 600A airplane, S/N 256066, modified by LJSC Ltd. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change

from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Raytheon Model HS.125 Series 600A airplane, S/N 256066, modified by LJSC Ltd.

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

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 29, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20175 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

13 CFR Part 71

[Docket No. FAA–2005–21703; Airspace Docket No. 05–ACE–19]

Modification of Class D and Class E Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects an error in the legal description of Class D airspace in a direct final rule, request for comments that was published in the **Federal Register** on Tuesday, July 12, 2005 (70 FR 39914).

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 2005–21703 published on Tuesday, July 12, 2005 (70 FR 39914), modified Class D and Class E Airspace at Topeka, Forbes Field, KS. The phrase ''This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.'' was incorrectly deleted from the legal description of Class D airspace. This action corrects that error.

■ Accordingly, pursuant to the authority delegated to me, the error in the legal description of Class D Airspace, Topeka, Forbes Field, KS as published in the **Federal Register** Tuesday July 12, 2005 (70 FR 39914), (FR Doc. 2005–21703), is corrected as follows:

§ 71.1 [Corrected]

On page 39915, Column 2, at the end of the legal description of ACE KS D Topeka, Forbes Field, KS, add the phrase ''This Class D airspace area is effective during the specific dates and times established in advance by the Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

Issued in Kansas City, MO, on September 16, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–20179 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–22600; Airspace Docket No. 05–AWP–11]

RIN 2120–AA66

Change of Controlling Agency for Restricted Areas; HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agency of Restricted Areas R–3101 PMRFAC Four, R–3103 Humuula, R–3107 Kaula Rock, R–3109A, B & C Schofield-Makua, Oahu, and R–3110A, B & C Schofield-Makua, Oahu, HI. The FAA is taking this action to reflect an administrative change of controlling agencies for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the name of the controlling agency for R–3101 PMRFAC Four, R–3103 Humuula, R–3107 Kaula Rock, R–3109A, B & C Schofield-Makua, Oahu, R–3110A, B & C Schofield-Makua, Oahu, HI, from ''FAA, Honolulu CERAP or FAA, Honolulu ATCT'' to ''FAA, Honolulu Control Facility.'' The FAA is taking this action to reflect an administrative change of controlling agencies for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.23 [Amended]

■ 2. Section 73.23 is amended as follows:

* * * * *

R–3101 PMRFAC Four, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu CERAP.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3103 Humuula, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu CERAP.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3107 Kaula Rock, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu CERAP.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3109A Schofield-Makua, Oahu, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu ATCT.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3109B Schofield-Makua, Oahu, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu ATCT.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3109C Schofield-Makua, Oahu, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu ATCT.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3110A Schofield-Makua, Oahu, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu ATCT.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3110B Schofield-Makua, Oahu, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu ATCT.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

R–3110C Schofield-Makua, Oahu, HI [Amended]

By removing the words ''Controlling agency. FAA, Honolulu ATCT.'' and inserting the words ''Controlling agency. FAA, Honolulu Control Facility.''

* * * * *

Issued in Washington, DC, on October 3, 2005.

Edith V Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–20279 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–037]

RIN 1625–AA00

Safety Zone Regulations, Downed Aircraft, Browns Bay, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Puget Sound around the body and debris of a helicopter. The Coast Guard is establishing this zone to ensure unencumbered access for rescuers and investigators, and protect the public from numerous dangers associated with recovery of this submerged aircraft. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 4 p.m. (PDT) October 3, 2005 until 8 a.m. (PDT) October 17, 2005 unless sooner cancelled by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–05–037 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jes Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6040.

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 persons that transit in the vicinity of the submerged helicopter in Browns Bay, WA. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow for the safe recovery of a downed helicopter submerged in the waters of Puget Sound. The Coast Guard is establishing this zone to ensure unencumbered access for rescuers and investigators, and protect the public from numerous dangers associated with recovery of this submerged aircraft. The safety zone is needed to protect watercraft and their occupants from safety hazards associated with the recovery efforts.

Discussion of Rule

This rule, for safety concerns, will control vessels, personnel and individual movements in a safety zone surrounding the recovery operations indicated in section 2 of this Temporary Final Rule. The safety zone includes all waters with a radius of 1 nautical mile from the point at 47 degrees, 51.0 minutes North, 122 degrees, 21.0 minutes West [datum: NAD 1983], approximately three nautical miles northeast of Edwards Point, Edmonds, WA, where a submerged helicopter, tail number A–109, is located. The safety zone does not extend on land.

The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other Federal, State, or local agencies.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small area that should not significantly impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' include 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 rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Browns Bay during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the 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 temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this temporary rule under Executive Order 13132 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 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 temporary rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary 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

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that these security zones and fishing rights protection need not be incompatible. We have also determined that this Temporary Final 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for

compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

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. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33, Code of Federal Regulations, 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. From 4 p.m. (PDT) October 3, 2005 until 8 a.m. (PDT) October 17, 2005 unless sooner cancelled by the Captain Of the Port, a temporary §165.T13–05–017 is added to read as follows:

§ 165.T13–05–017 Safety Zone: Downed Aircraft, Browns Bay, Puget Sound, WA.

(a) *Location.* The following area is a safety zone: The waters within a one nautical mile radius of 47 degrees, 51.0 minutes North, 122 degrees, 21.0 minutes West [datum: NAD 1983], approximately three nautical miles northeast of Edwards Point, Edmonds, Washington, where a submerged helicopter, tail number A–109, is located.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in this safety zone, except for vessels involved in the salvage and investigation operations, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement Period.* From 4 p.m. (PDT) October 3, 2005 until 8 a.m. (PDT) October 17, 2005 unless sooner cancelled by the Captain of the Port.

Dated: October 3, 2005.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–20342 Filed 10–5–05; 2:13 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3140

[WO–310–1310–PP–241A]

RIN 1004–AD76

Leasing in Special Tar Sand Areas

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: The Bureau of Land Management (BLM or ''we'') is issuing this interim final rule to amend regulations for the leasing of hydrocarbons, except coal, gilsonite and oil shale, in special tar sand areas. In this rule, BLM amends our regulations to respond to provisions of the Energy Policy Act of 2005 that allow separate oil and gas leases and tar sand leases in special tar sand areas, specify several oil and gas leasing practices that apply to tar sand leases, increase the maximum size for combined hydrocarbon leases and tar sand leases, and set the minimum acceptable bid for tar sand leases at $2.00 per acre. The law requiring these changes also requires that this rule be published as a final rule within 45 days of enactment.

This is an interim final rule. Although the rule is effective upon publication, there is a 60-day comment period that starts on the date of publication. After the comment period, we will review the comments and may issue a further final rule making any necessary changes.

DATES: The interim final rule is effective October 7, 2005.

Comments

You should submit your comments on or before December 6, 2005. The BLM will not necessarily consider any comments received after the above date during its decision-making on the interim final rule.

ADDRESSES:

Comments

You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153. Hand delivery: 1620 L Street NW., Suite 401, Washington, DC 20036. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Electronic access and filing address.''

FOR FURTHER INFORMATION CONTACT: Ron Teseneer in the Solid Minerals Group at (202) 452–5094. For assistance in

reaching Mr. Teseneer, persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Interim Final Rule
IV. Procedural Matters

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this interim final rule at BLM's Internet home page: *http://www.blm.gov.* Internet e-mail: *comments_washington@blm.gov.* Please also include ''Attention: 1004–AD76'' and your name and return address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us by phone at (202) 452–5030.

Federal eRulemaking Portal: *http://www.regulations.gov.*

Written Comments

Written comments on the interim final rule should be specific, should be confined to issues pertinent to the interim final rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. The BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 1620 L Street, NW., Suite 401, Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78) amended the Mineral Leasing Act to authorize the Secretary of the Interior (Secretary) to issue combined hydrocarbon leases in areas containing substantial deposits of tar sand, which were to be designated as special tar sand areas. This Act further specified that combined hydrocarbon leases were the only type of lease that could be offered in these special tar sand areas. The BLM published regulations implementing the leasing provisions of this Act on February 18, 1983 (see 48 FR 7422).

Section 350 of the Energy Policy Act of 2005 further amended the Mineral Leasing Act to authorize the Secretary to issue separate oil and gas leases and tar sand leases, in addition to combined hydrocarbon leases, in special tar sand areas. Section 350 of the Act also specified several oil and gas leasing practices that will apply to tar sand leases and set the minimum acceptable bid for tar sand leases at $2.00 per acre.

Section 350(a) also authorizes the waiver of diligence requirements in tar sands prospecting permits. Because the Mineral Leasing Act does not provide for prospecting permits for this mineral, no provisions to implement this part of the new statute are included in this rule.

Section 369(j)(1)(D) of the Energy Policy Act of 2005 also amended the Mineral Leasing Act to increase the maximum acreage of combined hydrocarbon leases and tar sand leases in a special tar sand area to 5,760 acres.

The terms of section 350 are very clear and leave BLM no room for interpretation. Therefore, the BLM finds good cause to omit the general notice of proposed rulemaking as required by 5 U.S.C. 553(b) because the statutorily prescribed directions make notice and comment unnecessary. Section 350(c) of the Act requires BLM to amend these regulations in order to implement the changes directed by Congress in the Act. The BLM has little discretion in this matter and is merely making minor technical amendments and other revisions directly related to implementing the Act. For the same reasons, BLM finds good cause under 5 U.S.C. 553(d) to make the rule effective immediately upon publication. However, we will accept comments on the rule for 60 days after the date of publication (see **DATES**). If there are no substantive comments on the interim final rule, we will publish another in the **Federal Register** stating that the rule will stand as published. If there are substantive comments on the interim final rule, we will issue a further final rule which addresses those comments and makes any necessary changes.

III. Discussion of Interim Final Rule

This interim final rule implements the changes to the 43 CFR part 3140 regulations that are required by Section 350 and 369 of the Energy Policy Act of 2005. A detailed, section-by-section discussion of the changes follows:

Part 3140—Leasing in Special Tar Sand Areas

The title is changed from COMBINED HYDROCARBON LEASING, to reflect that oil and gas leases and tar sand leases are now available in special tar sand areas.

The title of subpart 3141 in the index is revised to read ''Subpart 3141—Leasing in Special Tar Sand Areas.'' This is done because in certain circumstances oil and gas leases in special tar sand areas may be obtained noncompetitively.

The authority citation for Part 3140 is amended to add the Energy Policy Act of 2005.

Section 3140.0–5 Definitions

This section is revised to correct references to 43 CFR 3572.1, which no longer exists. The new references are 43 CFR 3592 and 43 CFR 3593.

Section 3140.1–4 Other Provisions

This section is revised to show the new statutory maximum lease size within special tar sand areas, and to indicate that the lease referred to in this section is a combined hydrocarbon lease.

Section 3140.4–2 Issuance of the Combined Hydrocarbon Lease

Paragraph (b) of this section is amended to correct a typographical error. Paragraph (d)(2) is amended to reflect the revised maximum lease size.

Subpart 3141—Leasing in Special Tar Sand Areas

The title of this subpart is changed by removing the word competitive. This is because under some circumstances, oil and gas leases in special tar sand areas may be leased noncompetitively. The authority citation for this subpart is changed to include the Energy Policy Act of 2005.

Section 3141.0–1 Purpose

This section is revised to indicate that subpart 3141 now includes oil and gas leasing and tar sand leasing in special tar sand areas.

Section 3141.0–3 Authority

This section is revised to include the Energy Policy Act of 2005 as one of the authorities for subpart 3141.

Section 3141.0–5 Definitions

This section is amended to include the definitions of an oil and gas lease and a tar sand lease for the purposes of this subpart.

Section 3141.0–8 Other Applicable Regulations

This section is amended to specify that the other regulations referenced in the current regulations apply to combined hydrocarbon leases only. Two new paragraphs were added to indicate which other regulations apply to oil and gas leases and which other regulations apply to tar sand leases.

Section 3141.1 General

This section is amended to allow the authorized officer to issue tar sand leases by competitive leasing only. This section also is revised to allow the authorized officer to issue oil and gas leases by competitive leasing, or if no qualifying bids are received, by noncompetitive leasing. This is the same procedure used to lease other oil and gas resources under the Mineral Leasing Act. Although it is possible to construe the changes made by the Energy Policy Act as allowing only competitive leasing of oil and gas in tar sand areas, we believe that Congress intended to use the same procedures for all oil and gas. There is no reason to treat oil and gas resources in special tar sand areas differently.

Furthermore, it is more efficient to administer the oil and gas leasing program of the Utah State BLM Office if the same procedures apply to all oil and gas parcels offered in its sales, since BLM conducts oil and gas leasing on a statewide basis.

The revisions to this section also clarify that oil and gas resources may be leased by either a combined hydrocarbon lease or by an oil and gas lease, and that tar sands may be leased by either a combined hydrocarbon lease or by a tar sand lease. The revisions also reiterate that an oil and gas lease does not include rights to explore for or develop tar sands and that a tar sand lease does not include rights to explore for or develop oil and gas.

This section is revised to specify which oil and gas leasing regulations apply to tar sand leasing, and to indicate that the minimum acceptable bid for tar sand leases is $2.00 per acre.

This section is further revised to indicate that tar sand leases are not charged against the acreage limitations is found at 30 U.S.C. Section 184(d) and 43 CFR 3101.2 for holding oil and gas leases.

Section 3141.2–2 Exploration Licenses

Paragraph (b)(5) of this section is revised to reflect the new maximum lease size for special tar sand areas.

Section 3141.4–2 Consultation With Others

Several revisions are made in paragraph (b) of this section to reflect the availability of oil and gas leases and tar sand leases in special tar sand areas.

Section 3141.5–1 Economic Evaluation

This section is revised to indicate that an economic evaluation is required for combined hydrocarbon leases only.

Section 3141.5–2 Term of Lease

This section is modified to describe the term of lease for tar sand leases.

Section 3141.5–3 Royalties and Rentals

Paragraph (a) of this section is modified to indicate that the royalty rate specified applies to tar sand leases.

Paragraph (c) of this section is modified to indicate that the rental rate specified applies to tar sand leases.

Section 3541.5–4 Lease Size

This section is amended to reflect the statutory maximum lease size of 5,760 acres for combined hydrocarbon leases or tar sand leases.

Section 3141.5–5 Dating of Lease

This paragraph is modified to specify that it also applies to tar sand leases.

Section 3141.6–2 Publication of a Notice of Competitive Lease Offering

This section is amended to specify the publication procedures for tar sand leases as directed by the Energy Policy Act of 2005.

For Tar Sand Leases or Oil and Gas Leases, at least 45 days prior to conducting a competitive auction, lands to be offered for a competitive lease sale shall be posted in the proper BLM office having jurisdiction over the lands as specified in Section 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

Section 3141.6–3 Conduct of Sales

This section is amended to specify the bidding procedures for oil and gas leases and tar sand leases. This is one of the specific directives in the Energy Policy Act of 2005.

Oil and Gas Leases will be conducted using the procedures for oil and gas leases in Section 3120.5 of this title.

Tar sand lease parcels shall be offered by oral bidding, the winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding $2.00 per acre, and payments shall be made as provide in Section 3120.5–2 of this title.

Section 3141.6–5 Fair Market Value for Combined Hydrocarbon Leases

This section is revised to clarify that it applies only to combined hydrocarbon leases.

Subpart 3142—Paying Quantities/ Diligent Development for Combined Hydrocarbon Leases

The title of this subpart is revised to clarify that it applies only to combined hydrocarbon leases.

Section 3142.0–5 Definitions

This section is revised to correct a typographical error.

The revisions in this section reiterate that the bidding procedures for oil and gas leases in special tar sand areas are the same as for oil and gas leases elsewhere.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These interim final regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These interim final regulations will not have an effect of $100 million or more on the economy. See further the discussion under the Regulatory Flexibility Act. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These interim final regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These interim final regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

This rule changes the types of leases that may be issued in special tar sand areas, specifies which of the oil and gas leasing regulations will apply to tar sand leasing, sets the minimum acceptable bid for tar sand leases at $2 per acre, changes the maximum lease size in special tar sand areas, corrects some typographical errors and erroneous cross references in the existing regulations, and makes some

cosmetic changes to make the remainder of the part consistent.

The only provision of this rule with the potential to have an economic impact is the regulation setting the minimum acceptable bid at $2 per acre. The $2 per acre minimum bid for tar sand leases will not have an effect on productivity, jobs, the environment, or other units of government, nor will it have an effect of $100 million. The $2 per acre minimum bid may have an effect on the oil and gas industry, but we anticipate that the effect will be minimal. The requirement that leasing occur competitively will ensure that fair market value will be paid for leases issued. In addition, the $2 minimum is a statutory requirement of the Energy Policy Act of 2005 and is not discretionary on the part of the Secretary of the Interior.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these interim final regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the interim final regulations clearly stated?
2. Do the interim final regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the interim final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example § 3141.5–4 Lease size.)
5. Is the description of the interim final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final regulations? How could this description be more helpful in making the interim final regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has determined that this interim final rule is essentially administrative in nature and that a National Environmental Policy Act (NEPA) analysis must be completed prior to any leasing. This qualifies as a categorical exclusion under 516 Departmental Manual (DM) Chapter 2, Appendix 1.10. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 DM, Chapter 2, Appendix 1. In addition, the interim final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 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 a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Furthermore, in the Energy Policy Act of 2005, Congress directed that this final rule be published within 45 days exactly. Therefore, there is no time to complete a NEPA analysis of the rule and meet the prescribed deadline.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final regulations will have no effect on any small entities. The interim final regulation is incorporating a decision already made by Congress. The interim final regulation allows separate leases for two resources that formerly were only offered jointly in special tar sand areas, specifies which of the oil and gas leasing regulations apply to tar sand leases, and sets the minimum acceptable bid for tar sand leases. Therefore, BLM has determined under the RFA that this interim final rule would not have a significant economic impact on a substantial number of small entities. The $2 per acre fixed minimum bid for tar sand leases will not have an effect on the economy of $100 million. The competitive bidding process should ensure that a tar sand lease is sold at fair market value and therefore the statutory $2 minimum bid should have no impact on small entities.

Small Business Regulatory Enforcement Fairness Act

These interim final regulations are not a ''major rule'' as defined at 5 U.S.C. 804(2). The interim final regulation is essentially administrative in nature, changing only the types of leases that may be offered in special tar sand areas, specifying which of the oil and gas leasing regulations apply to tar sand leases, and setting the minimum acceptable bid for tar sand leases.

Unfunded Mandates Reform Act

These interim final regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these interim final regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The interim final rule will not impose any mandate on State, local, or tribal governments or the private sector. The regulations implement clear and mandatory provisions of a recently enacted statute. The interim final regulation is essentially administrative in nature, changing only the types of leases that may be offered in special tar sand areas, specifying which of the oil and gas leasing regulations apply to tar sand leases, and setting the minimum acceptable bid for tar sand leases. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The interim final rule does not represent a government action capable of interfering with constitutionally protected property rights. The interim final rule has no effects that could be considered a taking. This rule change is administrative in nature. It changes the types of leases that may be issued in special tar sand areas, specifies which of the oil and gas leasing regulations will apply to tar sand leasing, sets the minimum acceptable bid for tar sand leases at $2 per acre, changes the maximum lease size in special tar sand areas, corrects some typographical errors and erroneous CFR references in the existing regulations and erroneous CFR references in the existing regulations, and makes some conforming changes to make the remainder of the part consistent. Therefore, the Department of the Interior 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

The interim final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The interim final rule will have no 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. This rule change is administrative in nature. It changes the types of leases that may be issued in special tar sand areas, specifies which of the oil and gas leasing regulations will apply to tar sand leasing, sets the minimum acceptable bid for tar sand leases at $2 per acre, changes the maximum lease size in special tar sand areas, corrects some typographical errors and erroneous cross references in the existing regulations, and makes some conforming changes to make the remainder of the part consistent. Therefore, in accordance with Executive Order 13132, BLM has determined that this interim final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this interim final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175 we have identified no potential effects on Indian trust resources; however, it does affect split estate lands involving Indian surface and federal minerals. Accordingly, we are in the process of preparing a letter to the potentially affected tribes to inform them of the procedural changes that will take place in special tar sands areas and seeking their comments on the rule.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM has determined that the interim final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule does not represent the exercise of agency discretion. Congress' mandate to offer oil and gas leasing and tar sand leasing, separately, in special tar sand areas may result in an increase in oil and gas production of unknown amounts. It does not impose a regulatory burden on any lessee.

Paperwork Reduction Act

BLM has determined that these regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this rule is Ron Teseneer, Solid Minerals Group (WO320). Jim Kohler, Utah State Office, BLM, Dennis Daugherty, Office of the Solicitor, Department of the Interior, and Frank Bruno, Regulatory Affairs provided assistance during this effort.

List of Subjects in 43 CFR Part 3140

Government contracts, Hydrocarbons, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 29, 2005.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, BLM amends 43 CFR part 3140, as set forth below:

PART 3140—COMBINED HYDROCARBON LEASING

■ 1. Amend part 3140 by revising the part heading to read as follows:

PART 3140—LEASING IN SPECIAL TAR SAND AREAS

■ 2–3.The authority citation for part 3140 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 95 Stat. 1070; 43 U.S.C. 1701 *et seq.*; the Energy Policy Act of 2005 (Pub. L. 109–58), unless otherwise noted.

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

■ 4. Remove the authority citation for subpart 3140.

■ 5. Amend § 3140.0–5 by revising paragraph (b) to read as follows:

§ 3140.0–5 Definitions.

* * * * *

(b) A complete plan of operations means a plan of operations that is in substantial compliance with the information requirements of 43 CFR 3592 for both exploration plans and mining plans, as well as any additional information required in this part and under 43 CFR 3593, as may be appropriate.

* * * * *

■ 6. Amend § 3140.1–4 by revising paragraph (a) to read as follows:

§ 3140.1–4 Other provisions.

(a) A combined hydrocarbon lease shall be for no more than 5,760 acres. Acreage held under a combined hydrocarbon lease in a Special Tar Sand Area is not chargeable to State oil and gas limitations allowable in § 3101.2 of this title.

* * * * *

■ 7. Amend § 3140.4–2 by revising paragraphs (b) and (d)(2) to read as follows:

§ 3140.4–2 Issuance of the combined hydrocarbon lease.

* * * * *

(b) The authorized officer shall not sign the combined hydrocarbon lease until it has been executed by the conversion applicant and the lease or claim to be converted has been formally relinquished to the United States.

* * * * *

(d) * * *

(2) To the extent necessary to promote the development of the resource, the authorized officer may issue, upon the request of the applicant, one combined hydrocarbon lease that does not exceed 5,760 acres, which shall be as nearly compact as possible, to cover non-contiguous oil and gas leases or valid claims which have been approved for conversion.

Subpart 3141—Competitive Leasing in Special Tar Sand Areas

■ 8. Revise the subpart heading for subpart 3141 to read as follows:

Subpart 3141—Leasing in Special Tar Sand Areas

■ 9. Remove the authority citation for subpart 3141.

■ 10. Revise § 3141.0–1 to read as follows:

§ 3141.0–1 Purpose.

The purpose of this subpart is to provide for the competitive leasing of lands and issuance of Combined Hydrocarbon Leases, Oil and Gas Leases, or Tar Sand Leases within special tar sand areas.

■ 11. Revise § 3141.0–3 to read as follows:

§ 3141.0–3 Authority.

The regulations in this subpart are issued under the authority of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), and the Energy Policy Act of 2005 (Pub. L. 109–58).

■ 12. Amend § 3141.0–5 by redesignating paragraphs (b) and (c) as paragraphs (d) and (e), respectively, and adding new paragraphs (b) and (c) to read as follows:

§ 3141.0–5 Definitions.

* * * * *

(b) For purposes of this subpart, ''oil and gas lease'' means a lease issued in a Special Tar Sand Area for the exploration and development of oil and gas resources except for tar sand.

(c) Tar sand lease means a lease issued in a Special Tar Sand area exclusively for the exploration for and extraction of tar sand.

* * * * *

■ 13. Amend § 3141.0–8 by:
■ A. Revising the section heading;
■ B. Redesignating paragraphs (a), (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) as paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(1)(v), (a)(1)(vi), (a)(1)(vii), (a)(1)(viii), (a)(1)(ix), and (a)(1)(x), respectively;
■ C. Redesignating paragraphs (b) and (c) as paragraphs (a)(2) and (a)(3), respectively;
■ D. Adding new paragraph (a) introductory text;
■ E. Revising newly redesignated paragraph (a)(3); and
■ F. Adding new paragraphs (b), and (c), to read as follows:

§ 3141.0–8 Other Applicable Regulations.

(a) *Combined hydrocarbon leases.*

* * * * *

(3) The provisions of 43 CFR part 3180 shall serve as general guidance to the administration of combined hydrocarbon leases issued under this part to the extent they may be included in unit or cooperative agreements.

(b) *Oil and gas leases.* (1) All of the provisions of parts 3100, 3110, and 3120 of this title apply to the issuance and administration of oil and gas leases issued under this part.

(2) All of the provisions of part 3160 apply to operations on an oil and gas lease issued under this part.

(3) The provisions of 43 CFR part 3180 apply to the administration of oil and gas leases issued under this part.

(c) *Tar sand leases.* (1) The following provisions of part 3100 of this title, as they relate to competitive leasing, apply to the issuance of tar sand leases issued under this part.

(i) All of subpart 3102;

(ii) All of subpart 3103 with the exception of sections 3103.2–1, 3103.2–2(d), and 3103.3;

(iii) All of section 3120.4; and

(iv) All of section 3120.5.

(2) Prior to commencement of operations, the lessee shall develop a plan of operations as described in 43 CFR 3592.1 which ensures reasonable protection of the environment.

■ 14. Amend § 3141.1 by:
■ A. Revising paragraph (a);
■ B. Redesignating paragraphs (b) and (c) as paragraphs (h) and (i), respectively;
■ C. Adding new paragraphs (b), (c), (d), (e), (f), and (g); and
■ D. Revising newly redesignated paragraph (h) to read as follows:

§ 3141.1 General.

(a) Combined hydrocarbons or tar sands within a Special Tar Sand Area shall be leased only by competitive bonus bidding.

(b) Oil and gas within a Special Tar Sand Area shall be leased by competitive bonus bidding as described in 43 CFR part 3120 or if no qualifying bid is received during the competitive bidding process, the area offered for competitive lease may be leased noncompetitively as described in 43 CFR part 3110.

(c) The authorized officer may issue either combined hydrocarbon leases, or oil and gas leases for oil and gas within such areas.

(d) The rights to explore for or develop tar sand deposits in a Special Tar Sand Area may be acquired through either a combined hydrocarbon lease or a tar sand lease.

(e) An oil and gas lease in a Special Tar Sand Area does not include the rights to explore for or develop tar sand.

(f) A tar sand lease in a Special Tar Sand Area does not include the rights to explore for or develop oil and gas.

(g) The minimum acceptable bid for a lease issued for tar sand shall be $2 per acre.

(h) The acreage of combined hydrocarbon leases or tar sand leases held within a Special Tar Sand Area shall not be charged against acreage limitations for the holding of oil and gas leases as provided in section 3101.2–1 of this title.

* * * * *

■ 15. Amend § 3141.2–2 by revising paragraph (b)(5) to read as follows:

§ 3141.2–2 Exploration licenses.

* * * * *

(b) * * *

(5) An application shall cover no more than 5,760 acres, which shall be as compact as possible. The authorized officer may grant an exploration license covering more than 5,760 acres only if the application contains a justification for an exception to the normal limitation.

* * * * *

■ 16. Amend § 3141.4–2 by revising paragraph (b) to read as follows.

§ 3141.4–2 Consultation with others.

* * * * *

(b) The issuance of combined hydrocarbon leases, oil and gas leases, and tar sand leases within special tar sand areas in units of the National Park System shall be allowed only where mineral leasing is permitted by law and where the lands are open to mineral resource disposition in accordance with any applicable Minerals Management Plan. In order to consent to any issuance of a combined hydrocarbon lease, oil and gas lease, tar sand lease, or subsequent development of hydrocarbon resources within a unit of National Park System, the Regional Director of the National Park Service shall find that there will be no resulting significant adverse impacts to the resources and administration of the unit or other contiguous units of the National Park System in accordance with § 3109.2 (b) of this title.

■ 17. Revise § 3141.5–1 to read as follows:

§ 3141.5–1 Economic evaluation.

Prior to any lease sale for a combined hydrocarbon lease, the authorized officer shall request an economic evaluation of the total hydrocarbon resource on each proposed lease tract exclusive of coal, oil shale, or gilsonite.

■ 18. Revise § 3141.5–2 to read as follows:

§ 3141.5–2 Term of lease.

(a) Combined hydrocarbon leases or oil and gas leases shall have a primary term of 10 years and shall remain in effect so long thereafter as oil or gas is produced in paying quantities.

(b) Tar Sand leases shall have a primary term of 10 years and shall remain in effect so long thereafter as tar sand is produced in paying quantities.

■ 19. Amend § 3141.5–3 by revising paragraph (a), redesignating paragraph (d) as (e), and adding new paragraph (d), to read as follows.

§ 3141.5–3 Royalties and rentals.

(a) The royalty rate on all combined hydrocarbon leases or tar sand leases is 12½ percent of the value of production removed or sold from a lease. The Minerals Management Service shall be responsible for collecting and administering royalties.

* * * * *

(d) The rental rate for a tar sand lease shall be $1.50 per acre for the first 5 years and $2.00 per acre for each year thereafter.

* * * * *

■ 20. Revise § 3141.5–4 to read as follows:

§ 3141.5–4 Lease size.

Combined hydrocarbon leases or tar sand leases in Special Tar Sand Areas shall not exceed 5,760 acres.

■ 21. Revise § 3141.6–2 to read as follows:

§ 3141.6–2 Publication of a notice of competitive lease offering.

(a) Combined Hydrocarbon Leases. Where a determination to offer lands for competitive leasing is made, a notice shall be published of the lease sale in the **Federal Register** and a newspaper of general circulation in the area in which the lands to be leased are located. The publication shall appear once in the **Federal Register** and at least once a week for 3 consecutive weeks in a newspaper, or for other such periods deemed necessary. The notice shall specify the time and place of sale; the manner in which the bids may be submitted; the description of the lands; the terms and conditions of the lease, including the royalty and rental rates; the amount of the minimum bid; and shall state that the terms and conditions of the leases are available for inspection and designate the proper BLM office where bid forms may be obtained.

(b) Tar Sand Leases or Oil and Gas Leases. At least 45 days prior to conducting a competitive auction, lands to be offered for a competitive lease sale shall be posted in the proper BLM office having jurisdiction over the lands as specified in § 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

■ 22. Amend § 3141.6–3 by redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6), respectively; and by adding new paragraphs (a) introducing text, (b), and (c) to read as follows:

§ 3141.6–3 Conduct of sales.

(a) *Combined Hydrocarbon Leases.*

* * * * *

(b) *Oil and Gas Leases.* Lease sales for oil and gas leases will be conducted using the procedures for oil and gas leases in § 3120.5 of this title.

(c) *Tar Sand Leases.* (1) Parcels shall be offered by oral bidding.

(2) The winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding $2.00 per acre.

(3) Payments shall be made as provided in § 3120.5–2 of this title.

■ 23. Amend § 3141.6–5 by revising the section heading to read as follows:

§ 3141.6–5 Fair market value for combined hydrocarbon leases.

Subpart 3142—Paying Quantities/ Diligent Development

■ 24. Revise the heading of subpart 3142 to read as follows:

Subpart 3142—Paying Quantities/ Diligent Development for Combined Hydrocarbon Leases

■ 25. Amend § 3142.0–5 by revising paragraph (a) to read as follows:

§ 3142.0–5 Definitions.

* * * * *

(a) Production, in compliance with an approved plan of operations and by nonconventional methods, of oil and gas which can be marketed; or

* * * * *

[FR Doc. 05–20150 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 303

[Docket No. FMCSA–2002–13248]

RIN 2126–AA79

Title VI Regulations for Federal Motor Carrier Safety Administration Financial Assistance Recipients

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA adopts as final its interim regulations at 49 CFR part 303 governing civil rights matters, consistent with the savings provision of section 106(b) of the Motor Carrier Safety Improvement Act of 1999. As with the interim rule, this final rule clarifies and modifies the applicability of certain Federal Highway Administration (FHWA) and Departmental umbrella Title VI provisions of the Civil Rights Act of 1964, and related nondiscrimination statutes, as they apply to FMCSA Federal financial assistance recipients. Part 303 was created to provide FMCSA with initial guidelines and procedures, as well as future FMCSA Title VI implementing regulations and any future guidelines on Title VI compliance. FMCSA removed itself from the FHWA Title VI regulations in 23 CFR part 200 to avoid confusion, while not altering the substantive Title VI obligations of FMCSA and its grantees. FMCSA remains subject to the Departmental umbrella Title VI regulations in 49 CFR part 21 and will develop as needed further guidelines and procedures to assure effective and consistent implementation for financially assisted recipients. We have not made any changes to the interim rules in part 303, and we adopt the interim regulations as final without change.

DATES: This Final Rule is effective on November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Sevier, Office of Civil Rights (MC–CR), DOT Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–4330, or e-mail *Carmen.Sevier@fmcsa.dot.gov.* Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Where Can You Get Copies of This Final Rule?

You may download this document from *http://www.archives.gov/_federal register* by clicking on today's **Federal Register**; from the Department of Transportation's electronic docket at the URL address: *http://dms.dot.gov*, identified by docket FMCSA–2002–13248 and key in the last five digits of this docket number; or you can contact the person listed under **FOR FURTHER INFORMATION CONTACT** to request a copy.

Background

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. No. 105–159, 113 Stat. 1748, December 9, 1999), created the Federal Motor Carrier Safety Administration (FMCSA) and transferred to FMCSA certain motor carrier safety and related responsibilities. Prior to MCSIA, the powers and authorities transferred to the FMCSA had been exercised by various entities within the Department. FMCSA consequently was charged with

enforcing motor carrier safety requirements previously enforced by its predecessors: the former Federal Highway Administration (FHWA) Office of Motor Carriers; the former FHWA Office of Motor Carrier and Highway Safety; and the former Office of Motor Carrier Safety within the DOT.

Section 106(b) of MCSIA contained a ''savings provision'' which, among other things, preserved for FMCSA the applicability of various rules and regulations that were applicable to its predecessor agencies and offices. Among those regulations are certain FHWA nondiscrimination protections and provisions that implement Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d, *et seq.*, and related nondiscrimination statutes). The FHWA's regulations in 23 CFR part 200 are applicable to recipients of Federal grant and cooperative agreement aid. Those regulations, promulgated by FHWA in 1975 and 1976, supplemented the Departmental umbrella Title VI protections in 49 CFR part 21.

Interim Final Rule (IFR)

FMCSA published an IFR in the **Federal Register** on February 14, 2005 (70 FR 7411) which established Part 303 for FMCSA Title VI implementing regulations by adopting the Departmental Title VI provisions under 49 CFR part 21. The interim regulations in Part 303 were intended to provide initial guidelines and procedures for future FMCSA Title VI implementing regulations and any future guidelines on Title VI compliance. FMCSA clarified the Title VI authorities covering FMCSA programs by deleting references specific to only FHWA programs and by stating the applicability of the Department-wide Title VI regulations to FMCSA. We invited public comment on the IFR and the 60-day comment period closed April 15, 2005. We did not receive any comments on the IFR.

Title VI

Title VI states that, ''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.'' In addition, Title VI and the other related nondiscrimination statutes [1] bar intentional discrimination, as well as disparate impact discrimination, which is a neutral policy or practice that has an unequal and adverse impact on protected groups.

Applicability of FHWA Title VI Provisions to FMCSA

The FHWA's regulations in 23 CFR part 200 provide guidance on how FHWA will implement its Title VI compliance and define the role and responsibilities of State transportation agencies in ensuring compliance with Title VI. FMCSA reviewed those regulations in light of its motor carrier safety objectives and concluded the FHWA regulations in 23 CFR part 200 do not meet the needs of FMCSA Federal financial assistance recipients. This is because FHWA non-discrimination policies and procedures are geared toward highway planning and development.

Alternatively, the Departmental implementing regulations in 49 CFR part 21 specify the manner and degree to which grant recipients must comply, and the basic recordkeeping requirements necessary to meet the intent of the nondiscrimination statutes. The Departmental regulations are broader in scope and therefore do not involve the degree of specificity required by the FHWA regulations. On that basis, FMCSA concluded the broader Departmental regulations are more appropriate for the level of financial assistance involved in FMCSA programs or activities. For these reasons, FMCSA adopted the Departmental umbrella provisions.

Programs or Activities

Under this final rule, FMCSA Federal financial assistance recipients must comply with the Title VI regulations in 49 CFR part 21 for FMCSA-only programs or activities. As noted above, we believe the less cumbersome but equally effective Departmental provisions better accommodate the interests of State agencies and other grantees by providing them with more streamlined Title VI procedures than those established in 23 CFR part 200. FMCSA established Part 303 in Subchapter A, Chapter III of Title 49 of the CFR, for its Title VI implementing regulations, by adopting the Departmental Title VI provisions under 49 CFR part 21. FMCSA remains subject to those requirements, and may develop further guidelines and procedures in accordance with the law to assure effective implementation by grantees.

For Joint or Multi-agency programs or activities, FMCSA grant recipients must follow the requirements of 49 CFR part 21 unless an agreement is reached by the Federal funding agencies for the recipients to use those Title VI procedures of the Federal lead agency.[2]

Conclusion

FMCSA carefully weighed the benefits to be gained by clarifying and modifying Title VI regulations applicable to the agency. By taking itself out from under FHWA Title VI regulations, FMCSA expects this rule to increase grant and cooperative agreement participation levels for FMCSA programs or activities by simplifying reporting requirements. Since the FHWA Federal-aid programs or activities tend to be much more costly than the FMCSA financially assisted programs or activities, FMCSA expects this rule to lower administrative costs for grantees in carrying out their Title VI responsibilities. FMCSA intends to continue applying and using the adequate Title VI protections under the Departmental umbrella regulations at 49 CFR part 21.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This Final Rule is not a significant regulatory action within the meaning of Executive Order 12866, or significant within the meaning of the Department of Transportation's regulatory policies and procedures. This rule clarified and modified the applicability of certain Title VI provisions of the FHWA and of the Department as they concern FMCSA's Federal financial assistance recipients under the motor carrier safety program. It also established Part 303 (49

[1] NONDISCRIMINATION PROGRAM REQUIREMENTS

1. *Title VI of the Civil Rights Act of 1964*—''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

2. *Age Discrimination Act of 1975*—''No person in the United States shall, on the basis of *age* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

3. *Section 504, Rehabilitation Act of 1973*—''No *qualified handicapped person* shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.''

4. *Title IX of the Education Amendments Act of 1972* prohibits discrimination on the basis of sex, in education and training programs provided by recipients of Federal financial assistance. Title IX is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution.

[2] The Federal lead agency is the agency that provides the most overall funding to the recipient.

CFR part 303) to provide FMCSA with Title VI implementing regulations, as well as any further procedures for ensuring compliance with Title VI. This was done by adopting the Department's longstanding Title VI regulations at 49 CFR part 21. Therefore, FMCSA expects this rule to impose no costs on industry or States, since all FMCSA Federal financial assistance recipients are currently complying with the requirements of Title VI. We requested comments on any potential costs or burdens associated with the IFR, but none were received.

Regulatory Flexibility Act

FMCSA evaluated the effects of this action on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act. In taking itself out from under FHWA's Title VI reporting and procedural requirements, because they are not appropriate for the level of financial assistance in FMCSA's programs, FMCSA expects to ease the compliance standards for Title VI by all FMCSA Federal-aid recipients. We certify that this action will not have a significant economic impact on a substantial number of small entities, and may have some positive net benefits.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532, *et seq.*) requires each Federal agency to assess the costs, benefits, and other effects of its regulatory actions on State, local, or tribal governments, or on the private sector, except to the extent the regulations incorporate requirements specifically set forth in law. FMCSA determined that this rule does not include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (adjusted for inflation). Furthermore, regulations implementing civil rights requirements are explicitly excluded from unfunded mandates consideration. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act do not apply to this final rule.

Executive Order 13132 (Federalism)

FMCSA analyzed this final rule under the principles and criteria of Executive Order 13132. We certify that this rule will not have a substantial direct effect on the States, or sufficient federalism implications for the States, nor will it limit the policymaking discretion of the States. This is because nothing in this final rule directly preempts any State law or regulation.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

FMCSA analyzed this final rule under the principles and criteria of Executive Order 13175. This rule will not significantly or uniquely affect the communities of Indian tribal governments and will not impose substantial direct compliance costs. Therefore, Executive Order 13175 does not apply to this final rule.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, dated May 18, 2001. The rule is procedural in nature and, therefore, is not a significant regulatory action under the provisions of Executive Order 12866, and is not likely to have significant adverse effect on the supply, distribution, or use of energy.

Paperwork Reduction Act of 1995

We determined that this rule does not include an information collection requirement for which we need approval from the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets the 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.

Executive Order 13045 (Protection of Children)

We analyzed the rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. Consequently, this rule is not economically significant and does not concern an environmental risk to the health or safety of children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency'' (LEP) applies to Federally assisted programs. It requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency.

Its purpose is to clarify for Federal-fund recipients the reasonable steps those grant recipients should take to ensure that its programs or activities are meaningfully accessible to individuals who are limited in English proficiency. Moreover, the Executive Order on LEP requires each Federal agency to provide guidance on Federal financial assistance to ensure that the recipients' programs or activities are meaningfully accessible.

As FMCSA develops its Title VI program, we will explore whether additional outreach to LEP individuals is appropriate. FMCSA will be operating under DOT LEP guidance. Therefore, this final rule complies with the principles enunciated in the Executive Order.

National Environmental Policy Act

FMCSA Environmental Order 5610.1C dated March 1, 2004 (69 FR 9680) defines FMCSA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. This final rule merely clarified and modified FMCSA's Title VI program, the applicability of both the FHWA's and the Department's Title VI provisions, and established a new part in 49 CFR chapter III, Subchapter A, for civil rights matters. Therefore, this final rule is categorically excluded in accordance with FMCSA Order 5610.1C, paragraph 6.a.

List of Subjects in 49 CFR Part 303

Civil Rights, Implementation and review procedures, Title VI compliance program, Title VI program and related statutes, Transportation.

Final Rule

Accordingly, the interim regulations published February 14, 2005 at 70 FR 7411, Part 303 of Subchapter A, Chapter III of Title 49 of the Code of Federal Regulations, are adopted without further revision.

Issued on: October 3, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–20261 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 70, No. 194
Friday, October 7, 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–2005–22623; Directorate Identifier 2004–NM–80–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require the following actions for the drive mechanism of the horizontal stabilizer: Repetitive detailed inspections for discrepancies and loose ball bearings; repetitive lubrication of the ballnut and ballscrew; repetitive measurements of the freeplay between the ballnut and the ballscrew; and corrective action if necessary. This proposed AD is prompted by a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a similar airplane model. We are proposing this AD to prevent an undetected failure of the primary load path for the ballscrew in the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 21, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or 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.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Airplane Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2005–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2005–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22623; Directorate Identifier 2004–NM–80–AD'' in the subject line 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 that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review 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*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket 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

On January 31, 2000, there was an accident involving a McDonnell Douglas Model DC–9–83 (MD–83) airplane. The National Transportation Safety Board (NTSB) determined that the probable cause of this accident was a loss of airplane pitch control resulting from the in-flight failure of the acme nut threads of the jackscrew assembly of the horizontal stabilizer trim system. The NTSB concluded that the thread failure was caused by excessive wear, resulting from insufficient lubrication of the jackscrew assembly.

The drive mechanism of the horizontal stabilizer on McDonnell Douglas Model DC–9–83 (MD–83) airplanes has a jackscrew assembly with an acme screw. The drive mechanism of the horizontal stabilizer on Boeing Model 767 airplanes uses a ballscrew. Acme screws and ballscrews have some differences in design, but perform similar functions and have the same airplane level effect following failure. The manufacturer's safety analysis of the 767 drive mechanism found no safety problems with the configuration of the drive mechanism, but showed that changes to the maintenance procedures and maintenance intervals are required to keep the drive mechanism properly maintained and operating as designed.

We have received a report indicating that the ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 series airplane showed extensive corrosion, which could lead to excessive wear. The ballscrew on Boeing Model 757 airplanes is similar to that on Boeing Model 767 airplanes that are the subject of this proposed AD. Therefore, both of these airplane models could have the same unsafe condition. We are considering separate action for the Boeing Model 757 series airplanes and other similar Boeing airplanes.

Extensive corrosion of the ballscrew in the drive mechanism of the horizontal stabilizer, if not corrected, could cause an undetected failure of the primary load path for the ballscrew and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Relevant Service Information

We have reviewed the following service bulletins:

- Boeing Service Bulletin 767–27A0194, Revision 1, dated July 21, 2005 (for Model 767–200, –300, and –300F series airplanes); and
- Boeing Service Bulletin 767–27A0195, Revision 1, dated July 21, 2005 (for Model 767–400ER series airplanes).

The compliance times specified in the service bulletins are as follows:

For all airplanes: The compliance time for the initial detailed inspections and lubrication of the ballnut and ballscrew is 15,000 total flight hours or 18 months after the original issue date on the service bulletin, whichever occurs later. The inspection is repeated at intervals not to exceed 3,500 flight hours or 24 months, whichever occurs first; the lubrication is repeated at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

For all airplanes except those on which an FAA-approved low utilization maintenance program is in effect: The compliance time for the initial ballscrew-to-ballnut freeplay inspection is 15,000 flight hours after accomplishing the last ballscrew-to-ballnut freeplay inspection or 18 months after the original issue date on the service bulletin, whichever occurs later. If the inspection has never been done, the compliance time for the initial inspection is 15,000 flight hours after the delivery date of the airplane or 18 months after the original issue date on the service bulletin, whichever occurs later. The inspection is repeated at intervals not to exceed 18,000 flight hours.

For all airplanes except those on which an FAA-approved low utilization maintenance program is in effect: The compliance time for the initial ballscrew-to-ballnut freeplay inspection is 60 months after accomplishing the last ballscrew-to-ballnut freeplay inspection. If the inspection has never been done, the compliance time for the initial inspection is within 60 months after the delivery date of the airplane. The inspection is repeated at intervals not to exceed 72 months.

The service bulletins also describe the procedures in the following table for the drive mechanism of the horizontal stabilizer:

PROCEDURES SPECIFIED IN BOEING SERVICE BULLETINS 767–27A0194 AND 767–27A0195

Work package	Repetitive actions	Corrective action
1	Accomplish detailed inspections for discrepancies (including cracks, corrosion, damage, and worn areas); and a detailed inspection for loose ball bearings of the external areas of the drive mechanism and areas below the drive mechanism.	Replace the ballscrew actuator with a new or overhauled actuator if any discrepancy is found during any inspection.
2	Lubricate the ballnut and ballscrew of the horizontal stabilizer drive mechanism.	Not applicable.
3	Measure the freeplay between the ballnut and ballscrew	Replace the ballscrew actuator with a new or overhauled actuator if the freeplay is more than the specified limit.

We have also reviewed Boeing Alert Service Bulletin 767–27A0185, dated July 10, 2003, which is included as an additional source of service information for accomplishing certain actions. This service bulletin applies to Boeing Model 767 airplanes that have line numbers 002 through 175 inclusive, and has procedures that are equivalent to those in Service Bulletins 767–27A0194 and 767–27A0195. Accomplishing the inspection and lubrication specified in Service Bulletin 767–27A0185 is considered acceptable for compliance with the initial inspection and lubrication specified in Revision 1 of Boeing Service Bulletins 767–27A0194 and 767–27A0195.

We have determined that accomplishing the actions specified in Revision 1 of Boeing Service Bulletins 767–27A0194 and 767–27A0195 will adequately address the unsafe condition.

Revision 1 of Boeing Service Bulletins 767–27A0194 and 767–27A0195 refers to the 767 Airplane Maintenance Manuals (AMM) in the following table as additional sources of service information for accomplishing the detailed inspections, lubrications, freeplay measurements, and corrective action.

ADDITIONAL SOURCES OF SERVICE INFORMATION

Boeing AMM	Subject
767–200	27–41–10
767–200	12–21–05

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require

the following actions for the drive mechanism of the horizontal stabilizer:

- Repetitive detailed inspections for discrepancies of the ballscrew assembly;
- Repetitive lubrication of the ballnut and ballscrew;
- Repetitive measurements of freeplay between the ballnut and the ballscrew; and
- Corrective action if necessary.

The proposed AD would require you to use Revision 1 of Service Bulletins 767–27A0194 and 767–27A0195 to perform these actions; except as discussed under ''Difference Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service bulletins specify compliance times relative to the date of issuance of the service bulletins; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD.

Costs of Compliance

There are about 903 Model 767 airplanes in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, per cycle.

ESTIMATED COSTS

Repetitive actions	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection	1	$65	None	$65	411	$26,715
Lubrication	1	65	None	65	411	26,715
Freeplay measurement	3	65	None	195	411	80,145

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

For the reasons discussed above, I certify that 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, Airplane, 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):

Boeing: Docket No. FAA–2005–22623; Directorate Identifier 2004–NM–80–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of extensive corrosion of a ballscrew in the horizontal stabilizer of a similar airplane model. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

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

Repetitive Detailed Inspections/Lubrications/Freeplay Measurement/Corrective Action

(f) Do all the applicable actions, including any applicable corrective action, specified in Work Packages 1, 2, and 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–27A0194 (for Model 767–200, –300, and –300F series airplanes) or Boeing Service Bulletin 767–27A0195 (for Model 767–400ER series airplanes), both Revision 1, both dated July 21, 2005; as applicable. Do the actions at the applicable compliance time specified in Table 1 of paragraph 1.E. ''Compliance'' of the service bulletins; except, where the service bulletins specify a compliance time relative to the original issue date of the service bulletin, this AD requires compliance relative to the effective date of this AD. Where the service bulletins specify a compliance time relative to the delivery date of the airplane, this AD requires compliance relative to the date of issuance of the original standard airworthiness certificate. Do any applicable corrective action before further flight. Repeat the actions at the applicable repeat interval specified in Table 1 of paragraph 1.E ''Compliance'' of the service bulletins.

Previously Accomplished Actions

(g) For airplanes on which the drive mechanism of the horizontal stabilizer was replaced before the effective date of this AD with a drive mechanism that was not new or overhauled, and the detailed and freeplay inspections were not accomplished in

accordance with Boeing Alert Service Bulletin 767–27A0194 or 767–27A0195, both dated August 21, 2003, as applicable: Within 4,000 flight hours or 24 months after the effective date of this AD, whichever is first, accomplish the inspections and perform any applicable corrective action before further flight in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–27A0194 or Boeing Service Bulletin 767–27A0195, both Revision 1, both dated July 21, 2005; as applicable.

(h) For Model 767 airplanes that have line numbers 002 through 175 inclusive: Accomplishing the initial inspection, applicable corrective action, and lubrication before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–27A0185, dated July 10, 2003; is considered acceptable for compliance with the applicable actions required by paragraph (f) of this AD.

Note 1: Boeing Service Bulletins 767–27A0194 and 767–27A0195, both Revision 1, both dated July 21, 2005, refer to the 767 Airplane Maintenance Manuals (AMM) in Table 1 of this AD as additional sources of service information for accomplishing the detailed inspections, lubrications, freeplay measurements, and corrective action.

TABLE 1.—ADDITIONAL SOURCES OF SERVICE INFORMATION

Boeing AMM	Subject
767–200	27–41–10
767–200	12–21–05

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane a horizontal stabilizer trim actuator unless it is new or has been overhauled in accordance with Boeing Service Bulletins 767–27A0194 and 767–27A0195, both Revision 1, both dated July 21, 2005; or has been inspected, lubricated, and measured in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Airplane Certification Service.

[FR Doc. 05–20267 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22624; Directorate Identifier 2004–NM–81–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This proposed AD would require the following actions for the drive mechanism of the horizontal stabilizer: Repetitive detailed inspections for discrepancies and loose ball bearings; repetitive lubrication of the ballnut and ballscrew; repetitive measurements of the freeplay between the ballnut and the ballscrew; and corrective action if necessary. This proposed AD is prompted by a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a similar airplane model. We are proposing this AD to prevent an undetected failure of the primary load path for the ballscrew in the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 21, 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.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or 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.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Airplane Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2005–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2005–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22624; Directorate Identifier 2004–NM–81–AD'' in the subject line 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 that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket 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

On January 31, 2000, there was an accident involving a McDonnell Douglas Model DC–9–83 (MD–83) airplane. The National Transportation Safety Board (NTSB) determined that the probable cause of this accident was a loss of airplane pitch control resulting from the in-flight failure of the acme nut threads of the jackscrew assembly of the horizontal stabilizer trim system. The NTSB concluded that the thread failure was caused by excessive wear, resulting from insufficient lubrication of the jackscrew assembly.

The drive mechanism of the horizontal stabilizer on McDonnell Douglas Model DC–9–83 (MD–83) airplanes has a jackscrew assembly with an acme screw. The drive mechanism of the horizontal stabilizer on Boeing Model 747 airplanes uses a ballscrew. Acme screws and ballscrews have some differences in design, but perform similar functions and have the same airplane level effect following failure. The manufacturer's safety analysis of the 747 drive mechanism found no safety problems with the configuration of the drive mechanism, but showed that changes to the maintenance procedures and maintenance intervals are required to keep the drive mechanism properly maintained and operating as designed.

We have received a report indicating that the ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 series airplane showed extensive corrosion, which could lead to excessive wear. The ballscrew on Boeing Model 757 airplanes is similar to that on the Boeing Model 747 airplanes that are the subject of this proposed AD. Therefore, both of these airplane models could have the same unsafe condition. We are considering separate action for Boeing Model 757 airplanes and other similar Boeing airplanes.

Extensive corrosion of the ballscrew in the drive mechanism of the horizontal stabilizer, if not corrected, could cause an undetected failure of the primary load path for the ballscrew and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–27A2396, Revision 1, dated August 4, 2005.

The compliance times specified in the service bulletin is as follows:

For all airplanes: The compliance times for the initial detailed inspections and lubrication of the ballnut and ballscrew is 15,000 total flight hours or 18 months after the original issue date on the service bulletin, whichever occurs later. The inspection is repeated at intervals not to exceed between 2,000 and 4,000 flight hours or 24 months, whichever occurs first; the lubrication is repeated at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

For all airplanes except those on which an FAA-approved low utilization maintenance program is in effect: The compliance time for the initial ballscrew-to-ballnut freeplay inspection is 15,000 flight hours after accomplishing the last ballscrew-to-ballnut freeplay inspection or 18 months after the original issue date on the service bulletin, whichever occurs later. If the inspection has never been done, the compliance time for the initial inspection is 15,000 flight hours after the delivery date of the airplane or 18 months after the original issue date on the service bulletin, whichever occurs later. The inspection is repeated at intervals not to exceed between 18,000 flight hours and 21,000 flight hours.

For all airplanes except those on which an FAA-approved low utilization maintenance program is in effect: The compliance time for the initial ballscrew-to-ballnut freeplay inspection is 60 months after accomplishing the last ballscrew-to-ballnut freeplay inspection. If the inspection has never been done, the compliance time for the initial inspection is within 60 months after the delivery date of the airplane. The inspection is repeated at intervals not to exceed 72 months.

The service bulletin also describes the procedures in the following table for the drive mechanism of the horizontal stabilizer.

PROCEDURES SPECIFIED IN BOEING ALERT SERVICE BULLETIN 747–27A2396

Work package	Repetitive actions	Corrective action
1	Accomplishing detailed visual inspections for discrepancies (including cracks, corrosion, damage, and worn areas); and a detailed inspection for loose ball bearings of the external areas of the drive mechanism and areas below the drive mechanism.	Replacing the ballscrew actuator with a new or overhaulted actuator if any discrepancy is found during any inspection.
2	Lubricating the ballnut and ballscrew of the horizontal stabilizer drive mechanism.	Not applicable.
3	Measuring the freeplay between the ballnut and ballscrew	Replacing the ballscrew actuator with a new or overhauled actuator if the freeplay is more than the specified limit.

We have determined that accomplishing the actions specified in the service bulletin will adequately address the unsafe condition.

The service bulletin refers to the 747 Airplane Maintenance Manuals (AMM) in the following table as additional sources of service information for accomplishing the detailed inspections, lubrications, freeplay measurements, and corrective action.

ADDITIONAL SOURCES OF SERVICE INFORMATION

Boeing AMM	Subject
747–100/200/300 AMM	12–21–19
747–100/200/300 AMM	27–41–06
747–400 AMM	12–21–19
747–400 AMM	27–41–06

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require the following actions for the drive mechanism of the horizontal stabilizer:

- Repetitive detailed inspections for discrepancies of the ballscrew assembly;
- Repetitive lubrication of the ballnut and ballscrew;
- Repetitive measurements of freeplay between the ballnut and the ballscrew; and
- Corrective action if necessary.

The proposed AD would require you to use the service bulletin described previously to perform these actions; except as discussed under ''Difference Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service bulletin specifies compliance times relative to the date of issuance of the service bulletin; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD.

Costs of Compliance

This proposed AD would affect about 1,082 Model 747 series airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, per cycle.

ESTIMATED COSTS

Repetitive actions	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection	1	$65	None	$65	236	$15,340
Lubrication	1	65	None	65	236	15,340
Freeplay measurement	3	65	None	195	236	46,020

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

For the reasons discussed above, I certify that 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, Airplane, 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):

Boeing: Docket No. FAA–2005–22624; Directorate Identifier 2004–NM–81–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, –200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of extensive corrosion of a ballscrew in the horizontal stabilizer of a similar airplane model. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

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

Repetitive Detailed Inspection/Lubrication/Freeplay Measurement and Corrective Action

(f) Do all the applicable actions, including any applicable corrective action, specified in Work Packages 1, 2, and 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2396, Revision 1, dated August 4, 2005. Do the actions at the applicable compliance time specified in Table 1 of paragraph 1.E. ''Compliance'' of

the service bulletin; except, where the service bulletin specifies a compliance time relative to the original issue date of the service bulletin, this AD requires compliance relative to the effective date of this AD. Where the service bulletin specifies a compliance time relative to the delivery date of the airplane, this AD requires compliance relative to the date of issuance of the original standard airworthiness certificate. Do any applicable corrective action before further flight. Repeat the actions at the applicable repeat interval specified in Table 1 of paragraph 1.E ''Compliance'' of the service bulletin.

Note 1: Boeing Alert Service Bulletin 747–27A2396, Revision 1, dated August 4, 2005, refers to the Airplane Maintenance Manuals (AMMs) in Table 1 of this AD as additional sources of service information for accomplishing the detailed visual inspections, lubrications, freeplay measurements, and corrective actions.

TABLE 1.—ADDITIONAL SOURCES OF SERVICE INFORMATION

Boeing AMM	Subject
747–100/200/300 AMM	12–21–19
747–100/200/300 AMM	27–41–06
747–400 AMM	12–21–19
747–400 AMM	27–41–06

Previously Accomplished Actions

(g) For airplanes on which the drive mechanism of the horizontal stabilizer was replaced before the effective date of this AD with a drive mechanism that was not new or overhauled, and the detailed and freeplay inspections were not accomplished in accordance with Boeing Alert Service Bulletin 747–27A2396, dated September 4, 2003: Within 4,000 flight hours or 24 months after the effective date of this AD, whichever is first, accomplish the inspections, and perform any applicable corrective action before further flight, in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2396, Revision 1, dated August 4, 2005.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane a horizontal stabilizer trim actuator unless it is new or has been overhauled in accordance with Boeing Alert Service Bulletin 747–27A2396, Revision 1, dated August 4, 2005; or has been inspected, lubricated, and measured in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Airplane Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Airplane Certification Service.

[FR Doc. 05–20268 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22631; Directorate Identifier 2005–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This proposed AD would require modifying electrical harnesses located at the left- and right-hand wing roots; and re-routing and modifying the harness of the right-hand outboard flap actuator. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent chafed electrical harnesses, which could result in a potential source of ignition for fuel vapors near a fuel tank and consequent fire or fuel tank explosion.

DATES: We must receive comments on this proposed AD by November 7, 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.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2474; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22631; Directorate Identifier 2005–NM–183–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has 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.

We have determined that the actions identified in this 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 Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. The DAC advises that the manufacturer conducted a fuel system review and found that certain electrical harnesses located near the fuel tanks in the wings could chafe. Chafed electrical harnesses could result in a potential source of ignition for fuel vapors near a fuel tank and consequent fire or fuel tank explosion.

Relevant Service Information

EMBRAER has issued Service Bulletin 120–24–0059, Revision 02, dated March 18, 2005. The service bulletin describes procedures for modifying electrical harnesses located at the left- and right-hand wing roots; and re-routing and modifying the harness of the right-hand outboard flap actuator. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–06–01, dated June 29, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil 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 DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

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

Costs of Compliance

This proposed AD would affect about 112 airplanes of U.S. registry. The proposed actions would take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $979 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $167,888, or $1,499 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

EMBRAER: Docket No. FAA–2005–22631; Directorate Identifier 2005–NM–183–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent chafed electrical harnesses, which could result in a potential source of ignition for fuel vapors near a fuel tank and consequent fire or fuel tank explosion.

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.

Corrective Action

(f) Within 5,000 flight hours after the effective date of this AD, modify the electrical harnesses located at the left- and right-hand wing roots; and re-route and modify the harness of the right-hand outboard flap actuator; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–24–0059, Revision 02, dated March 18, 2005.

Previously Accomplished Actions

(g) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 120–24–0059, dated April 6, 2004; and Revision 01, dated November 9, 2004; are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) Brazilian airworthiness directive 2005–06–01, dated June 29, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20269 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22628; Directorate Identifier 2005–NM–056–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –700, and –800 Series Airplanes; Model 747–400 and –400F Series Airplanes; Model 757–200 Series Airplanes; Model 767–300 Series Airplanes; and Model 777–300 Series Airplanes Equipped With Certain Driessen or Showa Galleys or Driessen Closets

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 Boeing transport category airplanes. This proposed AD would require inspecting to determine if certain galleys and closets are installed, and replacing the spiral wire wrapping of the electrical cables of the galleys and closets with new spiral wire wrapping if necessary. This proposed AD results from testing and reports from the manufacturer indicating unacceptable flammability properties of wire wrapping installed in certain galleys and closets. We are proposing this AD to prevent fire propagation or smoke in the cabin area due to electrical arcing or sparking and ignition of the spiral wire wrapping.

DATES: We must receive comments on this proposed AD by November 21, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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–2005–22628; the directorate identifier for this docket is 2005–NM–056–AD.

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22628; Directorate Identifier 2005–NM–056–AD'' in the subject line 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 that website, 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 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 received reports of testing by the manufacturer indicating unacceptable flammability properties of the spiral wire wrapping of the electrical cables in certain galleys and closets on various Boeing transport category airplanes. The existing spiral wire wrapping of certain galleys and closets was not tested for flammability standards and may not self-extinguish in the event of a fire. Electrical arcing or sparking and ignition of the spiral wire wrapping could result in fire propagation or smoke in the cabin area.

Relevant Service Information

We have reviewed the service information identified in the following table.

SERVICE INFORMATION

Boeing	Revision	Dated
Special Attention Service Bulletin 737–25–1438	1	November 11, 2004.
Service Bulletin 737–25–1439	3	November 11, 2004.
Special Attention Service Bulletin 747–25–3264	1	November 11, 2004.
Service Bulletin 747–25–3275	1	April 4, 2002.
Special Attention Service Bulletin 757–25–0238	2	November 11, 2004.
Special Attention Service Bulletin 767–25–0297	1	November 11, 2004.
Special Attention Service Bulletin 777–25–0180	1	November 11, 2004.

The service bulletins and special attention service bulletins describe procedures for replacing existing spiral wire wrapping of the electrical cables of the galleys and closets with new spiral protective wrapping that has been shown to meet certain flammability testing requirements. The procedures also describe installing a modification placard to indicate that new spiral protective wrapping has been installed. Each of the service bulletins reference Dreissen Aircraft Interior Systems Service Bulletin SB 25–442, Revision E, dated April 29, 2004, and Showa Aircraft Industry Co., Ltd., Service Bulletin SB 25–30–111, dated December 11, 2000, as applicable, as additional sources of service information. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Each of the Boeing service bulletins referenced in this proposed AD specify certain Boeing series airplanes. However, this proposed AD is applicable to all the airplane models specified. Since galleys and closets may be removed from one airplane and installed in another airplane, this proposed AD would also require an inspection to determine if certain galleys or closets are installed, or a maintenance record check of the airplane to determine if certain galleys or closets are installed.

Although the Boeing service bulletins refer to accomplishment of certain Driessen Aircraft Interior Systems and Showa service bulletins, or ''the latest FAA-approved revision,'' this proposed AD would require accomplishment of the Driessen Aircraft Interior Systems and Showa service bulletins specified in this proposed AD. Using the phrase, ''or later FAA-approved revision,'' violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (j) of the proposed AD.

The Boeing service bulletins also specify an imprecise compliance time for replacing the spiral protective wrapping of the electrical cables of the galley, *i.e.*, ''at the next heavy maintenance check.'' This proposed AD would require replacement within 72 months after the effective date of the AD, and we have coordinated this compliance time with the manufacturer.

Additionally, for clarification and for the purposes of this proposed AD, the use of the term ''galley'' includes the terms ''buffet'' and ''closets'' referenced in certain service information specified in this proposed AD.

Costs of Compliance

There are about 5,177 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 2,621 airplanes of U.S. registry. The proposed inspection to determine part numbers of the galleys would take about 1 work hour per galley, at an average labor rate of $65 per work hour. Some airplanes have only one galley and some have up to 11 galleys. With the exception of Boeing Model 777–300 airplanes, we estimate the cost of the inspection proposed in this AD for U.S. operators to be between $65 and $715 per airplane.

If an operator is required to replace the spiral protective wrapping of the electrical cables of the galley, we estimate that cost to be as follows:

1. For Dreissen galleys: About two work hours per galley, at an average labor rate of $65 per work hour, and the estimated cost for the new spiral protective wrapping to be about $1,450, per galley. The estimated total cost would be about $1,580, per galley.

2. For Showa galleys: About 20 work hours per galley, at an average labor rate of $65 per work hour, and the estimated cost of the new spiral protective wrapping to be about $1,550, per galley. The estimated total cost would be about $2,850, per galley.

Currently, there are no Boeing Model 777–300 airplanes with the subject galleys on the U.S. Register. However, if a Model 777–300 is imported and placed on the U.S. Register in the future, the required actions would take about 1

work hour per galley, at an average labor rate of $65 per work hour.

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):

Boeing: Docket No. FAA–2005–22628; Directorate Identifier 2005–NM–056–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing transport category airplanes equipped with certain Driessen Aircraft Interior Systems or Showa galleys, certificated in any category; as identified in paragraphs (c)(1) through (c)(5) inclusive of this AD.

(1) Model 737–300, –400, –500, –700, and –800 series airplanes;

(2) Model 747–400 and 747–400F series airplanes;

(3) Model 757–200 series airplanes;

(4) Model 767–300 series airplanes;

(5) Model 777–300 series airplanes.

Unsafe Condition

(d) This proposed AD results from testing and reports from the manufacturer indicating unacceptable flammability properties of wire wrapping installed in certain galleys and closets. We are proposing this AD to prevent fire propagation or smoke in the cabin area due to electrical arcing or sparking and ignition of the spiral wire wrapping.

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.

Note 1: For clarification and for the purposes of this AD, the use of the term ''galley'' also includes the terms ''buffet'' and ''closets'' that are referenced in certain service information specified in this AD.

Determination of Part Installation

(f) Within 72 months after the effective date of this AD, inspect the galleys to determine if any of the part numbers (P/Ns) installed are identified in the applicable service information specified in Table 1 of this AD. Instead of inspecting the galleys to determine if the P/Ns are installed, a review of airplane maintenance records is acceptable if the P/Ns can be positively determined from that review.

TABLE 1.—SERVICE BULLETINS AND SPECIAL ATTENTION SERVICE BULLETINS

Model and service information	Revision	Dated
Boeing Special Attention Service Bulletin 737–25–1438, for Model 737–300, –400, and –500 series airplanes.	1	November 11, 2004.
Boeing Service Bulletin 737–25–1439, for Model 737–700 and –800 series airplanes	3	November 11, 2004.
Boeing Special Attention Service Bulletin 747–25–3264, for Model 747–400 series airplanes	1	November 11, 2004.
Boeing Service Bulletin 747–25–3275, for Model 747–400F series airplanes	1	April 4, 2002.
Boeing Special Attention 757–25–0238, for Model 757–200 series airplanes	2	November 11, 2004.
Boeing Special Attention Service Bulletin 767–25–0297, for Model 767–300 series airplanes	1	November 11, 2004.
Boeing Special Attention Service Bulletin 777–25–0180, for Model 777–300 series airplanes	1	November 11, 2004.

Note 2: The service bulletin and special attention service bulletins specified in Table 1 of this AD reference Dreissen Aircraft Interior Systems Service Bulletin SB 25–442, Revision E, dated April 29, 2004; and Showa Aircraft Industry Co., Ltd., Service Bulletin SB 25–30–111, dated December 11, 2000; as applicable; as additional sources of service information.

If Certain Galleys Are Not Installed

(g) If no galley is installed having any P/N identified in the service information specified in paragraph (f) of this AD, no further action is required by this AD.

If Certain Galleys Are Installed

(h) If any galley is installed having any P/N identified in the service information specified in paragraph (f) of this AD: Within 72 months after the effective date of this AD, replace the spiral protective wrapping of the electrical cables of the galley with new spiral protective wrapping that has been shown to meet certain flammability testing requirements, in accordance with the applicable service information specified in paragraph (f) of this AD.

Credit for Previous Replacement

(i) Replacement of the spiral protective wrapping of the electrical cables of any galley with new spiral protective wrapping that has been shown to meet certain flammability

testing requirements, in accordance with the service information listed in the Table 2 of this AD, prior to the effective date of this AD, is acceptable for compliance with the requirements of paragraph (h) of this AD.

TABLE 2.—PREVIOUS ACCOMPLISHMENT

Boeing service information	Revision	Dated
Special Attention Service Bulletin 737–25–1438	Original	March 15, 2001.
Special Attention Service Bulletin 737–25–1439	Original	March 15, 2001.
Special Attention Service Bulletin 737–25–1439	1	August 2, 2001.
Service Bulletin 737–25–1439	2	December 19, 2001.
Special Attention Service Bulletin 747–25–3264	Original	March 15, 2001.
Special Attention Service Bulletin 747–25–3275	Original	March 15, 2001.
Special Attention Service Bulletin 757–25–0238	Original	March 15, 2001.
Special Attention Service Bulletin 757–25–0238	1	November 15, 2001.
Special Attention Service Bulletin 767–25–0297	Original	March 15, 2001.
Special Attention Service Bulletin 777–25–0180	Original	March 15, 2001.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any replacement required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20270 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22632; Directorate Identifier 2005–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) 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 Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. This proposed AD would require repetitive inspections for cracking or fracturing of the output links of the power control unit (PCU) for the ailerons, and related investigative and corrective actions if necessary. This proposed AD results from reports of fractured output links of the aileron PCU. We are proposing this AD to prevent failure of an output link of the aileron PCU, which, if both links on one aileron fail, could result in reduced lateral control of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 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.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22632; Directorate Identifier 2005–NM–158–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. TCCA advises that fractured output links of the power control unit (PCU) for the ailerons have been found on in-service Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. Cracking or fracture of an output link of the aileron PCU, if not corrected, could result in failure of the link. Failure of one link may be a dormant (undetected) failure. However, failure of both output links on one aileron could result in reduced lateral control of the airplane.

The output links of the aileron PCU on certain Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes are similar to those on the affected Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. Therefore, those Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes may be subject to the unsafe condition revealed on the Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

Other Relevant Rulemaking

We previously issued AD 2005–03–13, amendment 39–13969 (70 FR 7845, February 16, 2005). AD 2005–03–13 requires doing repetitive inspections for fractures and cracks of the links of the aileron PCU; replacing any fractured/cracked link; and doing applicable related investigative and corrective actions, if necessary. The actions required by that AD, which applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes, are similar to those that would be required by this proposed AD for Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005. The service bulletin describes procedures for repetitive detailed inspections for cracking or fracturing of the output links of the aileron PCU, and related investigative and corrective actions if necessary. If any fractured or cracked link is found, the service bulletin specifies a corrective action of replacing the fractured/cracked link with a new link. The service bulletin also describes related investigative actions and corrective actions that must be done if any fractured or cracked link is found, which include:

- Measuring the torque value of the forward and aft attachment bolts for both the damaged PCU output link and the adjacent PCU output link installed on the same aileron.
- For any damaged PCU output link, testing and measuring, as applicable, to determine if there is any mismatch between the PCU output link and the aileron lugs.
- For any damaged PCU output link, performing an eddy current inspection for cracking of the aileron lugs and flange bushings of the aileron lugs.
- If any damage (including but not limited to cracking) of an aileron lug or flange bushing is found, contacting the manufacturer for instructions.
- Reporting results of all inspections, measurements, and tests, to the manufacturer.

TCCA mandated the service information and issued Canadian airworthiness directive CF–2005–23, dated June 29, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Among the Proposed AD, Canadian Airworthiness Directive, and Service Information.'' The proposed AD would also require sending the inspection results to the manufacturer.

Difference Among the Proposed AD, Canadian Airworthiness Directive, and Service Information

The Canadian airworthiness directive and service bulletin specify to contact the manufacturer for instructions on how to disposition certain damaged parts. This proposed AD would require you to disposition those parts using a method that we or TCCA (or its delegated agent) approve. In light of the type of action that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, disposition of a damaged part in a manner that we or TCCA approve would be acceptable for compliance with this proposed AD.

Clarification of Inspection Terminology

The Canadian airworthiness directive specifies performing a ''detailed visual'' inspection for cracking or fracturing of the output links of the aileron PCU. We refer to this inspection as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD. (This terminology is consistent with the terminology used in the service information.)

Interim Action

We consider this proposed AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Costs of Compliance

This proposed AD would affect about 205 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this proposed

inspection for U.S. operators is $13,325, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2005–22632; Directorate Identifier 2005–NM–158–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Bombardier airplane models	Serial Nos.
CL–600–2C10 (Regional Jet Series 700, 701, & 702).	10003 and subsequent.
CL–600–2D15 (Regional Jet Series 705).	15001 and subsequent.
CL–600–2D24 (Regional Jet Series 900).	15001 and subsequent.

Unsafe Condition

(d) This AD results from reports of fractured output links of the power control unit (PCU) for the ailerons. We are issuing this AD to prevent failure of an output link of the aileron PCU, which, if both links on one aileron fail, could result in reduced lateral control of the airplane.

Compliance

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

Repetitive Inspections, Related Investigative Actions, and Corrective Actions

(f) Prior to the accumulation of 2,000 total flight hours, or within 550 flight hours after the effective date of this AD, whichever is later: Do a detailed inspection for cracking or fracturing of the output links of the aileron PCU and do all related investigative and corrective actions, as applicable, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005, except as provided by paragraph (g) of this AD. Thereafter, repeat the inspection and applicable related investigative and corrective actions at intervals not to exceed 1,000 flight hours. Any applicable related investigative and corrective actions must be done before further flight after the inspection.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Exception to Corrective Action Instructions

(g) If any cracking or other damage is found on an aileron lug or flange bushing during any inspection required by this AD, and the service bulletin recommends contacting Bombardier for appropriate action: Before further flight, disposition and replace the cracked or damaged aileron lug or flange bushing with a new part, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Reporting

(h) Submit a report of the findings (both positive and negative) of the inspections required by paragraph (f) of this AD to Bombardier Aerospace; Attention: Christian Holzl, dept. 508; Location S666 1422 024; 13100 Highway 50; Mirabel, Quebec, Canada, J7M 3C6; fax (450) 476–7321. Submit the report at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the airplane serial number, the total accumulated flight cycles and flight hours on the airplane, the date of the inspection, the total accumulated flight cycles and flight hours at the last ''C'' check, the serial number of each PCU, and the results of all inspections, tests, and measurements done in accordance with paragraph (f) of this AD. Submitting Appendix A of Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, Revision A, dated May 18, 2005, is an acceptable means of complying with this requirement. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Actions Accomplished Previously

(i) Inspections and corrective actions done, and reports submitted, before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A670BA–27–023, including Appendix A, dated May 3, 2005, are acceptable for compliance with the corresponding requirements of paragraphs (f) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(k) Canadian airworthiness directive CF–2005–23, dated June 29, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20271 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22633; Directorate Identifier 2005–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 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 Dassault Model Falcon 2000 airplanes. This proposed AD would require an inspection for the presence of fail-safe pins, nuts, and washers on each engine, and replacement of the fail-safe fastener assembly with a new assembly if necessary. This proposed AD results from a report of a missing pin of a fail-safe fastener. We are proposing this AD to prevent reduced structural integrity of an engine mount due to a missing pin of a fail-safe fastener, and possible separation of an engine from the airplane during flight.

DATES: We must receive comments on this proposed AD by November 7, 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.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22633; Directorate Identifier 2005–NM–155–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Dassault Model Falcon 2000 airplanes. The DGAC advises that the inner pin of a fail-safe fastener, which ensures the link between the rear of the engine and the fuselage, has been found missing on an in-service airplane. Lack of clarity in a production procedure is suspected to be the cause of this event. A missing pin of a fail-safe fastener, if not corrected, could result in reduced structural integrity of an engine mount, and possible separation of an engine from the airplane during flight.

Relevant Service Information

Dassault has issued Service Bulletin F2000–301, dated February 2, 2005. The service bulletin describes procedures for a detailed inspection for the presence of fail-safe pins, nuts, and washers on each engine, and replacement of the fail-safe fastener assembly with a new assembly if necessary. 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–2005–018, dated February 2, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is 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 airplanes of this type design that are certificated for operation in the United States.

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

except as discussed under ''Difference Between Proposed Rule, French Airworthiness Directive, and Referenced Service Bulletin.''

Difference Between Proposed Rule, French Airworthiness Directive, and Referenced Service Bulletin

The French airworthiness directive requires operators to inform the airplane manufacturer of inspection results. The Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet related to service bulletin quality, a sheet recording compliance with the service bulletin, and reply card noting the precise location of any missing component. However, this proposed AD would not require those actions. We do not need this information from operators.

Costs of Compliance

This proposed AD would affect about 149 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection proposed by this AD for U.S. operators is $9,685, 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 and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2005–22633; Directorate Identifier 2005–NM–155–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category; up to and including serial number 212, excluding serial number 208.

Unsafe Condition

(d) This AD results from a report of a missing pin of a double fail-safe fastener. We are issuing this AD to prevent reduced structural integrity of an engine mount due to a missing pin of a fail-safe fastener, and possible separation of an engine from the airplane during flight.

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.

Inspection and Replacement

(f) Before the accumulation of 3,750 total landings, or within 2 months after the effective date of this AD, whichever occurs later, do a detailed inspection for the presence of fail-safe pins, nuts, and washers on each engine, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–301, dated February 2, 2005. If any component is found missing at an attachment point, before further flight, replace the fail-safe fastener assembly with a new assembly, in accordance with the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(g) Inspections and replacements done in accordance with Chapter 54–003 of the Dassault Falcon 2000 Maintenance Manual are acceptable for compliance with the requirements of paragraph (f) of this AD.

No Reporting

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) French airworthiness directive F–2005–018, dated February 2, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 29, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20272 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 33

[Docket No. RM05–34–000]

Transactions Subject to FPA Section 203

Issued October 3, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to Subtitle G (Market Transparency, Enforcement, and Consumer Protection), section 1289 (Merger Review Reform), of Title XII (Electricity Modernization Act of 2005), of the Energy Policy Act of 2005 (EPAct 2005), Pub. L. 109–58, 119 Stat. 594 (2005), the Federal Energy Regulatory Commission (Commission) is proposing rules and amendments to the Commission's regulations to implement amended section 203 of the Federal Power Act (FPA). The Commission seeks public comment on the rules and amended regulations proposed herein.

EFFECTIVE DATE: Comments are due November 7, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:
Sarah McWane (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8372.
Phillip Nicholson (Technical Information), Office of Markets, Tariffs and Rates—West, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8240.
Jan Macpherson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8921.
James Akers (Technical Information), Office of Markets, Tariffs and Rates—West, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8101.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. Section 1289 (Merger Review Reform) of Title XII, Subtitle G (Market Transparency, Enforcement, and Consumer Protection),[2] of EPAct 2005 amends section 203 of the Federal Power Act (FPA) [3] and directs the Federal Energy Regulatory Commission (Commission) to adopt, by rule, procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under section 203 of the FPA. Amended section 203 also: (1) Increases (from $50,000 to $10 million) the value threshold for certain transactions subject to section 203; (2) extends the scope of section 203 to include transactions involving certain transfers of generation facilities and certain holding companies' acquisitions with a value in excess of $10 million; (3) limits the Commission's review of a public utility's acquisition of securities of another public utility to transactions greater than $10 million; and (4) requires that the Commission, when reviewing a proposed section 203 transaction, examine cross-subsidization and pledges or encumbrances of utility assets. The Commission proposes rules and amendments to the Commission's regulations to implement amended section 203.[4]

2. The Commission intends to issue a final rule within six months after EPAct 2005's enactment to coincide with the date on which amended section 203 of the FPA takes effect, February 8, 2006. The Commission seeks public comment on the rules proposed herein.

II. Background

A. Commission Merger Policy Before Effective Date of Amended FPA Section 203

1. Section 203 of the FPA

3. Section 203 of the FPA currently provides that Commission authorization is required for various types of dispositions and acquisitions of jurisdictional facilities, such as public utility mergers and consolidations. Specifically, section 203(a) of the FPA states:

> No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so.
>
> The Commission shall approve such transactions if they are consistent with the public interest.

2. The Commission's Merger Policy Statement

4. In 1996, the Commission issued the Merger Policy Statement [5] updating and clarifying the Commission's procedures, criteria, and policies concerning public utility mergers in light of dramatic and continuing changes in the electric power industry and the regulation of that industry. The purpose of the Merger Policy Statement was to ensure that mergers are consistent with the public interest and to provide greater certainty and expedition in the Commission's analysis of merger applications.

5. The Merger Policy Statement sets out three factors the Commission generally considers when analyzing whether a proposed section 203 transaction is consistent with the public interest: effect on competition; effect on rates; and effect on regulation.[6]

6. With respect to the effect on competition, the Merger Policy Statement adopts the Department of Justice (DOJ)/Federal Trade Commission (FTC) 1992 Horizontal Merger Guidelines (Guidelines) [7] as the analytical framework for examining horizontal market power concerns. The Merger Policy Statement also uses an analytical screen (Appendix A analysis) that is intended to allow early identification of transactions that clearly do not raise competitive concerns. As

[1] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[2] EPAct 2005 §§ 1281 *et seq.*

[3] 16 U.S.C. 824b (2000).

[4] As noted below, EPAct 2005's amendments to FPA section 203 will not take effect until February 3, 2006. We will generally refer to EPAct 2005's amended section 203 of the FPA as ''amended section 203.'' All other references to FPA section 203 are as it currently exists.

[5] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 FR 68,595 (Dec. 30, 1996), FERC Stats. and Regs. ¶ 31,044 (1996), *reconsideration denied,* Order No. 592–A, 62 FR 33,340 (June 19, 1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

[6] Although the Commission applies these factors to all section 203 transactions, not just mergers, the filing requirements and the level of detail required may differ. *Id.* at ¶ 30,113 n.7. *See also* 18 CFR 2.26 (2005) (which codifies the Merger Policy Statement).

[7] U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, 57 FR 41,552 (1992), revised, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (Apr. 8, 1997).

part of the screen analysis, applicants must define the relevant products sold by the merging entities, identify the customers and potential suppliers in the geographic markets that are likely to be affected by the proposed transaction, and measure the concentration in those markets.[8] Using the delivered price test to identify alternative competing suppliers, the concentration of potential suppliers included in the defined market is then measured by the Herfindahl-Hirschman Index (HHI) and used as a screen to determine which transactions may raise market power concerns.

7. The Commission stated in the Merger Policy Statement that it will examine the second factor, the effect on rates, by focusing on customer protections designed to insulate consumers from any harm resulting from the transaction. We directed applicants to attempt to negotiate such measures with their customers before filing their applications.[9]

8. The Merger Policy Statement set forth a third factor for examination, the effect on regulation. This includes both state regulation and the Commission's regulation, including any potential shift in regulation from the Commission to the Securities and Exchange Commission (SEC) due to a transaction creating a registered public utility holding company under the Public Utility Holding Company Act of 1935 (PUHCA 1935).[10] The Merger Policy Statement explained that, unless applicants commit themselves to abide by this Commission's policies with regard to affiliate transactions involving non-power goods and services, we will set the issue of the effect on regulation for hearing.[11] With respect to a transaction's effect on state regulation, where the state commissions have authority to act on the transaction, the Commission stated that it intends to rely on them to exercise their authority to protect state interests.

3. The Filing Requirements Rule and Revised Filing Requirements Under 18 CFR Part 33 of the Commission's Regulations

9. The Commission later issued the Filing Requirements Rule,[12] a final rule updating the filing requirements under 18 CFR Part 33 of the Commission's regulations for section 203 applications. The Filing Requirements Rule implements the Merger Policy Statement and provides detailed guidance to applicants for preparing applications. The revised filing requirements were also designed to assist the Commission in determining whether section 203 transactions are consistent with the public interest, to provide more certainty, and to expedite the Commission's handling of such applications.

10. The Filing Requirements Rule codifies the Commission's screening approach, provides specific filing requirements consistent with Appendix A of the Commission's Merger Policy Statement, establishes guidelines for vertical competitive analysis, and sets forth filing requirements for mergers that may raise vertical market power concerns. It also streamlined the rules, eliminated unnecessary Part 33 filing requirements, and reduced the information burden for transactions that raise no competitive concerns.

11. In the Filing Requirements Rule, the Commission explained that for certain transactions, abbreviated filing requirements are appropriate because it is relatively easy to determine that they will not harm competition and, thus, a full-fledged screen or vertical competitive analysis is not required. The Commission does not require the full Appendix A analysis screen if: (1) The applicant demonstrates that the merging entities do not operate in the same geographic markets, or if they do, that the extent of such overlapping operation is *de minimis*; and (2) no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.[13] Furthermore, the Commission stated that it will not require section 203 applicants to provide an Appendix A analysis if: (1) The application is a regional transmission organization (RTO) filing that directly responds to the Commission's RTO rule; [14] (2) the transaction is simply an internal corporate reorganization; or (3) the transaction only involves a disposition of transmission facilities.[15]

12. The Commission also stated in the Filing Requirements Rule that, as announced in the Merger Policy Statement, it intended to continue processing section 203 applications expeditiously, with a goal of issuing an initial order for most mergers within 150 days of a completed application.[16] Further, the Commission stated that it intended to continue processing uncontested non-merger applications within 60 days of filing and protested non-merger applications within 90 days of filing.[17]

B. Section 203 as Amended by EPAct 2005

13. EPAct 2005 revises section 203(a) of the FPA as follows:

14. Amended section 203(a)(1) states that no public utility shall, without first having secured an order of the Commission authorizing it to do so: (A) Sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10 million; (B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; (C) purchase, acquire, or take any security with a value in excess of $10 million of any other public utility; or (D) purchase, lease, or otherwise acquire an existing generation facility: (i) that has a value in excess of $10 million; and (ii) that is used for interstate wholesale sales and over which the Commission has jurisdiction for ratemaking purposes.

15. Section 203(a)(2) adds the entirely new requirement that no holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of $10 million of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility

[8] Merger Policy Statement at ¶ 30,119–20.

[9] *See id.* at ¶ 30,121–24.

[10] 15 U.S.C. 79a *et seq.* (2000).

[11] Merger Policy Statement at ¶ 30,125; *see* also Atlantic City Electric Company and Delmarva Power & Light Company, 80 FERC ¶ 61,126 at 61,412, order denying reh'g, 81 FERC ¶ 61,173 (1997).

[12] *Revised Filing Requirements Under Part 33 of the Commission's Regulations,* Order No. 642, 65 FR 70,983 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g,* Order No. 642-A, 66 FR 16,121 (Mar. 23, 2001), 94 FERC ¶ 61,289 (2001) (codified at 18 CFR Part 33 (2005) (Filing Requirements Rule)).

[13] Filing Requirements Rule at ¶ 31,902 and ¶ 31,907. It also provides that an applicant will not be required to file additional information regarding the vertical aspects of a proposed merger if it shows that the merger does not impair competition in ''downstream'' electricity markets and involves an input supplier (the ''upstream'' merging firm) that sells: (1) An input that is used to produce a *de minimis* amount of the relevant product; or (2) no product into the downstream electricity geographic market. Id. At ¶ 31,903.

[14] *Regional Transmission Organizations,* Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,108 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001).

[15] Filing Requirements Rule at ¶ 31,902. The Commission clarified that, if it later determined that a filing raised competitive issues, the Commission would evaluate those issues and direct the applicant to submit any data needed to satisfy the Commission's concerns. *Id.* at n.79.

[16] *Id.* at ¶ 31,873.

[17] *Id.* at ¶ 31,876.

company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10 million without Commission authorization.

16. Like the existing section 203(a), amended section 203(a)(3) provides that upon receipt of an application for such approval, the Commission shall give reasonable notice in writing to the Governor and state commission of each of the states in which the physical property affected is situated, and to such other persons as it may deem advisable.

17. Amended section 203(a)(4) states that after notice and opportunity for hearing the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control if it finds that the transaction will be consistent with the public interest, but also adds the entirely new requirement that the Commission must find that the transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

18. Section 203(a)(5) adds the entirely new requirement that the Commission shall:

> By rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions, under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

19. Section 203(a)(6), which is also new, provides that for purposes of this subsection, the terms ''associate company,'' ''holding company,'' and ''holding company system'' have the meaning given those terms in the Public Utility Holding Company Act of 2005 (PUHCA 2005).[18]

20. Section 1289(b) provides that the amendments made by this section shall take effect six months after the date of enactment of EPAct 2005.

21. Section 1289(c) provides that the amendments made by subsection (a) shall not apply to any section 203 application that was filed on or before the date of enactment of EPAct 2005.

22. Section 203(b) of the FPA remains unchanged.[19]

III. Discussion

23. The Commission proposes to revise 18 CFR Part 33 (Application for Acquisition, Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility) and 18 CFR 2.26 (Policies concerning review of applications under section 203) to implement amended section 203 of the FPA.

A. Proposal To Amend 18 CFR Part 33

1. Part 33—Title

24. Currently, 18 CFR Part 33 is titled ''Application for Acquisition, Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility.'' The Commission proposes to revise the title of 18 CFR part 33 to read as follows: ''Applications Under Federal Power Act Section 203.''

2. Applicability and Definitions—18 CFR 33.1

25. Proposed section 33.1(a) is intended to clarify what transactions are subject to amended section 203 of the FPA and Part 33 as a result of amended sections 203(a)(1)(A)–(D) and (a)(2) of the FPA.[20] Proposed new subsection 33.1(b) would define certain new terms in amended section 203 that are not defined in EPAct 2005.

a. ''Value''

26. Proposed subsection 33.1(b) would define ''value.'' Currently, subsection 33.1(b) defines ''[v]alue in excess of $50,000'' as ''the original cost undepreciated as defined in the Commission's Uniform System of Accounts prescribed for public utilities and licensees in part 101 of this chapter.''

27. Before EPAct 2005, the question of what ''value'' means was not particularly significant for determining section 203 applicability, since most transactions involving the transfer of jurisdictional facilities clearly met the relatively low $50,000 threshold regardless of how ''value'' was defined. Most transactions involving the transfer of physical jurisdictional facilities (usually transmission) were clearly subject to section 203 simply because the ''original cost undepreciated'' of almost any transmission facility exceeded the relatively low $50,000 threshold set forth in FPA section 203(a). However, with the higher $10 million threshold, the question of how to define ''value'' may become significant for determining whether section 203 applies to certain transactions involving jurisdictional facilities (either physical or paper),[21] generation facilities, securities, individual companies or holding companies.

28. As relevant here, we believe that ''value'' can be viewed in two broad ways: Original/accounting cost value and market value. Original cost undepreciated is the amount actually paid for installing an original plant and equipment and additions thereto. A market value approach, on the other hand, bases value on the probable or expected future earnings or profits over the life of the asset. Different potential buyers of the asset will, of course, place different valuations on an asset, depending on their estimates of future expected profitability and their cost of capital.

29. As discussed below, the Commission proposes to generally rely on a ''market value'' approach for determining whether asset transfers are jurisdictional under section 203, with the exception of transfers of wholesale contracts. We invite comment on whether the ''market value'' concept or other alternative concepts are appropriate. We also invite comment and suggestions on measures of market value or other measures of value.

30. With respect to transactions involving the transfer of physical facilities, such as an existing generation facility or a transmission facility, which

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[18] EPAct 2005 § 1261 *et seq.*

[19] Section 203(b) states:

> The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

[20] Because proposed section 33.1(a) is almost identical to amended sections 203(a)(1)(A)–(D) and (a)(2), which are summarized in section II.B. above and set forth in the proposed regulatory text, we will not recite that text here.

[21] We note that the $10 million value threshold that is to be applied to the transfer of jurisdictional facilities under amended section 203(a)(1)(A), similar to the prior $50,000 threshold under section 203(a), is important for determining whether the transfer of part of a public utility's jurisdictional facilities is subject to section 203. The transfer of all of a public utility's jurisdictional facilities, regardless of value, is subject to amended section 203, as it was with section 203.

is addressed by amended subsections 203(a)(1)(A) and (D), the use of ''original cost undepreciated'' could lead to a different jurisdictional determination for facilities of equal size. For example, two generation units of the same size and type, but of substantially different ages, would likely have different values based on ''original cost undepreciated.'' The transfer of the newer generation unit could be deemed jurisdictional because its original construction cost exceeded $10 million, while the transfer of the older unit might not be jurisdictional because its original construction cost was less than $10 million. Thus, although the effects on markets of the transfer of both generation units could be the same, under the existing regulations the Commission would be prevented from evaluating the public interest implications of the transfer of the older unit.[22] Therefore, the Commission proposes that ''value,'' as applied to transmission facilities and existing generation facilities, be defined as the market value of such facilities. We recognize, however, that the determination of the market value for transmission facilities can be difficult in some instances and thus propose that, in the absence of a readily ascertainable market value, original cost undepreciated would be used. We seek comment on whether this measure of ''value'' of transmission and generation facilities, or some other measure, should be used, for transactions between non-affiliates and between affiliates. For transactions involving transfers of facilities between non-affiliates, the Commission believes that market value will, in most circumstances, be reflected in the transaction price. However, for a transaction between affiliates, it cannot be readily assumed that the market value will be reflected in the transaction price, since the buyer and seller do not bargain at arms' length. A possible alternative measure is original cost undepreciated. Therefore, the Commission seeks comments on these or other possible alternatives for defining value for transactions between affiliates.

31. With respect to paper jurisdictional facilities (usually wholesale contracts), Commission precedent does not address how the value of a wholesale contract should be determined for purposes of determining whether section 203 applies.[23] Rather, it appears to have been assumed, by applicants and the Commission alike, that the value of a wholesale contract, however measured, would exceed $50,000. However, with the increase in the value threshold to $10 million in amended section 203, the ''value'' of a wholesale contract may become significant.

32. For example, a wholesale contract may have a total revenue stream that exceeds $10 million, but with profits of much less than $10 million. A market value approach would involve basing ''value'' on the price or consideration paid for the contract, which, as with any other asset, would depend on the valuation of expected profits over the remaining life of the contract. Alternatively, the significance of a wholesale contract in terms of its effect on the market may be better reflected by defining ''value'' as total expected contract revenues over the remaining life of the contract. Total revenues are directly related to the quantity of power and energy delivered under the contract, which contributes to total market supply.[24] It may also be appropriate to factor into this determination the value of options that might affect the price and any rights to extend the contract or change the quantities sold. At this juncture, however, we propose that for purposes of determining the applicability of amended section 203 and Part 33 to a given transaction, the value of any wholesale contract included in the transaction would be based on total expected contract revenues over the remaining life of the contract. We seek comment on whether this measure of ''value'' of wholesale power sales contracts, a market value measure, or some other measure, should be used.

33. In addition, existing section 203 requires prior Commission approval for a public utility to acquire any security of another public utility, regardless of the value of the security. Thus, up to this point there was no need to define ''value'' for security acquisitions in Part 33. Amended sections 203(a)(1)(C) and (a)(2), however, state that the securities must have a value in excess of $10 million. The Commission proposes to define ''value'' of a security as the market price at the time the security is acquired. For transactions between non-affiliated companies, we will rebuttably presume that the market value is the agreed-upon transaction price. We seek comment on whether this measure of ''value'' of securities, or some other measure, should be used. We also seek comment on how to determine value for security transactions involving affiliates if the securities are not widely traded. For example, should the Commission consider using the *Edgar* standard [25] of review when determining value in affiliate transactions? While this valuation method would not require a direct solicitation, the Commission seeks comments as to whether we should give particular weight to evidence of non-affiliate transactions involving either non-affiliated buyers or sellers of securities of similarly situated utilities or assets.

34. The Commission proposes to define ''value'' with respect to a merger or consolidation with a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10 million, as used in amended section 203(a)(2), as ''market value.'' As noted above, we would expect that in most circumstances ''market value'' will be reflected in the transaction price for transactions between non-affiliates. We seek comment on whether this measure of ''value'' or some other measure should be used in these circumstances.

35. Further, given the increased significance of valuation of a transaction under amended section 203, we solicit comment on whether the Commission's existing record keeping and reporting requirements, outside the section 203 context, provide an adequate basis for monitoring jurisdictional entities' determinations of when a section 203 application is required.[26] For example,

[22] Admittedly, this example addresses transfers of relatively small generation or transmission facilities. Even at a historical cost of $101 per kilowatt, the original cost of a 100 megawatt plant would exceed $10 million and thus the transfer would be jurisdictional.

[23] In *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 at 62,405 (1993), the Commission merely noted, without discussion, that the value of the wholesale contract must exceed $50,000 for the transfer to be subject to section 203 of the FPA. *See also Ocean State Power*, 38 FERC ¶ 61,140 (1987).

[24] We note that for purposes of determining destination markets to be used in the Appendix A analysis, Part 33 requires applicants to identify individual wholesale customers based on sales. 18 CFR 33.3(c)(2).

[25] *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*). The *Edgar* standard of review is designed to prevent affiliate abuse and to ensure prices that are consistent with competitive outcomes. The *Edgar* decision outlined three methods by which a buyer could demonstrate that the transaction was free from potential affiliate abuse. First, the buyer can present evidence of direct head-to-head competition either through a formal solicitation or an informal negotiation process. Second, the buyer can present evidence of the prices that non-affiliated buyers were willing to pay for similar services to the proposed affiliate sale. Third, the buyer can present benchmark evidence showing the terms, prices and conditions of sales of similar services made by non-affiliated sellers in the relevant market. *Id.* at 62,168–69.

[26] However, we note that EPAct 2005 §§ 1284(d) and (e) expand the Commission's criminal and civil penalty authority, which will discourage

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do FERC Form 1s or Order No. 652 [27] market-based rate change in status reports provide sufficient information to monitor compliance with section 203?

b. ''Existing Generation Facility''

36. Proposed subsection 33.1(b) also defines the term ''existing generation facility.'' Amended section 203(a)(1)(D) provides that the acquisition of ''an existing generation facility'' with a value in excess of $10 million ''that is used for interstate wholesale sales and over which the Commission has jurisdiction for ratemaking purposes'' is now subject to section 203 of the FPA.

37. The Commission proposes to define ''existing generation facility'' for section 203 purposes as a generation facility that is operational at the time the transaction is consummated. If such a generation facility is intended to be used in whole or in part for wholesale sales in interstate commerce by a public utility, it is subject to our jurisdiction for ratemaking purposes and thus covered under amended section 203(a)(1)(D). Although the statutory provision refers to a facility that ''is'' used for wholesale sales (and over which the Commission has jurisdiction for ratemaking purposes), we believe a reasonable interpretation is that the provision would apply to newly constructed facilities that have already been energized at the time the transaction is consummated and are intended to be used in whole or in part for wholesale sales in interstate commerce by public utilities. We also note that if it can be demonstrated that a facility is used exclusively for retail sales, then amended section 203(a)(1)(D) is not triggered. We seek comment on the definition of the term ''existing generation facility.'' We seek comment on whether ''at the time the section 203 transaction is consummated'' is the correct point in time for determining whether a facility is an ''existing'' facility.

c. ''Associate Company,'' ''Holding Company,'' ''Holding Company System,'' ''Transmitting Utility,'' and ''Electric Utility Company''

38. The term ''transmitting utility'' is already defined in amended section 3 of the FPA [28] as ''an entity (including an entity described in section 201(f)) that owns, operates, or controls facilities used for the transmission of electric energy—(A) in interstate commerce; (B) for the sale of electric energy at wholesale.'' [29]

39. Amended section 203(a)(6) states that the terms ''associate company,'' ''holding company,'' and ''holding company system'' shall have the meaning given those terms in PUHCA 2005.[30]

40. We note that amended section 203(a)(2) refers to the term ''electric utility company,'' but provides no definition of that term. However, ''electric utility company'' is a PUHCA term and we believe that the most reasonable interpretation, especially in light of amended section 203(a)(6), is that it has the same meaning as used in PUHCA 2005, which is any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.[31] We seek comments on this proposed definition.

d. ''Non-Utility Associate Company''

41. Amended section 203(a)(4) adds the new requirement that before we can approve a proposed section 203 transaction, the Commission must find that the transaction will not result in cross-subsidization of a non-utility associate company or a pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest. However, because EPAct 2005 provides no definition of the term ''non-utility associate company,'' proposed subsection 33.1(b) would define this term.

42. PUHCA 2005, Subtitle F of EPAct 2005, defines an ''associate company'' of a company as any company in the same holding company system with such company, but does not define ''non-utility associate company.'' [32] A reasonable interpretation, as explained below, is that Congress was concerned about the potential that customers of ''regulated'' public utilities (persons that own or operate facilities used for wholesale sales or transmission in interstate commerce) would inappropriately subsidize ''unregulated'' associate companies [33] in the same holding company system, whether the associate companies were in energy or non-energy businesses. Such cross-subsidization can harm not only customers of the regulated public utility but it can also harm competition by giving ''unregulated'' sellers a competitive advantage. Similarly, Congress was concerned that regulated public utility assets not be inappropriately pledged or used to support non-regulated associate companies, to the harm of customers of the regulated public utility.

43. Historically, the Commission has used the term ''non-utility'' in more than one context and with more than one meaning. In the context of considering cross-subsidization concerns arising from the formation of holding companies, ''non-utility operations'' has been used to refer to the operation of businesses completely uninvolved in any aspect of the generation, transmission, distribution, or sale of electricity.[34] An example would be an associate company that engages in real estate development or residential construction. In the context of considering cross-subsidization or affiliate abuse concerns associated with power transactions between public utility affiliates, the Commission has differentiated between utility activities and non-utility activities according to whether they were being conducted by a public utility with captive wholesale or retail customers served under cost-based rates (sometimes described as a ''traditional public utility''). In this context, the Commission has sometimes referred to a power marketer (a public utility authorized to charge market-based rates but without captive customers) affiliate of a traditional public utility as a non-utility affiliate.[35]

44. To provide the broadest cross-subsidization protection, the Commission proposes to interpret the term ''non-utility associate company'' to mean any associate company in a holding company system other than a public utility or electric utility company that has wholesale or retail customers served under cost-based regulation. Therefore, a non-utility associate company would include, for example, a power marketer, a generator that does not have captive customers, a gas marketer, a fuel supply company or a company that provides inputs to power production, or a company that is involved in business activities not related to the generation, transmission,

noncompliance with the requirements of FPA section 203.

[27] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 FR 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

[28] 16 U.S.C. 796 (2000).

[29] EPAct 2005 § 1291.

[30] *Id.* at § 1262.

[31] *Id.* at § 1262(5).

[32] *Id.* at § 1262.

[33] ''Unregulated'' companies, as the term is used herein, would include those that have no rate regulation oversight (*e.g.*, real estate businesses) as well as those that are regulated on a market rate basis (*e.g.*, wholesale sellers granted market-based rate authority by the Commission).

[34] *See Central Illinois Public Service Company,* 42 FERC ¶ 61,073 at 61,328 (1988); *Boston Edison Company and BEC Energy,* 80 FERC ¶ 61,274 at 61,994 (1997).

[35] *See Sierra Pacific Power Company,* 95 FERC ¶ 61,193 at 61,678–79 (2001) (*Sierra Pacific*).

distribution, or sale of electricity.[36] We seek comment on whether this definition is appropriate or whether the Commission should use a narrower definition, *e.g.*, one which defines a ''non-utility associate company'' as a company that is in a business not related to generation, transmission, distribution, or sale of electricity.

3. Contents of Application—General Information Requirements Regarding Cross-Subsidization—18 CFR 33.2(j)

45. Proposed new subsection 33.2(j) would implement section 203(a)(4) by requiring applicants to include in their section 203 applications an explanation of how applicants are providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, with appropriate evidentiary support for such explanation; or, if no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest. This explanation will be Exhibit M to the applicant's application. The Commission seeks comment on what evidence parties should be required to submit to support any explanation offered under this subsection.

46. EPAct 2005 provides no guidance on how the Commission, when reviewing section 203 applications, should determine whether or not a proposed transaction will result in cross-subsidization or a pledge or encumbrance of utility assets for the benefit of an associate company. The Commission has sought to guard against potential cross-subsidization and affiliate abuse when it reviews applications for cost-based or market-based rate authority under section 205 of the FPA[37] or dispositions of jurisdictional facilities under section 203 involving public utilities with captive customers or their affiliates.[38] The Commission also has in place cash management rules to monitor proprietary capital ratios and money lending or other financial arrangements that can harm regulated companies.[39] In light of the Congress' clear directive in EPAct 2005 that the Commission make findings regarding cross-subsidization and the pledge or encumbrance of utility assets in the context of a section 203 application, we seek comment, as discussed below, on what additional safeguards or conditions may need to be placed on section 203 transactions.

47. The Commission's primary focus has been to prevent a transfer of benefits from a traditional public utility's captive customers to shareholders of the public utility's holding company due to an intra-system transaction that involves power or energy, generation facilities, or non-power goods and services. Concerns arise both in the circumstance in which an ''unregulated'' affiliate (*e.g.*, a power marketer or non-utility affiliate) provides power or goods and services to a public utility with captive customers, as well as the circumstance in which the public utility with captive customers provides power or goods and services to the ''unregulated'' affiliate. For instance, a traditional public utility with captive customers served at cost-based rates may purchase power from its marketing affiliate at a price above market or sell power to its marketing affiliate at below-market prices, thus transferring benefits from customers to shareholders of the holding company. Customers served at cost-based rates by a traditional public utility may also be harmed if the traditional public utility buys a generation facility from an affiliate at a price greater than market or sells a generation plant to an affiliate at less than cost or market value, whichever is higher. Further, customers may be harmed if the traditional public utility purchases non-power goods and services from an affiliate at above market prices or sells non-power goods and services to an affiliate at less than the higher of cost or market value.[40]

48. The Commission's regulatory tool for protecting against inappropriate cross-subsidization, on an on-going basis, has primarily been its FPA sections 205 and 206[41] rate authority. This includes: review of just and reasonable rates and prudently incurred costs (*e.g.*, costs of purchasing power or non-power goods and services from an affiliate) for public utilities that sell at cost-based rates; imposing conditions and codes of conduct on market-based rate authorizations for sellers that have, or are affiliated with companies that have, captive customers; and auditing the accounts, books, and records of public utilities to ensure that inappropriate cross-subsidization does not occur.

49. As noted above, the Commission, through its FPA sections 205 and 206 ratemaking authority, already protects in several ways against affiliate abuse in connection with power and energy transactions and non-power transactions between traditional public utilities and their affiliates. The latter affiliates may be affiliated generators or marketers with market-based rates, affiliate companies that provide goods such as fuel or supplies, or service company affiliates that provide services such as accounting or legal services. When we grant market-based rate authority under section 205 of the FPA, the Commission requires that a power marketer not sell power to, or purchase power from, any utility affiliate without prior Commission approval. Another requirement is that sales of non-power goods and services from the traditional public utility to a marketing affiliate occur at the higher of cost or market value and that the traditional public utility's purchases of non-power goods and services from an affiliate (*e.g.*, an affiliate fuel company) occur at market value or less. Under section 205 of the FPA, the Commission also applies the *Edgar* standard to ensure that a traditional public utility's power purchases from an affiliate occur at a just and reasonable rate.[42]

50. In the section 203 context, the Commission currently requires that to gain section 203 approval without a hearing, if the transaction would create a registered holding company under PUHCA 1935, applicants must agree to abide by the Commission's policy on intra-system transactions for non-power goods and services.[43] Further, when a

[36] These are examples only. This list is not intended to be exhaustive.

[37] 16 U.S.C. 824d (2000).

[38] *See e.g., Sierra Pacific,* 95 FERC ¶ 61,193; *Boston Edison Company,* 80 FERC ¶ 61,274 (1997).

[39] *Regulation of Cash Management Practices,* Order No. 634, 68 FR 40,500 (Jul. 8, 2003), III FERC Stats. & Regs. ¶ 31,145 (June 26, 2003), Order No. 634–A, 68 FR 61,993 (Oct. 31, 2003), III FERC Stats. & Regs. ¶ 31,152 (2003) (Cash Management Rule).

[40] We note, however, that in our recently issued notice of proposed rulemaking to implement PUHCA 2005, we have sought comment on whether the Commission should apply the lower of cost or market standard for the provision of non-power goods and services or if we should instead adopt the SEC ''at cost'' standard. *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* 112 FERC ¶ 61,300 at P 15 (2005) (PUHCA NOPR).

[41] 16 U.S.C. 824e (2000).

[42] Additionally, issues can arise regarding costs that are allocated among holding company affiliates that all have captive customers. This does not raise the same concerns discussed above regarding the transfer of benefits from captive customers to shareholders. Rather, it raises the issue of one set of captive customers unfairly subsidizing another set of captive customers. The Commission addresses these types of issues in the context of setting cost-based rates under FPA sections 205 and 206. Historically, a related problem occurred when regulated companies traded an asset at inflated prices to the detriment of customers. Modern accounting rules generally prevent this problem.

[43] *Public Service Company of Colorado and Southwestern Public Service Company,* 75 FERC ¶ 61,325 at 62,046 (1996); Merger Policy Statement at ¶ 30,124–25; 18 CFR 2.26(e). However, as is discussed below, with the repeal of the PUHCA

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public utility disposes of its jurisdictional facilities to another company, whether domestic or foreign, the Commission protects public utility customers against inappropriate cross-subsidization by conditioning its authorization on the applicants' acceptance of the Commission's authority, under section 301(c) of the FPA,[44] to review the parent company's books and records as they relate to transactions with or the business of the public utility.[45]

51. Finally, with respect to potential encumbrances or pledges of utility assets, the Commission requires Commission-regulated entities that have not been granted waivers of our accounting and reporting rules to file copies of all cash management arrangements and changes to these arrangements. We also require jurisdictional entities that participate in such programs to calculate their proprietary capital ratios quarterly and to notify the Commission if they fall below 30 percent of total capitalization and provide other detailed information.[46]

52. All of these policies seek to safeguard the interests of captive customers served at cost-based rates and protect regulated public utility assets. However, any merger transaction that creates another affiliate opens the door to possible affiliate abuse or cross-subsidization concerns or pledges or encumbrances of assets. There are various ways we could address these concerns. We note that some state commissions, when reviewing a merger transaction, impose specific conditions designed to protect customers against unfair competitive practices, cross-subsidization, and affiliate abuse.[47] Examples of these conditions include, among other things: Reporting and information access requirements; restrictions on intra-corporate transactions that result in direct charges or cost allocations; a prohibition on the local utility bearing any of the merger acquisition premium, transaction costs, or merger transition costs; measures to protect the utility's financial position; a service quality program, under which the local utility would be subject to revenue requirement reductions if it did not meet certain performance targets established annually; and restrictions on a holding company's access to the local utility's power, natural gas assets, and its individual and aggregated customer information. Given Congress' amendment of section 203, the Commission solicits comments on the adequacy of its present policies preventing affiliate abuse and cross-subsidization, and whether conditions such as those imposed by state commissions may need to be placed on section 203 transactions.[48]

53. We also seek comment on whether additional conditions should be placed on section 203 approvals to ensure that there is no pledge or encumbrance that harms utility customers.[49] Specifically, we seek comment on the types of activities that would typically result in a pledge or encumbrance and the types of pledges and encumbrances that would be consistent with the public interest. We also seek comment on whether the Commission should require that all existing pledges and encumbrances be disclosed in any section 203 application proposing any sort of corporate reorganization.

54. The Commission notes that section 203(a)(4) refers to a pledge or encumbrance of utility assets for the benefit of an ''associate'' company, as opposed to a ''non-utility associate'' company. Since an associate company may either be a utility or non-utility, we interpret this provision to require the Commission to determine whether the transaction will result in the use of utility assets to finance, or serve as collateral for, activities engaged in by an associate company, whether it is a non-utility or a utility.

4. Commission Procedures for Consideration of Applications Under Section 203 of the FPA—18 CFR 33.11

55. Amended section 203(a)(5) of the FPA directs the Commission to adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under section 203 of the FPA. Section 203(a)(5) also requires the Commission to ''identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in [section 203(a)(4)].''

56. Proposed New sections 33.11(a) and (b) would implement amended section 203(a)(5). Specifically, proposed subsection 33.11(a) provides that the Commission will act on completed applications for approval of a transaction (*i.e.*, one that is consistent with the requirements of Part 33), not later than 180 days after the completed application is filed.[50] If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application, as required by amended section 203 of the FPA.

57. Proposed subsection 33.11(b) would provide for the expeditious consideration of completed section 203 applications that are not contested, are not mergers, and are consistent with Commission precedent, because they should typically meet the standards established in section 203(a)(4).

58. We note that, generally, the most critical period of the Commission's review of a particular section 203 application is the time between the end of the notice period and the issuance of a Commission decision (*i.e.*, the review period). The length of the review period needed depends on the complexity of the application, issues raised by any

1935 registered holding companies will no longer exist and there will be no SEC review of non-power goods and services transactions; thus, all intra-system affiliate transactions will be subject to this Commission's review and conditioning if relevant to jurisdictional rates.

[44] 16 U.S.C. 825 (2000).

[45] *New England Power Company*, 87 FERC ¶ 61,287 (1999).

[46] Cash Management Rule at P 9.

[47] *See, e.g., In the Matter of the Application of Enron Corp for an Order Authorizing the Exercise of Influence Over Portland General Electric Company,* Public Utility Commission of Oregon, Order No. 97–196, UM–814 (June 4, 1997); *Joint Petition of Long Island Lighting Company and The Brooklyn Union Gas Company for Authorization under Section 70 of the Public Service Law to Transfer Ownership to an Unregulated Holding Company and Other Related Approvals,* New York Public Service Commission, Case 97–M–0567 (April 14, 1998); *Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation With and Into B Mineral Energy Sub and G Mineral Energy Sub, the Wholly Owned Subsidiaries of A Newly Created Holding Company, Mineral Energy Company,* 79 CPUC2d 343, D.98–03–073 (March 26, 1998); Standards of Conduct for Distribution Companies and Their Competitive Affiliates, 220 Mass. Code Regs. 12 (2005).

[48] In addition to these types of conditions, the Commission could, depending upon the specific facts presented, consider as a condition of approval of a proposed section 203 transaction that the transaction be structured a different way to avoid inappropriate cross-subsidization.

[49] We note that in our recently issued notice of proposed rulemaking to implement PUHCA 2005, we sought comment on whether the Commission should amend its rules or policies to provide additional protection against inappropriate cross-subsidization or pledges or encumbrances of utility assets, particularly pursuant to our FPA section 205 and 206 ratemaking authority. PUHCA NOPR at P 26.

[50] As set forth in the Merger Policy Statement, a complete application is one that adequately and accurately describes the merger being proposed and that contains all the information necessary to explain how the merger is consistent with the public interest, including an evaluation of the merger's effect on competition, rates, and regulation. Merger Policy Statement at ¶ 30,127. The Commission's review process will begin when the application is deemed to be complete.

protests, Commission staff's analysis, and the need to hold an evidentiary hearing. In the Filing Requirements Rule, we stated that we typically process uncontested non-merger applications within 60 days of the date of filing and protested non-merger applications within 90 days of filing. Since the issuance of that rule, the Commission has met these goals in almost all instances.

59. The Commission cannot provide a comprehensive description of all the classes or types of transactions that will be encompassed in the expedited review category. However, the Commission proposes that the transactions that would generally warrant expedited review include: (1) A disposition of only transmission facilities, particularly those that both before and after the transaction remain under the functional control of a Commission-approved RTO or independent system operator; (2) transfers involving generation facilities of a size that do not require an Appendix A analysis; (3) internal corporate reorganizations that do not present cross-subsidization issues; and (4) the acquisition of a foreign utility company by a holding company with no captive customers in the United States.[51]

60. With respect to the latter category, the acquisition of a foreign utility company by a holding company with no captive customers in the United States, we recognize that amended section 203's requirement for regulatory approval could have the potential to impede or have a chilling effect on investment—particularly if the transaction were subjected to a lengthy regulatory review. Such a transaction would not cause competitive concerns in the United States and, further, there would be no concerns about cross-subsidization that harms captive customers in the United States. In addition, even with respect to the acquisition of a foreign utility company by a holding company with captive customers in the United States, there may be safeguards or conditions that could be adequate in order to expedite approval of such transactions. The Commission does not want to impede investment in the U.S. or abroad and we seek comment on procedures the Commission might adopt, or safeguards it might require, to pre-approve or expedite such transactions while at the same time protecting U.S. captive customers.[52]

61. For the section 203 applications that involve a competitive analysis per the guidelines of the revised filing requirements,[53] or that may raise cross-subsidization issues or other issues, the amount of time needed for review will depend on the complexity of the issues involved. In cases where the Commission decides that a hearing should be held, establishing a specific review period could also be problematic. However, as provided in amended section 203(a)(5), the Commission must grant or deny the application within 360 days of filing.

62. The Commission also proposes to indicate the length of the notice period for various types of filings. In the Filing Requirements Rule, the Commission stated that we will notice section 203 filings that contain either a competitive analysis screen or a vertical competitive analysis (per the requirements of part 33) for 60 days and that we will notice all other section 203 filings, including mergers that do not require a competitive analysis, for less than 60 days.[54] Since the issuance of the Filing Requirements Rule, the Commission has, in almost all instances, met these goals.

63. Occasionally, applicants have sought shortened notice periods, to achieve certain financial or tax objectives or to serve certain business purposes. Most of these applications, particularly those that do not involve a competitive analysis and do not raise other competitive concerns from affiliate transactions, do not require a complex analysis and, thus, they warrant a shortened notice period.

64. Thus, we have continued to apply our notice policy in a way that has allowed us to continue processing section 203 applications quickly and that is consistent with reasonable business goals and purposes. Accordingly, we expect to have a 60-day notice period for section 203 applications that involve, contain, or require a competitive analysis per the revised filing requirements and a 21-day notice period for all other section 203 applications, except, as explained below, certain applications that may raise cross-subsidization concerns. However, we do not propose to formalize this policy by rule, so that we can maintain the flexibility needed to deal with varying circumstances.

65. In determining the length of the notice period, as a matter of policy, the Commission expects to have, in most instances, a notice period between 21 days and 60 days for applications that seek authorization to transfer ownership of a generation plant from one affiliate or associate company to another company within the same corporate structure and for other applications that may raise cross-subsidization or pledge or encumbrance issues. Not included in this category are transactions that merely change upstream ownership interests held by parent companies of public utilities or transactions that do not alter the terms of power supply or power supply costs for captive customers.

B. Summary of the Commission's Proposal To Amend 18 CFR 2.26, the Merger Policy Statement

1. Effect on Regulation—18 CFR 2.26(1)

66. Section 2.26(b) lists the three factors that the Commission will generally consider in determining whether a proposed transaction subject to section 203 is consistent with the public interest. When considering the third factor, a proposed transaction's effect on federal regulation, section 2.26(e)(1) states that ''[w]here the merged entity would be part of a registered public utility holding company, if applicants do not commit in their application to abide by this Commission's policies with regard to affiliate transactions, the Commission will set the issue for a trial-type hearing.''

67. However, because EPAct 2005 repeals PUHCA 1935,[55] activities of registered holding companies that were previously subject to SEC regulation, including intercompany transactions, will no longer be exempt from this Commission's regulation once PUHCA 1935 repeal takes effect on February 8, 2006.[56] In particular, the Commission's conditions and policies under FPA sections 205 and 206 with respect to non-power goods and services transactions between holding company affiliates, discussed previously, can be applied to all public utilities that are members of holding companies.[57] In addition, the Commission will have authority to review allocations of service company costs among members of holding companies that have public utilities with captive customers. There

[51] We note that PUHCA 1935 exempted from its requirements certain acquisitions of foreign utility companies by a holding company with operations in the United States. 15 U.S.C. 33 (2000); 17 CFR 250.57 (2005). However, amended section 203 appears to provide no such exemption.

[52] *See* Senate Floor Statements by Senators Bingaman (D–NM) and Domenici (R–NM), H.R. 6, Energy Policy Act of 2005, Congressional Record at S9359 (July 29, 2005) (discussing concerns regarding Commission approval of certain foreign transactions outside of the United States).

[53] *See* 18 CFR 33.3 and 33.4.

[54] Filing Requirements Rule at ¶ 31,877–78.

[55] EPAct 2005 § 1263.

[56] *See* 17 CFR part 250 (2005).

[57] *Ohio Power Company* v. *FERC,* 954 F.2d 779 (D.C. Cir. 1992), *cert. denied,* 498 U.S. 73 (1992).

is thus no longer a concern about any potential shift in regulation from this Commission to the SEC under the effect of regulation factor, and we propose to delete section 2.26(e)(1) from our consideration of whether a proposed 203 transaction is consistent with the public interest. However, applicants are still required to address whether the transaction will have any other effect on the Commission's regulation.

2. Proposed New 18 CFR 2.26(f)

68. Proposed new subsection 2.26(f) would be added to the Commission's policies and would state that the Commission will also not approve a transaction that will result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

IV. Information Collection Statement

69. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[58] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[59]

70. Comments are solicited on the need for this information, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden. The Commission notes that in proposing to modify its current part 33 filing requirements it is carrying out an express statutory mandate set forth in EPAct 2005. The regulations that the Commission proposes should have a minimal impact on the current reporting burden associated with an individual application, as they do not substantially change the filing requirements with which section 203 applicants must currently comply. Further, the Commission does not expect the total number of section 203 applications under amended section 203 to increase substantially. While the proposed rulemaking implements the expanded scope of section 203 to include certain transactions involving existing generation facilities and certain holding company acquisitions, amended section 203 also substantially raises the value threshold to be used in determining whether certain classes of transactions involving the transfer of jurisdictional facilities and acquisition of securities (both of which are already subject to the Commission's section 203 jurisdiction) are subject to section 203. As a result, applications in these latter two classes should decline somewhat.

Title: FERC–519, Applications Under Federal Power Act Section 203.

Action: Proposed Information Collection.

OMB Control No: 1902–0082.

The applicant will not be penalized for failure to respond to this information collection unless the information collection displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit.

Necessity of the Information: The information collected under the requirements of FERC–519 is used by the Commission to implement section 203 of the Federal Power Act and the Code of Federal Regulations under 18 CFR Part 33 and 18 CFR 2.26. This notice of proposed rulemaking is limited to implementing amended section 203 of the FPA, which directs the Commission to adopt a rule to do so. Further, the proposed rule does not substantially change the current filing requirements or regulations that applicants must comply with for transactions subject to FPA section 203.

Internal Review: The Commission has reviewed these requirements pertaining to the implementation of amended section 203 of the FPA and has determined that the proposed requirements are necessary for the Commission to meet the provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the bulk power system.

71. Please send your comments concerning the collection of information and the associated burden estimates to: (1) Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax (202) 273–0873, e-mail: *michael.miller@ferc.gov*] and (2) the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, fax (202) 395–7285, e-mail *oira_submission@omb.eop.gov*].

V. Environmental Analysis

72. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[60] The Commission concludes that neither an Environmental Assessment or an Environmental Impact Statement is required for this notice of proposed rulemaking under section 380.4(a)(2)(ii) of the Commission regulations, which provides a ''categorical exclusion for rules that do not substantively change the effect of legislation.''[61]

VI. Regulatory Flexibility Act Certification

73. The Regulatory Flexibility Act of 1980 (RFA)[62] requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA does not define ''significant'' or ''substantial,'' instead leaving it up to an agency to determine the effect of its regulations on small entities.

74. In drafting this rule, the Commission has followed the provisions of both the RFA and the Paperwork Reduction Act to consider the potential effect of the regulations on small businesses and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the effect on small entities: tiering or establishment of different compliance or reporting requirements for small entities; classification, consolidation, clarification or simplification of compliance and reporting requirements; performance rather than design standards; and exemptions.

75. The Commission does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities. As noted above, EPAct 2005 directs the Commission to issue a rule adopting procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisition, under this section. In accordance with this directive, this proposed rule is intended to implement section 203 of the FPA. In particular, the

[58] 44 U.S.C. 3507(d) (2000).

[59] 5 CFR 1320.11 (2005).

[60] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[61] 18 CFR 380.4(a)(2)(ii) (2005).

[62] 5 U.S.C. 601–12 (2000).

proposed rule increases the value threshold for filing a section 203 application with the Commission from transactions in excess of $50,000 to transactions in excess of $10 million (under amended section 203 of the FPA). Further, the proposed rule does not substantially change the current requirements and regulations that applicants must comply with for transactions subject to FPA section 203. Accordingly, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

76. The Commission invites interested persons to submit comments on this notice, or alternative proposals addressing the issues raised by the changes in amended section 203. Comments are due November 7, 2005. Comments must refer to Docket No. RM05–34–000, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

77. Comments may be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

78. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

79. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

80. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM05–34'' in the docket number field.

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

List of Subjects in 18 CFR Parts 2 and 33

Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352; Pub. L. 109–58, 119 Stat. 594.

2. Section 2.26 is amended by revising paragraphs (e) and (f) to read as follows:

§ 2.26. Policies concerning review of applications under section 203.

* * * * *

(e) *Effect on regulation.* (1) Where the affected state commissions have authority to act on the transaction, the Commission will not set for hearing whether the transaction would impair effective regulation by the state commissions. The application should state whether the state commissions have this authority.

(2) Where the affected state commissions do not have authority to act on the transaction, the Commission may set for hearing the issue of whether the transaction would impair effective state regulation.

(f) Under section 203(a)(4) of the Federal Power Act (16 U.S.C. 824b), in reviewing a proposed transaction subject to section 203, the Commission will also consider whether the proposed transaction will result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

3. The authority citation for Part 33 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; Pub. L. 109–58, 119 Stat. 594.

4. The heading of Part 33 is revised to read as set forth above.

5. Section 33.1 is revised to read as follows:

§ 33.1 Applicability and definitions.

(a) *Applicability.* (1) The requirements of this part will apply to any public utility seeking authorization under section 203 of the Federal Power Act to:

(i) Dispose by sale, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10 million;

(ii) Merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever;

(iii) Purchase, acquire, or take any security with a value in excess of $10 million of any other public utility; or

(iv) Purchase, lease, or otherwise acquire an existing generation facility:

(A) That has a value in excess of $10 million; and

(B) That is intended to be used in whole or in part for wholesale sales in interstate commerce by a public utility.

(2) The requirements of this part shall also apply to any holding company in a holding company system that includes a transmitting utility or an electric utility if such holding company seeks to purchase, acquire, or take any security with a value in excess of $10 million, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10 million.

(b) *Definitions.* For the purposes of this part, as used in section 203 of the Federal Power Act (16 U.S.C. 824b)—

(1) *Existing generation facility* means a generation facility that is operational at the time the section 203 transaction is consummated.

(2) *Non-utility associate company* means any associate company in a holding company system other than a public utility or electric utility company

that has wholesale or retail customers served under cost-based regulation.

(3) *Value* when applied to:

(i) Transmission facilities, generation facilities, transmitting utilities, electric utility companies, and holding companies, means the market value of the facilities or companies. For transmission facilities, in the absence of a readily ascertainable market value, value means original cost undepreciated;

(ii) Wholesale contracts, means the total expected contract revenues over the remaining life of the contract; and

(iii) Securities, means the market price at the time the security is acquired. For transactions between non-affiliated companies, the Commission will rebuttably presume that the market value is the agreed-upon transaction price.

(4) The terms *associate company, electric utility company, holding company,* and *holding company system* have the meaning given those terms in the Public Utility Holding Company Act of 2005.

6. Section 33.2 is amended to add paragraph (j) to read as follows:

§ 33.2. Contents of application—general information requirements.

* * * * *

(j) An explanation (to be identified as Exhibit M to this application):

(1) Of how applicants are providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, with appropriate evidentiary support for such explanation; or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

7. Section 33.11 is added to read as follows:

§ 33.11 Commission procedures for the consideration of applications under section 203 of the FPA.

(a) The Commission will act on a completed application for approval of a transaction (*i.e.*, one that is consistent with the requirements of this part) not later than 180 days after the completed application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of section 203(a)(4) of the FPA and issues, by the 180th day, an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(b) The Commission will provide for the expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent. The transactions that would generally warrant expedited review include:

(1) A disposition of only transmission facilities, particularly those that both before and after the transaction remain under the functional control of a Commission-approved regional transmission organization or independent system operator;

(2) Transfers involving generation facilities of a size that do not require an Appendix A analysis;

(3) Internal corporate reorganizations that do not present cross-subsidization issues; and

(4) The acquisition of a foreign utility company by a holding company with no captive customers in the United States.

[FR Doc. 05–20311 Filed 10–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 1625–AA87 (Formerly 1625–AA00)

Security Zones; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Third supplemental notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard proposes to establish permanent security zones encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. These security zones are necessary to protect the TAPS Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones would be prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: Comments and related material must reach the Coast Guard on or before November 7, 2005.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686. Marine Safety Office Valdez, Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Duane Lemmon, Port Operations Department, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7218.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska;

§ 165.T17–004—Security zone; Port Valdez, and

§ 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule issued in April 2002, which expired July 30, 2002, created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska—security zone''.

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired. This extension was to allow for the completion of a notice-and-comment rulemaking to create permanent security zones to replace the temporary zones.

On October 23, 2002, we published a notice of proposed rulemaking (NPRM) that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002. Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the

need to issue a supplemental notice of proposed rulemaking (SNPRM) to address a collection of information issue regarding of the proposed rule (68 FR 14935, March 27, 2003). Then on May 19, 2004, we published a Second Supplemental Notice of Proposed Rulemaking (SSNPRM) (69 FR 28871) incorporating changes to Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels security zone coordinates described in the NPRM (67 FR 65074). The comment period for that SNPRM ended on July 30, 2004. Although no comments were received that would result in changes to the SSNPRM, we have learned over the last 3 years that the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone is actually larger than originally intended due to a conversion oversight in that particular zone's respective longitude and latitude values. Accordingly, to correct the conversion oversight and to allow for more effective enforcement, proposed changes to the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone coordinates results in the need to issue a Third Supplemental Notice of Proposed Rulemaking (TSNPRM). We have also removed unnecessary text from the description of the Valdez Narrows, Port Valdez, Valdez, Alaska security zone in proposed 33 CFR 165.1710(a)(3).

This TSNPRM proposes to reduce the size of the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone we initially proposed in the NPRM published October 23, 2002 (67 FR 65074).

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 02–011, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Valdez at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard is taking this action for the protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those responsible for those acts. As a vibrant port with a high volume of oil tanker traffic, these security zones are necessary to provide protection for the tankers transiting through the Port of Valdez and Valdez Narrows. These security zones are a necessary part of the Coast Guard's efforts to provide for the safety of the people and environment in Valdez and the surrounding area.

We are incorporating changes to the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone coordinates because we have been able to determine over the years that the changes are necessary in order to properly mark and monitor the zone, reduce the number of zone incursions and provide proper tactical enforcement while still keeping boaters a safe distance from the TAPS terminal.

Discussion of Proposed Rule

This supplemental notice of proposed rulemaking sets out three security zones. The Trans-Alaska Pipeline Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately .85 nautical miles offshore from the TAPS Terminal). The Tank Vessel Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point.

This action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels. The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones in order to mitigate the impact on commercial and recreational users.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tank Vessel Moving Security Zone is in effect for a short duration.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permission to enter the zone is available, and the Tank Vessel Moving Security Zone is in effect for a short duration. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity

and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Duane Lemmon, Marine Safety Office Valdez, Alaska at (907)835–7218.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply provides guidelines for vessels transiting in the Captain Of The Port, Prince William Sound Zone so that vessels may transit safely in the vicinity of the Port of Valdez and the TAPS terminal. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.T17–020 [Removed]

2. Remove § 165.T17–020.

3. Add new § 165.1710 to read as follows:

§ 165.1710 Port Valdez and Valdez Narrows, Valdez, Alaska-security zones.

(a) *Location.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′25″ N, 146°25′42″ W; thence northerly to yellow buoy at 61°06′00″ N, 146°25′42″ W; thence east to the yellow buoy at 61°06′00″ N, 146°21′30″ W; thence south to 61°04′25″ N, 146°21′30″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point.

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85–20 (b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters 200 yards either side of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′15″ N, 146°37′18″ W; thence south west to 61°04′00″ N, 146°39′52″ W; thence

southerly to 61°02′32.5″ N, 146°41′25″ W; thence north west to 61°02′40.5″N, 146°41′47″ W; thence north east to 61°04′07.5″ N, 146°40′15″ W; thence north east to 61°05′22″ N, 146°37′38″ W; thence south east back to the starting point at 61°05′15″ N, 146°37′18″ W.

(b) *Regulations.* (1) The general regulations in 33 CFR 165.33 apply to the security zones described in paragraph (a) of this section.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service, as required under 33 CFR part 161 and § 165.1704, may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: September 23, 2005.

M.S. Gardiner,

Commander, United States Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc.05–20276 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 421

[CMS–6022–P]

RIN 0938–AN31

Medicare Program; Termination of Non-Random Prepayment Review

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the statutory requirements regarding the termination of non-random prepayment review under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This proposed rule provides the criteria for terminating a provider or supplier from non-random prepayment review.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 6, 2005.

ADDRESSES: In commenting, please refer to file code CMS–6022–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6022–P, PO Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Marie Casey, (410) 786–7861 or Daniel Schwartz, (410) 786–4197.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–6022–P.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public website as soon as possible after they have been received. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. General and Legislative History

Medicare contracting authority has been in place since the inception of the Medicare program in 1965. Section 1874 of the Social Security Act (the Act) authorizes the Secretary to perform Medicare program functions directly or by contract.

On August 21, 1995, the Congress enacted the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA). Section 202 of HIPAA added section 1893 to the Act that establishes the Medicare Integrity Program and allows us to contract with eligible entities to perform program integrity activities. Specifically, we contract with intermediaries as specified in section 1816(a) of the Act; and carriers as specified in section 1842(a) of the Act; and program safeguard contractors (PSCs) to perform medical, fraud, and utilization reviews, and cost report audits of Medicare claims. (Hereinafter, intermediaries, carriers, and PSCs that perform medical review functions are referred to as contractors). This program is funded by the Medicare Hospital Insurance Trust Fund for activities related to Medicare Part A and Part B.

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Section 934 of the MMA amended section 1874A of the Act by adding a new subsection regarding random prepayment reviews and non-random prepayment reviews including the termination date of non-random prepayment reviews.

Although section 934 of the MMA specifies requirements regarding random prepayment review, contractors do not perform random prepayment review. However, contractors do perform non-random prepayment review.

For purposes of this regulation, we are proposing the following definitions related to medical review activities:

Allowable charges means the dollar amount (including co-pay and deductibles) that the Medicare program will pay for a particular item or service.

Complex Medical Review means review of claim information and medical documentation by a licensed medical professional, for a billed item or service identified by data analysis techniques or probe review to have a likelihood of sustained or high level of payment error.

Error rate means the dollar amount of allowable charges for a particular item or service billed in error as determined by complex medical review, divided by the dollar amount of allowable charges for that medically reviewed item or service.

Initial error rate means the calculation of an error rate based on the results of a probe review prior to the initiation of non-random prepayment complex medical review.

Medical review means the process performed by Medicare contractors to ensure that billed items or services are covered and are reasonable and necessary as specified under section 1862(a)(1)(A) of the Act.

Non-clinician medical review staff means specially trained medical review staff that do not possess the knowledge, skills, training, or medical expertise of a licensed medical professional.

Non-random prepayment complex medical review means the prepayment medical review of claim information and medical documentation by a licensed medical professional, for a billed item or service identified by data analysis techniques or probe review to have a likelihood of sustained or high level of payment error.

Non-random prepayment medical review means the prepayment medical review of claims for a billed item or service identified by data analysis techniques or probe review to have a likelihood of a sustained or high level of payment error.

Provider-specific probe review means the complex medical review of a small sample of claims, generally 20 to 40 claims, from a specific provider or supplier for a specific billing code to confirm that the provider or supplier is billing the program in error.

Quarterly error rate means the calculation of an error rate based on the results of non-random prepayment complex medical review for a specific billing code for a specific quarter.

Service-specific probe review means the complex medical review of a sample of claims, generally 100 claims, across the providers or suppliers that bill a particular item or service to confirm that the item or service is billed in error.

Termination of non-random prepayment complex medical review means the cessation of non-random prepayment complex medical review.

II. General Overview of the Medical Review Process

A. Medical Review

We enter into contractual agreements with contractors to perform medical review functions. One of the functions of a contractor is to ensure the fiscal integrity of the Medicare program by conducting medical review of claims to determine whether items or services are covered and are reasonable and necessary. When a claim is submitted for payment, it may be subject to medical review before payment is made.

There are three types of non-random prepayment medical review: Automated, routine, and complex. A non-random prepayment automated medical review is when decisions are made at the system level, using available electronic information, without the intervention of contractor personnel. A non-random prepayment routine medical review is limited to rule-based determinations performed by specially trained non-clinical medical review staff. Automated and routine non-random prepayment medical review does not create an administrative burden on the provider or supplier since additional medical documentation does not need to be submitted for these types of medical reviews and payments for covered, reasonable and necessary items or services are not delayed. Therefore, these types of reviews pose no discernable administrative burden on the provider or supplier because there is no interaction between the contractor and the provider or supplier during the medical review process. As indicated above, non-random prepayment complex medical review is the evaluation of medical records or any other documentation by a licensed medical professional prior to Medicare payment. Complex medical review determinations require the reviewer to make a clinical judgment about whether an item or service is covered, and is reasonable and necessary. In order for this determination to be made the provider or supplier would submit a copy of the medical records that indicate that the items or services billed are covered, and are reasonable and necessary for the condition of the patient. This type of review delays payment until the contractor is able to make a determination that the items or services billed are covered and are reasonable and necessary. This proposed rule only applies to terminating a provider or supplier from non-random prepayment complex medical review. (A detailed description of the concepts for performing the different types of non-random prepayment medical review functions are located in our manual instructions at *http://www.cms.hhs.gov/manuals/108_pim/pim83toc.asp).*

The contractor employs data analysis procedures to identify claims that may be billed inappropriately. These procedures may be based on claims data (national and local) beneficiary complaints, and alerts from other organizations (for example, Office of Inspector General and Government Accountability Office). When a contractor identifies a likelihood of sustained or high level of payment error, the contractor may request supporting medical record documentation. Examples of a high level of payment error include unusual patterns such as prescribing the same items or services for a high number of patients, consistently prescribing inappropriate treatments, unexplained increases in volume when compared to historical or peer trends, or any other reasons as determined by the Secretary or his designees.

Before a contractor places a provider or supplier on non-random prepayment complex medical review, the contractor would perform a probe review (that is, complex medical review of a small sample of claims for a specific billing code, generally 20 to 40 claims to confirm that the provider or supplier is billing the program in error). In the case of a widespread ''item or service-specific'' problem, a larger sample of claims (generally 100 claims of the item or service in question) would be subjected to complex medical review. Performing medical review on a sample of claims for a specific billing code before placing the provider or supplier

on non-random prepayment complex medical review allows for a determination as to whether a problem exists and ensures that contractor medical review resources are targeted appropriately and that providers and suppliers are not unnecessarily burdened.

When a probe confirms that a provider or supplier is billing the program in error, and those billing errors present a likelihood of sustained or high level of payment error (for example, a high billing error rate or errors on claims representing high dollar value) this may result in the provider or supplier being placed on non-random prepayment complex medical review. Contractors target medical review activities at providers, items or services that place the greatest risk of making improper payments from the Medicare trust funds.

This activity may involve complex medical review. Complex medical review involves the application of clinical judgment by a licensed medical professional in order to evaluate medical records to determine whether an item or service is covered, and is reasonable and necessary.

Medical records include any medical documentation, other than what is included on the face of the claim that supports the item or service that is billed. For Medicare to consider coverage and payment for any item or service, the information submitted by the supplier or provider (that is, claims) must be supported by the documentation in the patient's medical records. The patient's medical records include—(1) physician's office records; (2) hospital records; (3) nursing home records; (4) home health agency records; (5) records from other healthcare professionals; and (6) diagnostic reports and other supporting documentation. The contractor specifies which pieces of documentation they want. Providers and suppliers may supply additional documentation not explicitly listed by the contractor. This supporting information may be requested by CMS and its agents on a routine basis in instances where diagnoses on the claims do not clearly indicate medical necessity. For example, documentation supporting the medical necessity of a power wheelchair would not be requested in the vast majority of cases where patients have definite medical conditions such as neurological spinal cord injury, cerebral palsy, multiple sclerosis or stroke with residual myoplegia (not all inclusive). On the other hand, it is more likely that documentation would be requested for patients whose diagnoses are limited to non-neurological conditions such as chronic obstructive pulmonary disease, congestive heart failure, coronary artery disease, arthritis or obesity (not all inclusive).

Any determination must be documented and include the rationale for the decision. While medical review staff must follow National Coverage Determinations and Local Coverage Determinations, they are expected to use their expertise to make clinical judgments when making medical review determinations. They must take into consideration the clinical condition of the beneficiary as indicated by the beneficiary's diagnosis and medical history when making these determinations. At any time during the medical review process the contractor detects possible fraud, the contractor would refer the issue to the Benefit Integrity Program Safeguard Contractor.

Before the enactment of the MMA, we continued to perform non-random prepayment complex medical review until the provider or supplier demonstrated compliance with Medicare billing requirements as evidenced by an acceptable error rate. The contractor made the determination of ''acceptable error rate.'' As a result, some providers and suppliers have remained on medical review for a considerable period of time.

B. Termination of Non-Random Prepayment Complex Medical Review

In accordance with section 934 of the MMA, we are proposing to terminate in most cases a provider or supplier from non-random prepayment complex medical review no later than 1 year from the initiation of the review or when the provider's or supplier's error rate decreases by 70 percent from the initial error rate. The initiation of review begins on the date the contractor sends a letter to the provider or supplier. The letter would notify the provider or supplier of the results of the probe review and would inform them that they would be subjected to non-random prepayment complex review. In addition, we are proposing terminating a provider or supplier from non-random prepayment complex medical review when medical review error rate findings indicate that the provider or supplier has corrected its billing errors resulting in at least a 70 percent decrease from its initial error rate. The initial error rate would be calculated based on the probe review prior to the initiation of non-random complex prepayment medical review. We initially considered whether a 90 to 95 percent decrease in a provider's or supplier's error rate was appropriate but determined that a 90 to 95 percent reduction in a provider's or supplier's error rate would be impracticable. Therefore, we believe an error rate reduction of 70 percent from the error rate calculated during probe review, the ''initial error rate,'' would protect the financial integrity of the Medicare program and allow the provider or supplier a realistic opportunity to be terminated from non-random prepayment complex medical review.

When a provider or supplier is terminated from non-random prepayment complex medical review after 1 year of review and the contractor determines that the provider or supplier continues to have a high error rate despite educational interventions, the contractor must consider referring the provider or supplier to the Benefit Integrity Program Safeguard Contractor. Contractors must also consider continuing educational interventions without performing medical review or consider performing postpayment medical review.

We are also proposing that a contractor could extend a non-random prepayment complex medical review beyond the 1-year limit in certain situations. The contractor could extend non-random prepayment complex medical review if a provider or supplier stops billing the code under review or shifts billing to another inappropriate code to avoid the contractor's proper calculation of the error rate. If the reduction in the error rate is attributed to a 25 percent or greater reduction in the number of claims submitted for the specific billing code under review, non-random prepayment complex medical review for that provider or supplier could be extended. However, if the number of claims submitted for a specific code was reduced because the provider or supplier began billing claims using a new appropriate code, or there is another legitimate explanation for the reduced number of claims billed, at the contractor's discretion, the provider or supplier may not be required to undergo extended non-random prepayment complex medical review. If extended medical review is necessary, contractors would notify providers and suppliers in writing the reason for the need to perform additional prepayment complex medical review.

The contractor would evaluate the results of non-random complex prepayment medical review, and the length of time a provider or supplier remains on review, at least every quarter following the initiation of non-random prepayment complex medical review. Quarterly error-rate evaluations would

be for the discrete quarter; a rolling error rate average over more than one quarter would not be appropriate. After the contractor determines that the provider or supplier should be terminated from non-random prepayment complex medical review, the contractor would update the claims processing system within 2 business days to ensure that the provider's and supplier's claims are no longer suspended for that specific billing error.

Once a provider or supplier is terminated from non-random prepayment complex medical review contractors would periodically re-evaluate the provider or supplier's data. If necessary the contractor could place a provider or supplier that appears to have resumed a high level of payment error on complex medical review. This review would only be initiated if a probe review confirms that there continues to be a high level of payment error.

III. Provisions of the Proposed Regulations

To comply with section 934 of the MMA, we are proposing to amend 42 CFR part 421 by adding and reserving subpart D and adding a new subpart E entitled, ''Medicare Payment Review.'' This subpart would establish the general criteria for terminating a provider or supplier from non-random prepayment complex medical review.

In § 421.401, we are proposing to define the following terms for purposes of this new subpart:

- Error rate.
- Initial error rate.
- Medical review.
- Non-random complex prepayment medical review.
- Non-random prepayment medical review.
- Provider specific probe review.
- Quarterly error rate.
- Service specific probe review
- Termination of non-random prepayment complex medical review.

In addition, we are proposing in § 421.405 to specify the termination criteria for non-random prepayment complex medical review.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each issue for § 421.405 as summarized and discussed below that contain information collection requirements.

Section 421.405 Termination and Extension of Non-Random Prepayment Complex Medical Review

In summary, § 421.405 outlines the proposed requirements and process for the termination and extension of non-random prepayment complex medical review, a form of complex medical review. Contractors conduct complex medical review to determine whether items or services billed are covered, correctly coded, and are reasonable and necessary for the condition of the patient. Under complex medical review the provider or supplier must submit a copy of the medical records that support the items or services billed.

The burden associated with this section is the time and effort necessary for the provider or supplier of services to locate and obtain the supporting documentation for the claim to Medicare and to forward the materials for submission to Medicare contractors for review. We expect that this information would generally be maintained by suppliers and/or providers as a normal course of business and that this information will be readily available.

The burden associated with this requirement is estimated to be 10 minutes per provider or supplier, to locate, photocopy and transmit this information to the contractor upon request.

Over the past 3 years, Medicare contractors have performed complex medical review on an average of 2.9 million claims.

The total annual burden associated with this requirement is estimated to be 483,333 hours (2.9 million requests for medical records × 10 minutes).

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: William N. Parham, III, CMS–6022–P, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, CMS–6022–P, *Christopher_Martin@omb.eop.gov*. Fax (202) 395–6974.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We would consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we would respond to the comments in the preamble to that document.

VI. Regulatory Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule would not have a significant

economic impact on a substantial number of small entities. We believe that this rule would decrease the costs for providers and suppliers because it establishes guidelines for terminating a provider or supplier from non-random prepayment complex medical review. We believe this rule would eliminate inappropriate reviews and would ensure that Medicare payments would not be withheld for extended time periods.

Because a contractor would no longer be maintaining providers or suppliers on non-random prepayment complex medical review for extended periods, administrative expenses (for example, copying, mailing, and the retention of medical documentation) would be reduced.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule would have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation would not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 421—INTERMEDIARIES, CARRIERS, AND PROGRAM SAFEGUARD CONTRACTORS

1. The authority citation for part 421 continues to read as follows:

Authority: Sec. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. The heading for Part 421 is revised to read as set forth above.

3. Add and reserve a new subpart D.

4. Add new subpart E, consisting of § 421.400 through § 421.405, to read as follows:

Subpart E—Medical Review

Sec.

421.400 Medicare review functions.
421.401 Definitions.
421.405 Termination and extension of non-random prepayment complex medical review.

Subpart E—Medical Review

§ 421.400 Medicare review functions.

CMS enters into contractual agreements with intermediaries, carriers, and program safeguard contractors (PSCs) (hereinafter, intermediaries, carriers, and PSCs that perform medical review functions are referred to as contractors) to perform medical review functions to ensure that items or services are covered and are reasonable and necessary in accordance with Medicare coverage policies and program instructions.

§ 421.401. Definitions.

As used in this subpart—

Allowable charges means the dollar amount (including co-pay and deductibles) that the Medicare program will pay for a particular item or service.

Complex Medical Review means all medical review of claim information and medical documentation by a licensed medical professional, for a billed item or service identified by data analysis techniques or probe review to have a likelihood of sustained or high level of payment error.

Error rate means the dollar amount of allowable charges for a particular item or service billed in error as determined by complex medical review, divided by the dollar amount of allowable charges for that medically reviewed item or service.

Initial error rate means the calculation of an error rate based on the results of a probe review prior to the initiation of non-random prepayment complex medical review.

Medical review means the process performed by a contractor to ensure that billed items or services are covered and are reasonable and necessary as specified under section 1862(a)(1)(A) of the Act.

Non-clinician medical review staff means specially trained medical review staff that do not possess the knowledge, skills, training, or medical expertise of a licensed health care professional.

Non-random prepayment complex medical review means the prepayment medical review of claim information and medical documentation by a licensed medical professional, for a billed item or service identified by data analysis techniques or probe review to have a likelihood of sustained or high level of payment error.

Non-random prepayment medical review means the prepayment medical review of claims for a billed item or service identified by data analysis techniques or probe review to have a likelihood of a sustained or high level of payment error.

Provider-specific probe review means the complex medical review of a small sample of claims, generally 20 to 40 claims, from a specific provider or supplier for a specific billing code to confirm that the provider or supplier is billing the program in error.

Quarterly error rate means the calculation of an error rate based on the results of non-random prepayment complex medical review for a specific billing code for a specific quarter.

Service-specific probe review means the complex medical review of a sample of claims, generally 100 claims, across the providers or suppliers that bill a particular item or service to confirm that the item or service is billed in error.

Termination of non-random prepayment complex medical review means the cessation of non-random prepayment complex medical review.

§ 421.405 Termination and extension of non-random prepayment complex medical review.

(a) Except for cases described in paragraph (b) of this section, a contractor may terminate a provider or supplier from non-random prepayment complex medical review—

(1) No later than 1 year following the initiation of non-random prepayment complex medical review; or

(2) If calculation of the error rate indicates that the provider or supplier has reduced its initial error rate by 70 percent or more. A contractor must review claims for a specific billing code aberrancy for the quarter and calculate

the quarterly error rate for those claims medically reviewed in that quarter. In order for this determination to be made, the provider or supplier must submit a copy of the medical records that indicate that the items or services billed are covered, correctly coded, and are reasonable and necessary for the condition of the patient. When a provider or supplier is terminated from non-random prepayment complex medical review after 1 year of review and the contractor determines that the provider or supplier continues to have a high error rate despite educational interventions the contractor must consider referring the provider or supplier to the Benefit Integrity PSC. Contractors must also consider continuing educational interventions without performing medical review or must consider performing postpayment medical review.

(b) *Extension of non-random prepayment complex medical review.* (1) A contractors must extend non-random prepayment complex medical review beyond the 1 year timeframe if a provider or supplier stops billing the code under review or shifts billing to another inappropriate code to avoid proper calculation of the error rate. If the reduction in the error rate is attributed to a 25 percent or greater reduction in the number of claims submitted for the specific billing code under review, non-random prepayment complex medical review for that provider or supplier must be extended. However, if the number of claims submitted for a specific code were reduced because the provider or supplier began billing claims using a new appropriate code, or there is another legitimate explanation for the reduced number of claims billed, at contractor discretion, the provider or supplier may not be required to undergo extended non–random prepayment complex medical review.

(2) If extended medical review is necessary, contractors must notify providers and suppliers in writing the reasons for the need to perform additional prepayment complex review.

(c) *Quarterly termination evaluation*—(1) Contractors, at a minimum, must evaluate the length of time a provider or supplier has been on non-random prepayment complex medical review on a quarterly basis. A determination as to whether the provider's or supplier's initial probe review error rate for a specific billing code has been reduced by 70 percent must also be evaluated quarterly.

(2) Quarterly error rate evaluations must be for the discrete quarter; a rolling error rate average over more than one quarter is not permitted. After the contractor determines that the provider or supplier should be terminated from non-random prepayment complex medical review, the claims processing system must be updated within 2 business days to ensure that a provider's or supplier's claims for a specific billing error is no longer suspended for non-random prepayment complex medical review.

(d) *Periodic re-evaluation.* Once a provider or supplier is terminated from non-random prepayment complex medical review, contractors must periodically re-evaluate the provider or supplier's data and if necessary must place a provider or supplier that appears to have resumed a high level of payment error on complex medical review. This review would only be initiated if a probe review confirms that there continues to be a high level of payment error.

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

Dated: October 26, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 10, 2005.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on September 30, 2005.

[FR Doc. 05–19925 Filed 9–30–05; 2:47 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

[WO–350–1410–00–24 1A]

RIN 1004–AD60

Alaska Native Veterans Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend regulations published in the **Federal Register** on Friday, June 30, 2000 (65 FR 40953). The existing regulations allowed certain Alaska Native veterans another opportunity to apply for a Native allotment under the repealed Native Allotment Act of 1906. This proposed rulemaking would delete the requirement that veteran applicants must post the land by marking all corners of the ground with their name and address prior to filing an application with the BLM. Enforcement of the posting rule for allotments adjudicated under the 1906 Act was previously waived by an Assistant Secretary. Therefore, the posting requirement is deemed unnecessary for Native veteran allotment cases.

DATES: *Comments:* Send your comments to reach the BLM on or before December 6, 2005. The BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Hand Delivery: 1620 L. Street, NW., Suite 401, Washington, DC 20036.

E-mail: *comments_washington@blm.gov*.

Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Haskins, Division of Conveyance Management, Bureau of Land Management, 222 West 7th Avenue #13, Anchorage, Alaska 99513; telephone (907) 271–3351; or Kelly Odom, Bureau of Land Management, Regulatory Affairs Group, Mail Stop 401, 1620 L Street, NW., Washington, DC 20036; telephone (202) 452–5028. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. The BLM may not necessarily consider or include in the Administrative Record for the final rule comments which the BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments including names, street addresses, and other contact information of respondents, will be available for public review at 1620 L Street, NW., Room 401, Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The Alaska Native Veterans Allotment Act of 1998 (Act), (Section 432 of Pub. L. 105–276), as amended, authorized allotments for certain Alaska Native veterans who served in the U.S. military during the Vietnam era. The Act provided an opportunity to file allotment applications for veterans who may have missed their chance to file (under the 1906 Native Allotment Act) as a direct result of their military service. The Act provided an 18 month application period which began on July 31, 2000 and ended on January 31, 2002. Regulations promulgated to implement the Act included a requirement for applicants to post the corners of their claims before filing their applications with the BLM. The BLM issued the regulations requiring posting before filing because we believed that physical markings on the land would facilitate the processing of the veteran applications and help finalize state and Native conveyance entitlements.

III. Discussion of Proposed Rule

The BLM, Bureau of Indian Affairs (BIA), Alaska Legal Services and BIA service providers notified Alaska Native veterans that it was critical that they submit their applications before the filing deadline. The BLM estimates almost 90% of the applicants failed to post their claim as the regulations require by January 31, 2002, the end of the application filing period. An applicant's failure to post its claim is a legal defect requiring the BLM to reject the claim. The BLM does not wish to reject a large percentage of applications because the corners of claims were not posted. Rejecting these claims for this reason alone is contrary to the purpose of the 1998 Act which was to provide another opportunity for certain veterans to file allotment applications. The BLM has determined that it would be inequitable to enforce a non-statutory requirement for the Vietnam veterans who timely filed their applications but did not post their claims. The BLM wants to give veteran applicants an opportunity to apply for a Native Allotment on the same basis as other applicants. Therefore, the BLM is proposing to amend 43 CFR 2568.74(d) by removing the requirement to post parcels and to delete 43 CFR 2568.77, which requires applicants to post corners of their claims.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does this rule raise novel legal or policy issues. Eliminating the posting requirement would only impact a limited number of individual Alaska Native Veteran applicants, Interior agencies, and tribal offices that are assisting applicants.

b. This rule will not create inconsistencies with other agencies' actions. The effect of this rule will be on a limited number of individuals who are qualified to apply for allotments and on the Interior Department agencies responsible for administering the allotment program. The allotment application period was limited by law to 18 months and has passed; the existing staff of responsible agencies will process applications following most of the same rules that are currently in effect for allotment applications under the 1906 Native Allotment Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Eliminating the posting requirement would impact a limited number of individual Alaska Native Vietnam Veteran applicants, Interior agencies, and tribal offices that are assisting applicants. It will have no affect on budgetary entitlements, grants, user fees, or loan programs.

d. This rule will not raise novel legal or policy issues. This rule will place Alaska Native Vietnam Veteran applicants in the same position as those applicants who filed under the initial 1906 Native Allotment Act.

Clarity of the Regulations

Executive Order 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:

1. Are the requirements in the proposed regulations clearly stated?

2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?

3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?

5. 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.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. An environmental assessment is not required. Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1638, made conveyances, regulations, and other actions which lead to the issuance of conveyances to Natives under Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 *et seq.*) exempt from NEPA compliance requirements. Since the Alaska Native Veterans Allotment Act is part of ANCSA, NEPA does not apply.

Regulatory Flexibility Act

This 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.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule will only apply to

certain Alaska Native veterans and specific classes of heirs of Alaskan Native veterans who are eligible to apply for allotments. Therefore, the Department of the Interior certifies that this document will not have any significant impacts on small entities under the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule would result in some costs saving to allotment applicants because under this rule they would no longer be required to post the corners of the lands in their applications. The Department of the Interior will have to implement the allotment program over the next several years, but these costs will be far below $100 million per year. Enforcing the posting requirement would cost the Department more than eliminating the posting requirements that we have determined to be unnecessary.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will result in some costs saving to allotment applicants.

c. Does 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. Eliminating the posting requirement would have a positive impact on a limited number of individual Alaska Native Vietnam Veterans, Interior agencies, and tribal offices who are helping the applicants. The BLM will not have any additional applicants because of this revised rule. The original regulations provided for the filing of applications.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Eliminating the posting requirement will potentially result in minimal savings to tribal governments assisting veteran applicants.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the unfunded Mandates Reform Act.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. This rule does not represent a government action capable of interfering with constitutionally protected property rights. Eliminating the posting requirement will have no effect on the use or value of protected property rights. Therefore, the Department of the Interior determines that this rule will 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 rule does not have significant Federalism effects. A Federalism assessment is not required. This rule would not have 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. Eliminating the posting requirement would have a neutral effect on the State of Alaska. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b) (2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2 we have identified potential effects on Indian trust resources and they are not addressed in this rule. The rule would result in more allotments being conveyed.

Section 41 of ANCSA, which authorizes Native allotments for certain veterans, specifically requires that the Department of the Interior promulgate regulations ''after consultation with Alaska Natives groups.'' The BLM consulted with the BIA throughout the process of the initial rulemaking and held public meetings to discuss the rule with Native entities, including tribes. The BLM solicited Native's views very early in the rulemaking process and the BLM considered written comments received from tribes and other Native entities in the final rule. The BLM held additional meetings with Native groups before the regulations became final and considered tribal and other Native views in the final rulemaking. Accordingly:

a. We have consulted with the affected tribes.

b. We have consulted with tribes on a government-to-government basis and the consultations have been open and candid so that the affected tribes could fully evaluate the potential impact of the rule on trust resources.

c. We will consider tribal views in the final rule.

d. We have consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on Indian tribes. We consulted with the Bureau of Indian Affairs and the Division of Indian Affairs, Office of the Solicitor.

The elimination of the posting requirement would more closely comply with verbal and written comments received as a result of the above consultation.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use, including a shortfall in supply or price increase. This rule is not a significant energy action. It will not have an adverse effect on energy supplies. This rule will apply only to Alaska Native veterans and to a specific class of Alaskan Native veteran's heirs who are eligible to apply for allotments.

Paperwork Reduction Act

The BLM has determined this rulemaking does not contain any new information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Effects on Endangered Species or Critical Habitat

In accordance with the Endangered Species Act, this regulation does not have an effect on an endangered species or critical habitat. This rule will expedite the conveyance of otherwise

valid allotment claims for a small number of Alaska Native Veterans who have already applied.

Author: The principal author of this rule is Mike Haskins, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Kelly Odom of the BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian lands, Public lands, Public lands—sale, and Reporting and recordkeeping requirements, Alaska Native allotments for certain veterans.

Dated: September 27, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble and under the authority of the Alaska Native Veterans Allotment Act of 1998 (Section 432, Pub. L. 105–276) the BLM proposes to amend part 2560 of Title 43 of the Code of Federal Regulations as set forth below:

PART 2560—ALASKA OCCUPANCY AND USE

1. Revise the authority citation for part 2560 to read as follows:

Authority: 43 U.S.C. 1629g(e).

2. Revise paragraph (d) of § 2568.74 to read as follows:

§ 2568.74 What else must I file with my application?

* * * * *

(d) A legal description of the land for which you are applying. If there is a discrepancy between the map and the legal description, the map will control. The map must be sufficient to allow the BLM to locate the parcel on the ground. You must also estimate the number of acres in each parcel.

§ 2568.77 [Removed and Reserved]

3. Remove and reserve § 2568.77.

[FR Doc. 05–20164 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

Docket No. FMCSA–2005–21323]

RIN–2126–AA91

Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: In response to a petition for rulemaking from the Surge Brake Coalition, the Federal Motor Carrier Safety Administration proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers operated in interstate commerce. A surge brake is a self-contained permanently closed hydraulic brake system activated in response to the braking action of the tow vehicle. The amount of trailer braking effort developed is proportional to the total trailer weight and deceleration rate of the tow vehicle. Currently, surge brakes are not considered by FMCSA to comply with the FMCSRs specifying that all brakes with which a motor vehicle is equipped must at all times be capable of operating, and that a single application valve must, when applied, operate all the service brakes on the motor vehicle or combination of motor vehicles. The intent of this rulemaking is to adopt performance-based brake system requirements to allow the use of surge brakes on certain combinations of commercial motor vehicles based upon engineering test data submitted by the Surge Brake Coalition.

DATES: Comments must be received by December 6, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2005–21323 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN–2126–AA91). Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

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.

Privacy Act: Anyone is able to search the electronic form for 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 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–0676, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5 p.m. e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

I. Legal Basis for the Rulemaking
II. Background
III. Petition
IV. Regulatory Analyses and Notices

I. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984 (49 U.S.C. 31131, *et seq.*).

The Motor Carrier Act of 1935, as amended, provides that ''[t]he Secretary

of Transportation (Secretary) may prescribe requirements for: (1) Qualifications and maximum hours-of-service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours-of-service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)).

This NPRM proposes to amend regulations located at 49 CFR 393.48 entitled ''Brakes to be Operative,'' 49 CFR 393.49 currently entitled ''Single Valve to operate all Brakes,'' which previously was interpreted as prohibiting the use of surge brakes on commercial motor vehicles (CMVs), and to add a definition to § 393.5 for surge brakes. Section 393.48 states that all brakes with which a motor vehicle is equipped must at all times be capable of operating. Section 393.49 requires that a single application valve must when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. The adoption and enforcement of such rules is specifically authorized by the Motor Carrier Act of 1935. This NPRM rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This NPRM deals with surge brakes. The fundamental purpose of 49 CFR Part 393 Parts and Accessories Necessary for Safe Operation is to ensure that no employer is allowed to operate a commercial motor vehicle or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part. However, nothing contained in part 393 can be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by part 393, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used. Compliance with the brake regulations is necessary to ensure vehicles are equipped with adequate braking capability to ensure control of the CMV. Before prescribing modifications to such regulations, FMCSA must consider the ''costs and benefits'' of any proposal (49 U.S.C. 31136(c)(2)(A)).

II. Background

The Surge Brake Coalition petitioned FMCSA on February 28, 2002, to amend § 393.48 entitled ''Brakes to be Operative'' and § 393.49 entitled ''Single Valve to Operate all Brakes,'' which have been interpreted as prohibiting the use of surge brakes on commercial motor vehicles. Coalition members include trailer manufacturers, parts suppliers, commercial users dependent upon trailers, trailer rental companies, and trade associations whose memberships comprise distinct segments of the trailer business. A copy of the petition is included in the docket referenced at the beginning of this document.

Section 393.48 states that all brakes with which a motor vehicle is equipped must at all times be capable of operating. Section 393.49 requires a single application valve must, when applied, operate all the service brakes on the motor vehicle or combination of motor vehicles. Regulatory guidance previously issued by the Agency (40 FR 50671, 50688, Oct. 31, 1975) [1] indicates the use of surge brakes on trailers operated in interstate commerce is inconsistent with the requirements of §§ 393.48 and 393.49.

Section 393.48 Brakes to be Operative. The Bureau's position regarding surge brakes has been that they did not comply with the requirements of Section 393.48 of the Motor Carrier Safety Regulations. The cited section requires, in part, that all brakes with which motor vehicles are required to be equipped must be operative at all times. A surge brake which is only operative under certain preset conditions would not be in compliance with this requirement. In other words, surge brakes, in general, are only operative when the vehicles are moving in the forward direction.

Section 393.49 Single Valve to Operate All Brakes. A surge brake would comply with the requirements of Section 393.49 as it specifically states that the brake system shall be so arranged that one application valve shall, when applied, operate all of the service brakes on the motor vehicle or combination of motor vehicles. When the service brakes on a power unit towing a vehicle with surge brakes are applied, the brakes on both vehicles would be applied. The power unit brakes would be applied by its application valve and the surge brakes on the towed vehicle by the overrunning effect.

Subsequent regulatory guidance published by FHWA on November 17, 1993 (58 FR 60734, 60755) indicated that surge brakes did not comply with both §§ 393.48 and 393.49:

Section 393.48 Brakes to be Operative. Question 1: Do surge brakes comply with § 393.48? No. Section 393.48 requires that brakes be operable at all times. Generally, surge brakes are only operative when the vehicle is moving in the forward direction and as such do not comply with section 393.48.

Section 393.49 Single Valve to Operate All Brakes. Question 1: Does a combination of vehicles using a surge brake to activate the towed vehicle's brakes comply with § 393.49? No. The surge brake cannot keep the trailer brakes in an applied position. Therefore, the brakes on the combination of vehicles are not under the control of a single valve as required by § 393.49.

This guidance was also included in FHWA's April 4, 1997 (62 FR 16370, 16415 and 16416) publication, ''Regulatory Guidance for the Federal Motor Carrier Safety Regulations.''

III. Petition

The Surge Brake Coalition proposed in their petition for rulemaking that § 393.48 be amended by:

1. Revising paragraph (a) to read:

General rule. Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

2. Adding a new paragraph (d) to read:

Surge brakes. Paragraph (a) of this section does not apply to:

Any trailer with a gross vehicle weight rating (GVWR) of 12,000 lbs or less, equipped with inertial surge brakes when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; or

Any trailer with a GVWR greater than 12,000 lbs, but less than 20,001 pounds (lbs), equipped with inertial surge brakes when the GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

[1] The Federal Highway Administration's (FHWA) Bureau of Motor Carrier Safety (Bureau) (FMCSA's predecessor agency) published these motor carrier safety interpretations.

The Petitioner also requested the following exception be added to § 393.49: ''This requirement shall not apply to trailers equipped with surge brakes that satisfy the conditions provided in § 393.48(d).''

The Petitioner argues that surge brakes provide a safe, practical braking system for commercial motor vehicle combinations, especially for scenarios in which the trailer is likely to be towed by a variety of vehicles. For example, in the rental market, trailers are rented separately from towing vehicles, and towing vehicles frequently are not wired for electric brake controls. The Petitioner indicates that rental companies believe it is ''prohibitively expensive and impractical'' to install or adapt a brake control system on each towing vehicle every time they rent a trailer or piece of mobile equipment. The Petitioner estimates that over 25 percent of the rental trailer fleet is equipped with surge brakes.

The Petitioner believes surge brakes are a popular alternative to electric brakes because surge brakes activate automatically, adapt to the weight of the load, have fewer components, and require less maintenance. These features make surge brakes ideal for flatbed and van-type trailers with a GVWR of 20,000 lbs or less, and trailers serving the marine industry. The Petitioner also points out that manufacturers install approximately 250,000 surge brake systems annually on small to medium sized trailers.

The Petitioner's Engineering Tests

The Petitioner conducted brake performance tests at Exponent Failure Analysis Associates' (EFAA) Test and Engineering Center in Phoenix, Arizona. EFAA tested the braking performance of 16 different configurations of towing vehicles and trailers. The Petitioner used the services of a consulting engineer to interpret the test results and prepare the final report concerning the tests.

Test Protocol

1. *Straight-line braking:* Vehicle combinations were stopped from speeds of approximately 20 miles per hour (mph) or greater to determine whether the vehicle could meet the performance requirements under § 393.52. The vehicle combination was required to stay within a 12-foot-wide lane during the test and the stopping distance was measured.

2. *Brake holding on a 20 percent incline:* Using only the service brakes, the combination was stopped going up a 20 percent incline and required to remain stationary for at least 5 minutes.

3. *Braking in a turn:* The towing vehicle and trailer were driven on a circular, 12-foot-wide, 500-foot-radius test track of known coefficient of friction. The driver then applied the brakes to achieve maximum deceleration. The average deceleration was calculated.

Test Vehicles

Trailers (GVWR):

- 1999 U-Haul tandem axle auto transport (6,000 lbs GVWR), equipped with U-Haul surge brake actuator.
- 2000 Big Tex tandem axle, open cargo area, with side rails (14,000 lbs GVWR), equipped with Demco model DA20 surge brake actuator.
- Two 2001 Wells Cargo flatbed trailers with triple torsion axles (20,000 lbs GVWR). One trailer was equipped with a Titan model 20 surge brake actuator and the other with a Demco model DA20 surge brake actuator.

Towing vehicles (GVWR):

- 1993 Chevrolet C–1500 (6,100 lbs GVWR), curb weight 4,200 lbs. The vehicle was equipped with front disc brakes and rear drum brakes. The vehicle was also equipped with a rear-axle antilock braking system (ABS).
- 2001 Chevrolet K–3500 (11,400 lbs GVWR), curb weight 7,072 lbs. The vehicle was equipped with four-wheel disc brakes and four-wheel ABS.
- 2001 GMC Sierra (11,400 lbs GVWR), curb weight 7,476 lbs. The vehicle was equipped with four-wheel disc brakes and four-wheel ABS.

Towing vehicle & trailer test combinations:

- Unladen pickup truck/unladen trailer.
- Unladen pickup truck/full GVWR trailer.
- Full GVWR pickup truck/unladen trailer.
- Full GVWR pickup truck/full GVWR trailer.

Test Results:

- Vehicle combinations that included a heavy trailer (GVWR between 12,001 lbs and 14,600 lbs) complied with FMCSA's brake performance requirements under 49 CFR 393.52 when the GVWR of the trailer was 1.25 times that of the towing vehicle or less, including test runs with the towing vehicle and trailer loaded to their maximum GVWR.
- Vehicle combinations that included a medium-weight trailer (GVWR up to 12,000 lbs) complied with FMCSA's brake performance requirements when the GVWR of the trailer was 2 times that of the towing vehicle or less, including runs with the towing vehicle and trailer loaded to their maximum GVWR.
- Vehicle combinations that fall within the ratios of towing vehicle GVWR to trailer GVWR are capable of complying with 49 CFR 393.52, demonstrate stability and control during braking-in-a-curve tests, and are capable of being stopped and held stationary going up a 20 percent grade.

On August 13, 2004, FMCSA granted the Surge Brake Coalition's petition. FMCSA made a preliminary determination that the petitioner presented sufficient technical information to support its request that the Agency initiate a rulemaking to allow the use of surge brakes on certain combinations of vehicles. Although a limited number of vehicle configurations were tested, the Agency believes the tests adequately demonstrate safe ratios of the towing vehicle GVWR to the trailer GVWR that would be used to determine whether surge brakes may be used on a particular combination of vehicles.

The Agency does not believe that permitting the use of surge brakes, under the specific conditions noted in this proposal, is inconsistent with the original intent of §§ 393.48 and 393.49.

Section 393.48 requires that brakes be capable of operating at all times the vehicle is in operation on public roads. The intent of the requirement is that all commercial motor vehicles operating in interstate commerce have sufficient braking capability at all times. Based upon the information provided by the petitioner, FMCSA believes vehicles equipped with surge brakes, under the conditions being proposed in this rulemaking notice, would have sufficient braking capability at all times the vehicle combination is being operated on public roads, in interstate commerce. While surge brakes automatically release when the vehicle combination comes to a complete stop, the weight-ratio between the towing vehicle and the trailer being proposed today would ensure that the brakes on the towing vehicle are sufficient to maintain control of the combination when the surge brakes release automatically. Therefore, the agency believes the original intent of Section 393.48 would be satisfied by surge brake systems meeting the proposed requirements.

The petitioner contends that:

> Technological advances in braking systems render the original purpose of § 393.49 and its ''single-valve'' criterion overly broad and excessively restrictive. FHWA [previously] developed this regulation as a materials-oriented specification to foreclose the shortcomings of and risks associated with the predominant braking system of the day,

wheel brakes and their use in conjunction with large tractors or power units.

The Agency agrees with the petitioner that advances in braking technology, and specifically in the instance of surge brakes, render the current single valve requirement in the § 393.49 design restrictive and not necessary or appropriate when considered specifically in the context of surge brakes installed on the small and mid-size trailers addressed by this proposal.

The Agency proposes to rename and revise § 393.49 to make its construction consistent with § 393.48, and to make it easier to quickly understand the general requirement and the exceptions, which would include one for surge brakes. A new title of ''Control Valves for Brakes'' is proposed for this section to be more representative of the different types of brake systems addressed.

The Agency is proposing to add a definition for surge brakes to § 393.5 to ensure a clear understanding of what is meant by the term ''surge brakes,'' and to facilitate consistent application of the requirements being proposed.

If the proposed regulatory amendments are adopted, the Agency would withdraw the existing regulatory guidance provided as Question 1 to § 393.48 and Question 1 to § 393.49, originally published on November 17, 1993 (58 FR 60734) and republished on April 4, 1997 (62 FR 16370). These existing guidance questions addressing whether surge brakes meet the requirements of the standard would be replaced by the proposed regulatory text. Thus, the existing guidance would be superseded by the proposed regulatory text, and would be withdrawn.

The Agency requests comment on whether additional analysis is needed to support the Petitioner's assertion that vehicle combinations that include a heavy trailer (GVWR between 14,600 lbs and 20,000 lbs) would satisfy FMCSA's brake performance requirements under § 393.52 when the GVWR of the trailer is 1.25 times that of the towing vehicle or less. The agency is also requesting the submission of brake performance data and information relevant to all the other issues raised in the petition, and the proposed amendments to §§ 393.48 and 393.49.

The Agency emphasizes that the granting of the petition for rulemaking, and subsequent proposal to amend §§ 393.48 and 393.49 should not be construed as an exception to the brake performance requirements under § 393.52. Therefore, adoption of a final rule would not relieve motor carriers of their responsibility to ensure that any commercial motor vehicle, or combination of commercial motor vehicles, operated in interstate commerce, comply with the brake performance requirements under § 393.52.

IV. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT

Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 due to novel policy issues in that it is the subject of both a regulatory reform nomination and an industry petition. This rule has generated a significant amount of public interest as it has been identified in the 2005 ''Regulatory Reform of the U.S. Manufacturing Sector'' as published by the Office of Management and Budget. We expect the proposed rule would have minimal costs. The Agency has prepared a preliminary regulatory analysis analyzing the costs and benefits of this undertaking. A copy of the preliminary analysis document is included in the docket referenced at the beginning of this notice.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined on a preliminary basis that this proposed rulemaking would have minimal, but positive impact on a substantial number of small entities. This is because it removes a regulatory obstacle to the use of surge brakes on small and medium trailers. There are over 150 firms that manufacture trailers, about 300 firms that are in the boat delivery service, thousands of landscape and construction firms that may use trailers, and over 2,000 rental equipment firms that may offer trailers for rent. The majority of these firms are small businesses according to the definition provided by the Small Business Administration. No entity would be required to use surge brakes, and those currently using electric or other types of brakes have the option to continue with no change.

The change proposed is to allow a braking system that is not currently allowed. Many of these operations use small or medium trailers in their daily operations, which are subject to the FMCSRs if operated in interstate commerce, which currently do not allow the use of surge brakes. CMVs using such trailers are most likely to be operated in interstate commerce if the operation is near a State boundary. This proposed regulatory action would help to promote more uniform requirements. This is because numerous State agencies responsible for motor carrier safety are faced with a current dilemma: specifically, enforcing Federal regulations prohibiting the use of surge brakes on trailers operated in interstate commerce, while allowing identical trailer combinations to operate on the same roads, under the same conditions, in intrastate commerce.

Accordingly, FMCSA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This proposed action would meet 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.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA has preliminarily determined that this rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed rulemaking would not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and have determined preliminarily that this action would not have an effect on the quality of the environment. However, a preliminary environmental assessment (EA) has been prepared because the rulemaking is not among the type covered by a categorical exclusion. A copy of the preliminary environmental assessment is included in the docket listed at the beginning of this notice.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a ''significant energy action'' under that Executive Order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers and Motor Vehicle Safety.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Amend § 393.5 by adding a new definition for ''Surge Brake'' in alphabetical order to read as follows:

§ 393.5 Definitions.

* * * * *

Surge Brake. A self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle.

* * * * *

3. Amend § 393.48 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 393.48 Brakes to be operative.

(a) *General rule.* Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

* * * * *

(d) *Surge brakes.* Paragraph (a) of this section does not apply to:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 lbs or less, equipped with inertial surge brakes when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; or

(ii) Any trailer with a GVWR greater than 12,000 lbs, but less than 20,001 lbs, equipped with inertial surge brakes when the GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

4. Revise § 393.49 in its entirety, including a revised title, to read as follows:

§ 393.49 Control valves for brakes.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, every motor vehicle, the date of manufacture of which is subsequent to June 30, 1953, which is equipped with power brakes, must have the braking system so arranged that one application valve must when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. This requirement must not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as provided in § 393.44.

(b) *Driveaway-Towaway Exception.* This section is not applicable to driveaway-towaway operations unless the brakes on such operations are designed to be operated by a single valve.

(c) *Surge brake exception.* This requirement is not applicable to trailers equipped with surge brakes that satisfy the conditions specified in 49 CFR 393.48(d).

Issued on: October 3, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–20297 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 70, No. 194
Friday, October 7, 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

October 3, 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.

Agricultural Marketing Service

Title: Dried Prunes Produced in California—Dried Prune Handler Compensation Survey.

OMB Control Number: 0581–0208.

Summary of Collection: Marketing Orders (Orders) and Agreements (Agreements) covering the respective commodities emanate from the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. This regulation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The Act provides in section 608(d)(1) that information necessary to determine the extent to which an order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture (Secretary). Under the Prune Marketing Order, handlers are compensated for such costs as inspection, receiving, storing, grading and fumigation of reserve prunes held for the account of the Prune Marketing Committee. A formula has been established in the administrative rules and regulations that allow the Committee to compute the level of handler payments that reflect current industry costs. The Committee will obtain current industry costs through surveys of dried prune handlers, and average costs will be computed based on the number of handlers participating in the survey and the compensation rate will be updated based on the survey.

Need and Use of the Information: When volume regulations are in effect, the survey is filled out by handlers on a voluntary basis to inform the Prune Marketing Committee of their costs associated with inspection, receiving, storing, grading, handling and fumigation, as well as other costs.

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

Number of Respondents: 22.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 6.

Agricultural Marketing Service

Title: Dried Prunes Produced in California—Prune Dehydrator Survey.

OMB Control Number: 0581–0211.

Summary of Collection: Marketing Orders (Orders) and Agreements. (Agreements) covering the respective commodities emanate from the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. This regulation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. Under the Prune Marketing Order, prune producers may participate in a voluntary prune plum diversion program, when a reserve pool is implemented. Under this program, prune producers can elect to divert part of their prune plum crop from normal prune or prune product markets. Because dry-away ratios are the basis for computing the dried weight equivalent of diverted fresh prune plums, and those currently established are outdated, the Prune Marketing Committee will obtain current dry-away ratios through a voluntary survey submitted by commercial prune dehydrators, when the program is implemented.

Need and Use of the Information: The commercial prune dehydrators inform the Committee of their annual dry-away ratios for the preceding five years by completing this survey. The Prune Marketing Committee will use the information to average those ratios and compute a five-year average dray-away ratio for each producing region, and apply that ratio to diverted prune plums in those regions. The information to be provided is on a voluntary basis and includes the most recent six years of dry-away ratios for each commercial prune dehydrator owned or operated, the dehydrator location, the county(ies) where the dehydrator receives prunes, and in cases of dehydrators receiving prunes from multiple counties, the estimated percentage of production each county supplies to the dehydrator.

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

Number of Respondents: 17.

Frequency of Responses: Recordkeeping; Reporting: On occasion; annually.

Total Burden Hours: 5.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–20166 Filed 10–6–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–113–2]

Mycogen Seeds/Dow AgroSciences LLC and Pioneer Hi-Bred International Inc.; Availability of Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Mycogen Seeds/Dow AgroSciences LLC and Pioneer Hi-Bred International Inc. corn designated as corn line DAS–59122–7, which has been genetically engineered for resistance to a corn rootworm complex and for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Mycogen Seeds/Dow AgroSciences LLC and Pioneer Hi-Bred International Inc. in their petition for a determination of non-regulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice announcing the availability of the petition for nonregulated status and an environmental assessment. This notice also announces the availability of our written determination and our finding of no significant impact.

DATE: Effective September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Watson, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0486; e-mail: *michael.t.watson@aphis.usda.gov*. To obtain copies of the petition or, the determination, the environmental assessment (EA), or the finding of no significant impact (FONSI) contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov*. The petition and the EA, including the FONSI and determination, are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/03_35301p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/03_35301p_ea.pdf*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On December 19, 2003, APHIS received a petition (APHIS No. 03–353–01p) from Mycogen Seeds/Dow AgroSciences LLC of Indianapolis, IN, and Pioneer Hi-Bred International of Johnston, IA (Dow AgroSciences/Pioneer), requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays*) designated as corn line DAS–59122–7, which has been genetically engineered for resistance to corn rootworm and for tolerance to the herbicide glufosinate. The Dow AgroSciences/Pioneer petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

In a notice published in the **Federal Register** on July 1, 2005 (70 FR 38094–38096, Docket No. 04–113–1), APHIS announced the availability of the Dow AgroSciences/Pioneer petition and an environmental assessment (EA). APHIS solicited comments on whether the subject corn would present a plant pest risk and on the environmental assessment. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn and products developed from it.

APHIS received two comments by the close of the comment period on August 30, 2005. One comment was from a trade association, which supported the petition. The other comment was from a private individual who did not support the petition. The response to these comments can be found in an attachment to the finding of no significant impact (FONSI).

APHIS has amended the section of the EA titled ''Potential impacts on threatened and endangered arthropods.'' The amended section includes a reference to a process for assessment of impacts on threatened and endangered species that has been mutually agreed upon by the U.S. Fish and Wildlife Service and APHIS. The change in language merely provides clarity to the reader; it is not substantive and did not change the analysis described in the EA.

As described in the petition, corn line DAS–59122–7 has been genetically engineered to express a plant incorporated protectant (PIP) that controls certain corn rootworm. The PIP is an insecticidal crystal protein (ICP) from *Bacillus thuringiensis* strain PS149B1. The ICP is made of two proteins Cry34Ab1, approximately 14 kDa, and Cry35Ab1, approximately 44 kDa in molecular weight. Transcription of the Cry34Ab1 coding sequence is controlled by the maize ubiquitin promoter (UBI1ZM PRO). Transcription of Cry35Ab1 is controlled by a wheat (*Triticum aestivum*) peroxidase (TA Peroxidase) promoter. The termination sequences for these two genes were derived from the potato (*Solanum tuberosum*) proteinase inhibitor II (PINII). The PIP is expressed throughout the plant and confers resistance to northern corn rootworm (nCRW), western corn rootworm (wCRW), and Mexican corn rootworm (mCRW).

Corn line DAS–59122–7 has also been genetically engineered to express the enzyme phosphinothricin acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The expression of the *pat* gene, derived from the bacterium *Streptomyces viridochromogenes*, is under the control of the cauliflower mosaic virus (CaMV) 35S RNA promoter and a CaMV termination sequence (CaMV35S TERM). The DAS–59122–7 corn line was generated through Agrobacterium-mediated transformation of the publicly available corn line Hi-II.

Determination

Based on its analysis of the data submitted by Dow AgroSciences/Pioneer, a review of other scientific data, field tests of the subject corn, and the comments submitted by the public, APHIS has determined the following with respect to corn line DAS–59122–7: (1) It exhibits no plant pathogenic properties; although a plant pathogen was used in the development of this

corn, these plants are not infected by this organism, nor do they contain genetic material from this pathogen that can cause plant disease; (2) it exhibits no characteristics that would cause it to be more weedy than the non-transgenic parent corn line or other cultivated corn; (3) gene introgression from DAS–59122–7 corn into wild relatives in the United States and its territories is extremely unlikely and is not likely to increase the weediness potential of any resulting progeny nor adversely affect genetic diversity of related plants any more than would introgression from traditional corn hybrids; (4) disease and insect susceptibility and compositional profiles of the kernel is similar to non-transgenic corn and should have no adverse impact on raw or processed agricultural commodities; (5) it exhibits no potential to have significant adverse impact on organisms beneficial to agriculture; (6) compared to current agricultural practices, cultivation of DAS–59122–7 should not reduce the ability to control pests and weeds in corn or other crops. In addition to our finding of no plant pest risk, there will be no effect on threatened or endangered species resulting from a determination of non-regulated status for DAS–59122–7 and its progeny.

Therefore, APHIS has concluded that the subject corn and any progeny derived from hybrid crosses with other non-transformed corn varieties will be as safe to grow as corn varieties in traditional breeding programs that are not subject to regulation under 7 CFR part 340. The effect of this determination is that Dow AgroSciences/Pioneer corn line DAS–59122–7 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340.

Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject corn or its progeny. However, importation of corn line DAS–59122–7 and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319 and imported seed regulations in 7 CFR part 361.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts and plant pest risk associated with the determination of nonregulated status for the Dow AgroSciences/Pioneer corn line DAS–59122–7. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Based on that EA, APHIS has reached a FONSI with regard to the determination that Dow AgroSciences/Pioneer corn line DAS–59122–7 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available from the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–20194 Filed 10–6–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–062–2]

University of Kentucky; Availability of an Environmental Assessment and a Finding of No Significant Impact for Field Tests of Genetically Engineered Neotyphodium

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a field trial of genetically engineered strains of an endophytic fungus of perennial ryegrass, *Neotyphodium* sp. isolate Lp1. The fungi have been genetically engineered to disrupt the ergovaline synthesis pathway. The environmental assessment provides a basis for our conclusion that these field tests will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for these field tests.

DATES: A permit may be issued on or after October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Blanchette, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–5141; e-mail: *michael.p.blanchette@aphis.usda.gov.* To obtain copies of the petition, the environmental assessment (EA), or the finding of no significant impact (FONSI), contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov.* The EA and FONSI are also available on the Internet at: *http://www.aphis.usda.gov/brs/aphisdocs/05_15201r_ea.pdf.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On June 1, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–152–01r) from the University of Kentucky, Department of Plant Pathology, for a confined field release of two mutant strains of *Neotyphodium* sp isolate Lp1, which is an endophytic fungus of *Lolium perenne* (perennial ryegrass). These two mutants were generated by inserting a gene construct containing a hygromycin phosphotransferase gene (*hph*) into specific genes in the ergovaline synthesis pathway. The literature is obscure regarding the specific donor of the *hph* gene to the plasmid that was used to create this construct. The identical *hph* gene has been identified in three bacterial species, *Klebsiella* sp., *Streptomyces hygroscopicus,* and *Escherichia coli.* Expression of the *hph* gene is regulated by the *Neurospora crassa* cross-pathway control gene (*cpc-1*) promoter and a transcription termination sequence from the *trpC* gene of *Aspergillus nidulans.*

Strain Lp1–4175 results from an insertion of the *hph* construct in the dimethylallyltryptophan synthase

(*dmaW*) gene. This strain does not produce ergot alkaloids or clavine mycotoxins that are believed to cause toxicoses to grazing livestock and wildlife. Strain Lp1–981 was generated by an insertion of the *hph* construct in lysergyl peptide synthetase subunit 1 (*lpsA*). This line lacks the ability to produce ergovaline and other amides of lysergic acid, but retains the ability to produce clavines and lysergic acid.

Perennial ryegrass plants that have been inoculated with either mutant strain will be planted in the trial for the purpose of increasing seed. The endophyte is only transmitted vertically through seed. Therefore this trial will result in an increase in inoculated seed for future experiments.

On August 12, 2005, we published in the **Federal Register** (70 FR 47169–47170, Docket No. 05–062–1) a notice announcing the availability, for review and comment, of an environmental assessment (EA) for a field trial of the genetically engineered strains of *Neotyphodium* sp. isolate Lp1. We solicited comments on the EA for 30 days ending on September 12, 2005. We received eight comments by that date, from an academic professional, a public interest group, and private individuals. All eight commenters expressed concerns about the field trial. Some of the comments criticized the treatment of horizontal gene transfer and acute toxicity in the EA. Others suggested that these types of experiments should only be conducted in a contained facility. APHIS has responded to these comments in an attachment to the finding of no significant impact (FONSI).

Pursuant to its regulations (7 CFR part 340) promulgated under the Plant Protection Act, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons:

1. The test fungi *Neotyphodium* sp. Lp1 strains Lp1-981 and Lp1-4175 are identical to the untransformed endophyte except for their inability to produce toxic ergot alkaloids.

2. *Neotyphodium* species are not known as animal or human pathogens, and both it and its sexually transmitted form of the species (*Epichloeë* sp.) are only found in grasses.

3. Dissemination of *Neotyphodium* sp. Lp1 strains Lp1-981 and Lp1-4175 will be prevented through physical methods, normal site security, small size of the trials, and cleaning of equipment.

4. The host range of *Neotyphodium* sp. Lp1 strains Lp1-981 and Lp1-4175 and mode of transmission has not changed.

5. The *Neotyphodium* sp. Lp1 strains Lp1-981 and Lp1-4175 are expected to be less toxic to herbivores than the untransformed endophyte and therefore should not pose any new dietary threat.

6. The *Neotyphodium* species has never been associated with animal or human disease and therefore will not pose a risk to human health.

7. Hygromycin B phosphotransferase (from the marker gene) does not confer any plant pest characteristics to *Neotyphodium* species.

8. Threatened and endangered species in the area are not hosts of *Neotyphodium* sp. nor do they feed on hosts of these fungi, and therefore will not be affected by the trials.

The EA and the FONSI were prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 3rd day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–20195 Filed 10–6–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Lunch and Breakfast Cost Study-II

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection of data for the School Lunch and Breakfast Cost Study-II in order to assess the adequacy of the Federal meal reimbursement rates.

DATES: Written comments must be received on or before December 6, 2005.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Alberta Frost, Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Alberta Frost at 703–305–2576 or via e-mail to *Alberta.Frost@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 1014, 3101 Park Center Drive, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Alberta Frost at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: School Lunch and Breakfast Cost Study-II.

OMB Number: Not yet assigned.

Form Number: N/A.

Expiration Date: Not yet determined.

Type of Request: New Collection of Information.

Abstract: The School Lunch and Breakfast Cost Study-II will collect and analyze data from a nationally representative sample of public schools participating in the National School Lunch Program (NSLP). Data will be collected so as to provide sufficient information on school meal production costs to assess the adequacy of Federal meal reimbursement rates. The information will be used to determine the national average reported and full costs to produce NSLP and School Breakfast Program (SBP) reimbursable meals, the extent to which indirect costs are charged to School Food Authority (SFA) accounts for food service operations, the value of administrative costs used to produce reimbursable

NSLP and SBP meals, and the composition of SFA revenues, including federal reimbursements, cafeteria sales and State and local cash assistance in comparison to costs.

Respondents: State Child Nutrition (CN) Directors, State Commodity Distributing Agency (SDA) Directors, and State Department of Education (SEA) Finance Officers. For public school districts participating in the NSLP: SFA directors and business managers, local educational agency (LEA) finance officers, and school administrators and food service managers.

Estimated Number of Respondents: One hundred twenty-two SFA directors will complete a mail questionnaire with telephone follow-up and be interviewed in-person using several different instruments. One hundred twenty-two SFA business managers and 122 LEA finance officers will be interviewed in person. One food service manager in each of three schools in each SFA (a total of 366 food service managers) will be interviewed by telephone prior to site visits. During the site visits the 366 food service managers will be interviewed in-person using several different instruments. Approximately 25 State CN directors; 25 SDA directors, and 25 SEA finance officers will be interviewed by telephone.

Number of Responses per Respondent: Each instrument will be administered once to each respondent except for food service managers. Food service managers will be interviewed once by telephone prior to the site visit; in addition food service managers will be interviewed on each day of the five-day site visit to complete menu and recipe records.

Estimated Time per Response: The attached table presents the burden for each type of respondent.

Estimated time per response

Respondent	Number	Number of administrations	Minutes	Total minutes
State CN Director Interview	25	1	20	500
State SDA Administrator	25	1	20	500
SEA Finance Officer Interview	25	1	20	500
SFA Director:	122			
• Pre-Visit Questionnaire	122	1	30	3,660
• School Paid Staff Roster	122	1	15	1,830
• Central Staff Paid Staff Roster	122	1	10	1,220
• Central Staff Time Allocation Grid	122	1	10	1,220
• Food Service Expense Statement	122	1	30	3,660
• Off-Budget Staff Roster	122	1	10	1,220
• Off-Budget Time Allocation Grid	122	1	10	1,220
Food service managers/Cooks:	366			
• School Information Summary	366	1	10	3,660
• Kitchen Staff Time Allocation Grid	366	1	15	5,490
• Menu Record	366	5	15	27,450
• Recipe Record	366	5	30	54,900
SFA Business Manager	122	1	60	7,320
School Administrator Interview	366	1	80	29,280
LEA Finance Officer	122	1	60	7,320
Total Respondent Burden				150,950

Estimated Total Annual Burden on Respondents: 2516 hours.

Dated: October 3, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–20255 Filed 10–6–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest, California and Oregon, Mt. Ashland LSR Habitat Restoration and Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to promote the development of late-successional habitat and reduce the risk of uncharacteristic wildfires on approximately 5013 acres.

DATES: Comments concerning the scope of the analysis must be received within 30 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by January, 2006, and the final environmental impact statement is expected by July, 2006.

ADDRESSES: Send written comments to Margaret J. Boland, Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097. ATTN: Sue Stresser

FOR FURTHER INFORMATION CONTACT: Susan Stresser, Wildlife Biologist and Interdisciplinary Team Leader, Klamath National Forest, 132 Fairlane Road, Yreka, California 96097 or call (503) 841–4538.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Mt. Ashland Late-Successional Reserve (LSR) Habitat Restoration and Fuels Reduction Project is to promote the development of habitat for species dependent on late-successional forests and reduce the vulnerability of these stands and existing late-successional habitat to uncharacteristic wildfire. This project is proposed under the direction of Seciton 7(a)(1) of the Endangered Species Act that directs federal agencies to carry out programs for the conservation of threatened and endangered species. Agencies are also directed to conduct habitat restoration and enhance protection from catastrophic wildfire by the Healthy Forest Restoration Act, Northwest Forest Plan as incorporated in the Klamath National Forest Land and Resource Management Plan of 1995, and the National Fire Plan.

The need for actions in these watersheds results primarily from turn

of the century railroad logging; resulting in mid-successional stands with high stem densities, altered species composition, and low diversity that currently provide limited habitat for late-successional species. Many of these stands are unlikely to develop into functional late-successional habitat without treatment, and are at risk to uncharacteristic wildfire. An additional need is to protect the limited amount of existing late-successional habitat in these watersheds from uncharacteristic wildfire.

Proposed Action

The proposal is to thin mid-successional stands to promote the development of late-successional habitat (habitat promotion areas), construct strategic fuelbreaks, and thin and reduce fuels in mid-successional stands, early-successional stands, and riparian reserves to reduce the risk of uncharacteristic wildfires.

- *Habitat Promotion Areas:* Approximately 70 acres of early-successional and 2549 acres of mid-successional forest will be treated by variable-density thinning of trees less than 20 inches diameter at breast height. Where site-specific conditions allow, thinning will promote the historic species composition. No late-successional forest will be thinned.
- *Strategic Fuelbreaks:* Five defensive fuel profile zones, a type of strategic fuelbreak, will be located on prominent ridges. Encompassing approximately 1714 acres, defensive fuel profile zones will be treated to reduce ground and ladder fuels, and maintain canopy closure at 40 to 50 percent. A small number of trees greater than 20 inches diameter at breast height, primarily true fir, may be felled to achieve density objectives but will be left on site.
- *Riparian Reserve Treatments:* Within 170 feet of streams, ground and ladder fuels will be treated by hand thinning and burning of handpiles. Between 170 and 340 feet from streams, thinning treatments similar to the Habitat Promotion Areas may occur. Within riparian reserves associated with unstable lands, thinning and fuel treatment will occur only on low risk areas. Approximately 412 acres of Riparian Reserve habitat will be treated.
- *Fuel Treatments:* All Habitat Promotion Areas and Strategic Fuelbreaks will have existing and/or project-generated fuels treated by a variety of fuels reduction treatments including: underburning, handpiling, lop and scatter, and mastication (grinding material with ground-based equipment). Approximately 268 acres will receive only underburn treatment. Roughly 50 acres of late-successional forest will be treated to reduce fuels.

The project is located in the portion of the Mt. Ashland LSR located on the Klmath National Forest in the upper reaches of the Beaver Creek Watershed. LSRs and Riparian Reserves were established for the Klamath National Forest as part of the Northwest Forest Plan management scenario. LSRs were established to protect and enhance conditions of late-successional and old-growth forest ecosystems, providing habitat for species such as the northern spotted owl. Riparian Reserves are portions of watersheds where riparian-dependent resources receive primary emphasis. This project is authorized under Section 102 of the Healthy Forest Restoration Act because it would provide ''enhanced protection from catastrophic wildfire'' for the habitat of a threatened species, the northern spotted owl.

Due to past logging, many stands in the LSR are mid and early successional. Development of late-successional characteristics can be accelerated, as the stands are young and thrifty enough to respond favorably to density reduction. Due to past fire suppression, many mid-successional stands have stocking so dense that it is not sustainable; the site's capacity to support vegetation is exceeded. Fuels reduction, mainly removal of small diameter material, and fuel breaks were identified as high priority for the area.

Thinned material greater than 9 and less than 20 inches diameter breast height will be offered in a timber sale contract to generate revenues to help fund the remainder of the work, which may be offered in one or more service or stewardship contracts. Of the stands containing merchantable material, it is estimated that 1268 acres will be removed with tractors and tractor-endlining, 662 acres with a mechanical harvester, 1422 acres with cable equipment, and 605 with a helicopter.

Lead and Cooperating Agencies

The Forest Services is the lead agency and the United States Fish and Wildlife Service is a cooperating agency.

Responsible Official

Margaret J. Boland, Forest Supervisor, USDA Forest Service, 1312 Fairlane Road, Yreka, California 96097 is the Responsible Official.

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this proposal, an alternative design that moves the area towards the desired condition, or not implement any project at this time.

Scoping Process

The Forest Service and Fish and Wildlife Service have been collaborating on a proposal to improve habitat conditions in the Mt. Ashland LSR since May 2004. On July 6, 2004, this restoration project was included under the category of ''developing proposal'' in the Klamath National Forest's Schedule of Proposed Actions, which was posted on the Klamath National Forest's internet website and mailed to interested parties. A mailing list for the project was developed from those responding to the Schedule of Proposed Actions, a list of landowners near the project area, potentially affected Native American tribes, agencies with special expertise and groups that might be interested. Those on the mailing list were notified of a public field trip to the project area on Septebmer 29, 2004. Notices of the field trip were also sent to the Siskiyou Daily News, Yreka, California, and the Ashland Daily Tidings, Ashland, Oregon. A scoping letter describing the proposed action, purpose and need for the proposal, and requesting public comment will be sent to those on the mailing list. This notice of intent also invites public comment on the proposal and initiates the preparation of the environmental impact statement. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The scoping process will include identifying potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The public is encouraged to take part in the process and visit with Forest Service and Fish and Wildlife officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed restoration activities.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft

environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 30, 2005.

Michael P. Lee,

Deputy Forest Supervisor.

[FR Doc. 05–20070 Filed 10–6–05; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

DATES: Form AD–755 must be received not later than December 6, 2005.

ADDRESSES: Completed AD–755 forms should be submitted to:

- E-Mail: Send form AD–755 via electronic mail to *Terri.L.Henry@usda.gov.*
- Mail: Send hardcopy of completed form to Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1647–S, Stop 3604, Washington, DC 20250–3604.
- Fax: Send form AD–755 by facsimile transmission to: (202) 690–6755.
- Hand Delivery or Courier: Deliver form AD–755 to: Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1647–S, Stop 3604, Washington, DC 20250–3604.

SUPPLEMENTARY INFORMATION: Under authority of section 21 of the United States Grain Standards Act (Act) as amended, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to GIPSA's Administrator on implementation of the Act. Section 21 of the United States Grain Standards Act Amendments of 2000, Public Law 106–580, extended the authority for the Advisory Committee through September 30, 2015.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Advisory Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members and the five alternate members whose terms will expire March 2006.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: GIPSA, by telephone (tel: 202–205–8281), fax (fax: 202–690–2755), or electronic mail (e-mail: *Terri.L.Henry@usda.gov*) and request Form AD–755. Form AD–755 may also be obtained via the Internet through GIPSA's homepage at *http://www.gipsa.usda.gov/advcommittee/ad755.pdf.* Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

JoAnn Waterfield,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–20165 Filed 10–6–05; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee For Purchase From People Who Are Blind Or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received on or Before: November 6, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Americana Pen
NSN: 7520–01–529–1850—Refillable, Black Ink.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Belt, V
NSN: 3030–01–375–8087—Belt, V.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Eyeglasses

CR 39—Frames and Lenses
NSN: 6650–00–NIB–0012—Round 25 and 28 Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0015—Progressives (VIP, Adaptar, Freedom, Image), Plastic, Clear
NSN: 6650–00–NIB–0009—Single Vision, Plastic, Clear
NSN: 6650–00–NIB–0013—Flat Top 7x28 Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0014—Flat Top 8x35 Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0018—Executive Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0017—FT or round aspheric lenticular, Plastic, Clear
NSN: 6650–00–NIB–0016—SV aspheric lenticular, Plastic, Clear
NSN: 6650–00–NIB–0010—Flat Top 28, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0011—Flat Top 35, Bifocal, Plastic, Clear

CR 39—Lenses only
NSN: 6650–00–NIB–0033—Flat Top 28, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0034—Flat Top 35, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0032—Single Vision, Plastic, Clear
NSN: 6650–00–NIB–0041—Executive Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0040—FT or round aspheric lenticular, Plastic, Clear
NSN: 6650–00–NIB–0039—SV aspheric lenticular, Plastic, Clear
NSN: 6650–00–NIB–0038—Progressives (VIP, Adaptar, Freedom, Image), Plastic, Clear
NSN: 6650–00–NIB–0037—Flat Top 8x35 Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0036—Flat Top 7x28 Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0035—Round 25 and 28 Bifocal, Plastic, Clear

Frame only
NSN: 6650–00–NIB–0069—Plastic or Metal

Glass—Frames and Lenses
NSN: 6650–00–NIB–0025—Executive Bifocal, Glass, Clear
NSN: 6650–00–NIB–0024—Progressives (VIP, Adaptar, Freedom), Glass, Clear
NSN: 6650–00–NIB–0023—Flat Top 8x35 Trifocal, Glass, Clear
NSN: 6650–00–NIB–0022—Flat Top 7x28 Trifocal, Glass, Clear
NSN: 6650–00–NIB–0021—Flat Top 35 Bifocal, Glass, Clear
NSN: 6650–00–NIB–0020—Flat Top 28 Bifocal, Glass, Clear
NSN: 6650–00–NIB–0019—Single Vision, Glass, Clear

Glass—Lenses only
NSN: 6650–00–NIB–0042—Single Vision, Glass, Clear
NSN: 6650–00–NIB–0048—Executive Bifocal, Glass, Clear
NSN: 6650–00–NIB–0047—Progressives (VIP, Adaptar, Freedom), Glass, Clear
NSN: 6650–00–NIB–0046—Flat Top 8x35 Trifocal, Glass, Clear
NSN: 6650–00–NIB–0045—Flat Top 7x28 Trifocal, Glass, Clear
NSN: 6650–00–NIB–0044—Flat Top 35 Bifocal, Glass, Clear
NSN: 6650–00–NIB–0043—Flat Top 28 Bifocal, Glass, Clear

Lens Add-ons
NSN: 6650–00–NIB–0068—Add powers over 4.0
NSN: 6650–00–NIB–0067—Hyper 3 drop SV, jultifocal (CR 39)
NSN: 6650–00–NIB–0066—Lenses, oversize eye, greater that 58, excluding progressive roll and polish edge (CR 39 and polycarbonate)
NSN: 6650–00–NIB–0065—Diopter + or − 9.0 and above
NSN: 6650–00–NIB–0064—Prism (up to 6 diopters no charge) > 6 diopters/per diopter
NSN: 6650–00–NIB–0063—High Index (CR 39)
NSN: 6650–00–NIB–0062—Slab-off (polycarbonate, CR 39: trifocal and bifocals)

Polycarbonate—Frames and Lenses
NSN: 6650–00–NIB–0031—Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate
NSN: 6650–00–NIB–0030—Flat Top 8x35 Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0029—Flat Top 7x28 Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0028—Flat Top 35 Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0027—Flat Top 28 Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0026—Single Vision, Polycarbonate, Clear

Polycarbonate—Lenses only
NSN: 6650–00–NIB–0054—Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate
NSN: 6650–00–NIB–0053—Flat Top 8x35 Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0052—Flat Top 7x28 Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0051—Flat Top 35 Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0050—Flat Top 28 Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0049—Single Vision, Polycarbonate, Clear

Tints and Coatings
NSN: 6650–00–NIB–0060—ultraviolet coating (CR 39)
NSN: 6650–00–NIB–0059—anti-reflective coating (CR 39 and polycarbonate)
NSN: 6650–00–NIB–0058—High Index transition (CR 39)
NSN: 6650–00–NIB–0057—Photogrey (glass only)
NSN: 6650–00–NIB–0056—Photochromatic/Transition, (POLYCARBONATE MATERIAL)
NSN: 6650–00–NIB–0061—polarized lenses (CR 39)
NSN: 6650–00–NIB–0055—Transition, Plastic, CR–39
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contracting Activity: VISN 2—VA Healthcare Network Update New York, Buffalo, New York.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products

Scourer, Copper
NSN: M.R. 505—Scourer, Copper.
NPA: Lighthouse for the Blind of the Palm Beaches, Inc., West Palm Beach, Florida.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Scrubber, Pot & Dish and Refill
NSN: M.R. 582—Scrubber, Pot & Dish and Refill.
NPA: Lighthouse International, New York, New York.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Services

Service Type/Location: Administrative Services, Defense Logistics Agency, DCASR Building B–95, 805 Walker Street, Marietta, Georgia.
NPA: Nobis Enterprises, Inc., Marietta, Georgia.
Contracting Activity: Department of Defense.

Service Type/Location: Furniture Rehabilitation, Metal.
NPA: New Vision Enterprises, Inc., Louisville, Kentucky.
Contracting Activity: Department of the Navy.

Service Type/Location: Janitorial/Custodial, Defense Contracting Management, District South, 805 Walker Street, Marietta, Georgia.
NPA: Nobis Enterprises, Inc., Marietta, Georgia.
Contracting Activity: Department of the Army.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5536 Filed 10–6–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Redesignation of Service

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Redesignation of Procurement List service.

SUMMARY: This notice redesignates items included in a service on the Procurement List which will now be procured on an individual product basis. The service is on the Procurement List for the Defense Supply Center, Philadelphia, Pennsylvania.

EFFECTIVE DATE: October 7, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The following service is on the Procurement List to be performed by the designated nonprofit agency for the Defense Supply Center, Philadelphia as identified below:

Service Type/Location: Military Unique Subsistence Item Coordination.
NPA: Advocacy and Resource Corporation, Cookeville, Tennessee.
Contract Activity: Defense Supply Center, Philadelphia, Philadelphia, Pennsylvania.

The above service contains three items that will now be procured by the Defense Supply Center, Philadelphia on an individual product basis and are thus being identified as products on the Procurement List as set forth below:

8910–01–E60–8830 Cottage Cheese, Dehydrated—#10 Cans
8910–01–E60–8831 Whole Egg Crystals—1.75 pound bags
8910–01–E60–8832 Milk, Nonfat, Dry—#10 Cans

NPA: Advocacy and Resource Corporation, Cookeville, Tennessee.
Contract Activity: Defense Supply Center, Philadelphia, Philadelphia, Pennsylvania.

The proposed addition of these products to the Procurement List in the **Federal Register** of July 15, 2005, FR Doc. 05–13967, on page 40978 in the first column is hereby withdrawn.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5537 Filed 10–6–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee For Purchase From People Who Are Blind Or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: November 6, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On July 29, and August 5, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 43840, and 45366) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Product

Tape, Baggage Inspection
NSN: 7510–00–NIB–0673—2Prime; (inches) wide by 110 yards long
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio
Contracting Activity: Transportation Security Administration, Arlington, Virginia.

Service

Service Type/Location: Document Destruction, NARA—Pacific Alaska Region, 6125 Sand Point Way, NE., Seattle, Washington
NPA: Northwest Center for the Retarded, Seattle, Washington
Contracting Activity: National Archives & Records Administration, College Park, Maryland.

Deletions

On July 29, 2005, August 5, and August 12, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 43841, 45366, and 47175) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Card Set, Guide, File
NSN: 7530–00–261–3801—Card Set, Guide, File
NSN: 7530–00–261–3804—Card Set, Guide, File
NSN: 7530–00–261–3813—Card Set, Guide, File
NSN: 7530–00–261–3818—Card Set, Guide, File
NSN: 7530–00–261–3819—Card Set, Guide, File
NSN: 7530–00–249–5969—Card Set, Guide, File
NPA: Georgia Industries for the Blind, Bainbridge, Georgia.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Services

Service Type/Location: Dispatcher, Federal Building, 222 West 7th Avenue, Anchorage, Alaska.
NPA: Portland Habilitation Center, Inc., Portland, Oregon.
Contracting Activity: General Services Administration.

Service Type/Location: Grounds Maintenance, Federal Aviation Administration Air Route Traffic, Auburn, Washington.
NPA: None currently authorized.
Contracting Activity: Department of Transportation.

Service Type/Location: Janitorial/Custodial, Hill City Office and Shop, Hill City, South Dakota.
NPA: Southern Hills Developmental Services, Inc., Hot Springs, South Dakota.
Contracting Activity: Department of Interior, Reston, Virginia.

Service Type/Location: Janitorial/Custodial, Naval Reserve Center, Fort Harrison, South Avenue, Helena, Montana.
NPA: Helena Industries, Inc., Helena, Montana.
Contracting Activity: Department of the Navy.

Service Type/Location: Janitorial/Custodial, U.S. Fish & Wildlife Service, Bosque del Apache National Wildlife Refuge, Socorro, New Mexico.
NPA: Tresco, Inc., Las Cruces, New Mexico.
Contracting Activity: Department of Interior, Reston, Virginia.

Service Type/Location: Janitorial/Custodial, Umatilla Depot Activity, Hermiston, Oregon.
NPA: None currently authorized.
Contracting Activity: Department of the Army.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5538 Filed 10–6–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank).

Form Number(s): BE–605 and BE–605 Bank.

Agency Approval Number: 0608–0009.

Type of Request: Extension of a currently approved collection.

Burden: 19,750 hours.

Number of Respondents: 3,950 per quarter; 15,800 annually.

Average Hours Per Response: 1¼ hours.

Needs and Uses: The data collected are used in the preparation of the international transactions accounts, national income and product accounts, and input-output accounts. The data are needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. Also, the data from the BE–605 survey complement data from BEA's other ongoing surveys of foreign direct investment in the United States, namely the BE–13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate, and the BE–12 (benchmark) and BE–15 (annual) surveys, which provide data on the overall operations of U.S. affiliates.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108).

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek,

Departmental Paperwork Clearance Officer, Department of Commerce, Room 6025, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dhynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of the notice to the Office of Management and Budget, O.I.R.A., Attention PRA Desk Officer for BEA, via the Internet at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Dated: October 3, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20143 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–34–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2003, through August 31, 2004. The Department has preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in the final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer-specific assessment rates are above *de minimis*. Interested parties are invited to comment on these preliminary results. *See* the ''Preliminary Results of Review'' section of this notice.

DATES: *Effective date*: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: P. Lee Smith or Scot Fullerton, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–1386, respectively.

Background

On September 15, 1997, the Department published an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997).

Based on timely requests from various interested parties, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC with respect to the following companies: China Kingdom International (''China Kingdom''); Qingdao Jinyongxiang Aquatic Foods Co., Ltd. (''JYX Aquatic''); Qingdao Xiyuan Refrigerate Food Co., Ltd. (''Qingdao Xiyuan''); Weishan Zhenyu Foodstuff Co., Ltd. (''Weishan Zhenyu''); Yancheng Hi-King Agriculture Developing Co., Ltd. (''Yancheng Hi-King''); and Yancheng Yaou Seafood Co., Ltd. (''Yancheng Yaou''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 62022 (October 22, 2004) (''*Initiation Notice*'').

On January 10, 2005, the Crawfish Processors Alliance (''petitioner'') withdrew its request for review with respect to Qingdao Xiyuan. The Department rescinded the administrative review of Qingdao Xiyuan on February 11, 2005. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 7232 (February 11, 2005). On March 31, 2005, the Department found that JYX Aquatic had no entries of subject merchandise during the POR and rescinded the administrative review with respect to JYX Aquatic. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 16484 (March 31, 2005).

On May 31, 2005, the Department extended the time limit for the completion of the preliminary results of review to no later than September 30, 2005. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 30926 (May 31, 2005).

On October 29, 2004, the Department issued an antidumping duty questionnaire to each PRC company listed in the above-referenced initiation notice and received responses from China Kingdom, Weishan Zhenyu, Yancheng Hi-King and Yancheng Yaou between December 6, 2004 and January 18, 2005.

The Department issued supplemental questionnaires to China Kingdom, Weishan Zhenyu, Yancheng Hi-King and Yancheng Yaou and received responses from February 9, 2005 through July 25, 2005.

Scope of Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Non-Market Economy

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME''). Pursuant to section 771(18)(C)(i) of Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country and Factors

On February 25, 2005, the Department provided interested parties the opportunity to submit comments regarding the selection of a surrogate country and factor valuation in these preliminary results. On April 15, 2005, Weishan Zhenyu submitted publicly

available information for factor valuation. In its submission, Weishan Zhenyu included the financial report of an Indian seafood processor for valuing surrogate selling, general & administrative expenses (''SG&A''), overhead and profit. Weishan Zhenyu also included publicly available Spanish import statistics of non-frozen whole live freshwater crawfish from Portugal. The Department received no other comments regarding surrogate country or factor valuation.

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production (''FOP''), to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Office of Policy issued a memorandum listing appropriate surrogate countries. *See Memorandum from Ron Lorentzen to Carrie Blozy re: Administrative Review of Freshwater Crawfish Tail Meat (''Tail Meat'') from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated November 24, 2004. The memorandum listed five countries, including India and Indonesia.

Of the five countries named in the memorandum, none are significant producers of crawfish tail meat. However, India does have a seafood processing industry that is a comparable industry with respect to factory overhead, SG&A and profit. Therefore, we used India as the surrogate country to value all inputs with the exception of the raw material (whole live crawfish) and the by-product (crawfish scrap shell). Since we have determined that other forms of seafood are not sufficiently comparable to serve as surrogate values for the primary input, we have considered other countries in which to value the crawfish input. As done in prior segments of this proceeding, we have decided to use Spain as the surrogate country for the valuation of whole live crawfish because we have found that Spain is a significant producer of comparable merchandise, *i.e.*, whole crawfish. *See* Memorandum from Benjamin Kong to The File through Carrie Blozy re: Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Valuation, dated September 30, 2005 (''Factor Valuation Memo''); and *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Revew, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (''*1999–2000 Final Results*''). In addition, we have decided to use Indonesia as the surrogate country for the valuation of the crawfish by-product scrap based on the availability of a public price quote from an Indonesian company that has been used in prior segments of this proceeding. *See Memorandum to Barbara E. Tillman from Christian Hughes and Adina Teodorescu through Maureen Flannery re: Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China, Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01*, dated August 5, 2002; which was placed on the record of this review in Factor Valuation Memo, Attachment 5. We have not received comments from interested parties suggesting other possible surrogate values for these factors and have found no other data. We note that Weishan Zhenyu also suggested the use of Spanish import data from the period September 2003 through August 2004 to value whole live crawfish. For further discussion of our surrogate country selection, *see Memorandum from P. Lee Smith through Carrie Blozy and James C. Doyle to The File re: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country*, dated September 30, 2005.

Verification

As provided in section 782(i) of the Act, the Department conducted verification of the responses of Yancheng Hi-King, Weishan Zhenyu and China Kingdom. The Department verified the questionnaire responses of Yancheng Hi-King from July 27 through July 29, 2005 using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. *See* Memorandum to the File re: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Verification of U.S. Sales for Respondent Yancheng Hi-King Agriculture Developing Co., Ltd. (''Yancheng Hi-King Verification Report''), dated September 30, 2005.

The Department conducted verification of the questionnaire responses of Weishan Zhenyu from August 8 through August 13, 2005, using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. For more information, *see* the ''Application of Adverse Facts Available'' section below; and *Memorandum to the File from Carrie Blozy and Scot T. Fullerton through James C. Doyle re: Antidumping Duty New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (A–570–848): Verification report for Weishan Zhenyu Foodstuff Co., Ltd.*, dated September 30, 2005 (''*Weishan Zhenyu Verification Report*'').

The Department conducted verification of the questionnaire responses of China Kingdom from August 2 through August 5, 2005, using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. *See* the ''Application of Adverse Facts Available'' section below; and *Memorandum to the File from Carrie Blozy and Benjamin Kong re: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Verification Report for China Kingdom International Group Co., Ltd.*, dated September 27, 2005 (''*China Kingdom Verification Report*'').

Verification of the questionnaire responses of Yancheng Yaou was scheduled for August 2 through August 5, 2005. However, as described in the ''Application of Adverse Facts Available'' section above, Yancheng Yaou withdrew from verification on August 5, 2005. *See Memorandum to the File from Scot Fullerton and Kristina Boughton through Carrie Blozy re: Memorandum Discussing the On Site Meetings to Verify the Response of Yancheng Yaou Seafood Co., Ltd. In the Antidumping Duty Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated August 17, 2005 (''*On Site Meetings with Yancheng Yaou Memo*'').

The verification results are on file in the main Department of Commerce building, in the Central Records Unit, Room B–099.

Separate Rates

To establish whether a company operating in an NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

As discussed above, Yancheng Yaou withdrew from verification. *See On Site Meetings with Yancheng Yaou Memo.* Yancheng Yaou also filed a letter stating it would no longer participate in the current administrative review. *See* Letter from Yancheng Yaou Seafood Co., Ltd. to the Department, dated August 5, 2005. Therefore, the Department was unable to verify Yancheng Yaou's questionnaire responses concerning its eligibility for a separate rate. The Department therefore determines that Yancheng Yaou has not established that it is eligible for a separate rate. *See* ''Application of Adverse Facts Available'' section below.

De Jure Control

Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

In their questionnaire responses, China Kingdom, Weishan Zhenyu and Yancheng Hi-King stated that they are independent legal entities. Evidence on the record indicates that the government does not have *de jure* control over their export activities. China Kingdom, Weishan Zhenyu and Yancheng Hi-King submitted evidence of their legal right to set prices independent of all governmental oversight. Furthermore, the business licenses of China Kingdom, Weishan Zhenyu and Yancheng Hi-King indicate that they are permitted to engage in the exportation of crawfish. We also found no evidence of *de jure* governmental control restricting China Kingdom, Weishan Zhenyu or Yancheng Hi-King's exportation of crawfish.

In their responses, China Kingdom, Weishan Zhenyu and Yancheng Hi-King stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities. See Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999), and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings and that the company shall be liable for its debts to the extent of all its assets. Weishan Zhenyu and Yancheng Hi-King also provided copies of the *Foreign Trade Law of the PRC*, promulgated on May 12, 1994, which identifies the rights and responsibilities of organizations engaged in foreign trade, grants autonomy to foreign-trade operators in management decisions and establishes the foreign trade operator's accountability for profits and losses. China Kingdom, Weishan Zhenyu and Yancheng Hi-King also provided copies of their business licenses stating their right to conduct business within the scope of their licenses. The Department therefore preliminarily determines that there is an absence of *de jure* control over the export activities of China Kingdom, Weishan Zhenyu and Yancheng Hi-King.

De Facto Control

De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

China Kingdom, Weishan Zhenyu and and Yancheng Hi-King each has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. The Department verified these responses and found no information contradicting them. As a result, there is a sufficient basis to preliminarily determine that China Kingdom, Weishan Zhenyu and Yancheng Hi-King have demonstrated *de facto* absence of governmental control of their export functions and are entitled to separate rates. Consequently, the Department has preliminarily determined that China Kingdom, Weishan Zhenyu and Yancheng Hi-King have met the criteria for the application of separate rates based on the documentation each has submitted on the record.

Application of Adverse Facts Available

1. *China Kingdom.* Pursuant to sections 776(a)(2)(A),(C) and (D), and section 776(b) of the Act, the Department determines that the application of total adverse facts available (''AFA'') is warranted for respondent China Kingdom. When an interested party withholds information that has been requested by the Department, significantly impedes the proceeding or provides unverifiable information, sections 776(a)(2)(A),(C) and (D) of the Act require the use of facts otherwise available.

Information discovered at verification indicates that China Kingdom withheld certain sales documentation over the course of the administrative review and at verification regarding its single POR sale of subject merchandise to the United States. *See China Kingdom Verification Report.* Where a company's request for an antidumping administrative review is based entirely on a single sale of subject merchandise during the POR, it is essential that the company provide all documentation related to that sale.

The Department specifically asked China Kingdom in several questionnaires to describe in full the sales-transaction process and to provide all sales-related documentation. *See* China Kingdom's original questionnaire response, dated January 19, 2005 (''CK Original Response''), at page 14; China Kingdom's first supplemental questionnaire response, dated March 25, 2005, at page 9; and China Kingdom's second supplemental questionnaire response, dated July 20, 2005, at page 1. In response to all of these requests, China Kingdom never provided any documentation identifying any other parties to the transaction under review

besides the importer of record. *See* CK Original Response, at exhibits 12–15.

At verification, the Department again requested that China Kingdom provide the verification team with all U.S. sales documentation. Despite claims by company officials present at verification that all such documentation for China Kingdom's U.S. sale had been provided, in the course of reviewing China Kingdom's sales documentation file, the verification team found several documents pertaining to the sale under review that had not previously been provided, including evidence of a previously undisclosed financial arrangement with a third company not previously reported as a party to the transaction. These documents contradicted the information provided by China Kingdom in its questionnaire responses, thereby making China Kingdom's questionnaire responses unverifiable.

Additionally, China Kingdom refused to provide invoices to this third party and other information which had been requested by the Department. As such, the Department finds that China Kingdom withheld information specifically requested by the Department, and significantly impeded the investigation.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that China Kingdom has failed to cooperate to the best of its ability because it could have complied with the Department's request to respond accurately to the Department's questionnaires, requests for supplemental information, and questions asked at verification. Moreover, at no point in the administrative review, prior to or during verification, did China Kingdom notify the Department of the existence of any inaccuracies in information it reported to the Department, or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act. In sum, despite the Department's detailed requests for information in questionnaires and at verification, China Kingdom gave insufficient attention to its statutory duty to reply accurately to requests for factual information. For all of the aforementioned reasons, the Department finds that China Kingdom failed to cooperate to the best of its ability. For a detailed analysis of the Department's decision to apply AFA, *see Memorandum from James C. Doyle to Barbara E. Tillman: Application of Adverse Facts Available to China Kingdom*, dated September 30, 2005.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with section 776(b) of the Act, because of the breadth of the missing, unsupported and unverifiable data, the Department is applying total AFA to China Kingdom.

2. *Weishan Zhenyu.* Pursuant to sections 776(a)(2)(A),(C) and (D), and section 776(b) of the Act, the Department determines that the application of total AFA is warranted for respondent Weishan Zhenyu. When an interested party withholds information that has been requested by the Department, significantly impedes the proceeding, or provides information, but that information cannot be verified, sections 776(a)(2)(A),(C) and (D) of the Act provide for the use of facts otherwise available.

In the instant case, the Department has determined that facts available is warranted due to Weishan Zhenyu's withholding of information concerning the actual location of its production facilities. Throughout the review, the Department relied on Weishan Zhenyu's repeated assertions as to the specific location of the company's production facility, as well as the assertion that the company had only one production facility. At verification however, only after the Department discovered that the address where the plant was physically located was different from the location reported to the Department, did company officials state that its responses to the Department's questions on the location of its production facility were incorrect. *See Weishan Zhenyu Verification Report.* This information was discovered by the Department only after it inquired as to the location of the facilities where the Department had been taken for verification. In addition, Weishan Zhenyu's explanations for the discrepency could also not be verified, as the company offered inconsistent explanations as to the significance of the address originally provided to the Department and offered no supporting documentation, which was requested by the Department. As the Department has incomplete information regarding the location and number of production facilities used by Weishan Zhenyu during the POR, the Department could not verify that the factors of production submitted to the Department were related to Weishan Zhenyu or to another company, and is thus precluded from calculating a margin for Weishan Zhenyu.

Weishan Zhenyu also was unable to provide the Department with the original source documentation for its purchases of the whole crawfish input, the most significant input in the production of freshwater crawfish tail meat. Given that the Department normally reviews such documentation at verifications of crawfish tail meat, and also given the inconsistencies provided to the Department regarding payment for Weishan Zhenyu's whole crawfish purchases, the Department requested the original source documentation for the company's purchases of crawfish tail meat. Although company officials stated that the company did not retain such documentation, the Department found that the company had retained the documentation for other time periods. Given that the Department could not verify the reported factors of production due to both the withholding of information regarding the location of Weishan Zhenyu's production facilities, as well as the company's failure to provide the Department with source documents for the whole crawfish input, the Department finds that Weishan Zhenyu significantly impeded the proceeding and facts available, pursuant to sections 776(a)(2)(A), (C) and (D), is warranted.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the party, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing accurate information regarding the location of its production facilities despite multiple opportunities to do so and by failing to provide the Department with the original source documentation for the whole crawfish input, Weishan Zhenyu failed to cooperate to the best of its ability. Weishan Zhenyu could have accurately and completely replied to the Department's requests for information. Because the Department concludes that Weishan Zhenyu failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. For a detailed analysis of the Department's decision to apply AFA, *see Memorandum from James C. Doyle to Barbara E. Tillman: Application of Adverse Facts Available to Weishan Zhenyu*, dated September 30, 2005.

3. *Yancheng Yaou.* As further discussed below, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, the Department determines that the

application of total AFA, as part of the PRC-wide entity, is warranted for respondent Yancheng Yaou, as part of the PRC-wide entity, because Yancheng Yaou failed to allow the Department to verify its questionnaire responses. Section 776(a)(2)(D) warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. The Department attempted to conduct verification of the questionnaire responses of Yancheng Yaou from August 2 through August 5, 2005. On August 5, 2005, Yancheng Yaou withdrew from verification and reclaimed all of its verification exhibits. *See On Site Meetings with Yancheng Yaou Memo.* On August 5, 2005, Yancheng Yaou also submitted a letter stating that it was withdrawing from the current administrative review. *See* Letter from Yancheng Yaou Seafood Co., Ltd. to the Department, dated August 5, 2005.

Verification is integral to the Department's analysis because it allows the Department to satisfy itself that the information upon which the Department relies in calculating a margin is accurate and therefore enables the Department to comply with its mandate to calculate the dumping margin as accurately as possible. In the *Initiation Notice*, the Department stated that if one of the companies for which we initiated a review does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part. *See Initiation Notice*, at fn. 3. Yancheng Yaou notified the Department that it would no longer participate in the current administrative review and therefore could not establish its eligibility for a separate rate. The Department therefore finds Yancheng Yaou to be part of the PRC-wide entity. As a result, the Department determines that it is necessary to review the single PRC-wide entity, including Yancheng Yaou, in this proceeding.

4. *PRC-wide Entity.* The PRC-wide entity (including Yancheng Yaou) did not provide verifiable information to the Department. Pursuant to section 776(a)(2)(D) of the Act, as the information provided by the PRC-wide entity is unverifiable, the Department must resort to the facts otherwise available. According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action* (''*SAA*'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316 at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997). As explained above, the PRC-wide entity (including Yancheng Yaou) withdrew from verification and informed the Department that it would not participate further in this review. Because the PRC-wide entity indicated it would no longer cooperate in the proceeding, the Department finds it necessary, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, to use AFA as the basis for these preliminary results of review for the PRC-wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, it is the Department's practice to select, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003).

The Court of International Trade (''CIT'') and the Federal Circuit have consistently upheld the Department's practice. *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (''*Rhone Poulenc*''); *NSK Ltd.* v. *United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l* v. *United States*, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States*, Slip Op. 05–22, at 16 (CIT February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870. *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *See also D&L Supply Co.* v. *United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the statute, court precedent, and its practice, the Department has assigned the rate of 223.01 percent, the highest rate calculated in any segment of the proceeding, to China Kingdom, Weishan Zhenyu, and the PRC-wide entity as AFA. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China*, 64 FR 61581 61584 (November 12, 1999). *See 1999–2000 Final Results.* As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *SAA* states that ''corroborate'' means to

determine that the information used has probative value. *See SAA* at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan*, 61 FR 57391, 57392 (November 6, 1996). The *SAA* also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined by the calculation of the margin based on sales and production data of a respondent in a prior review, and on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See 1999–2000 Final Results.* The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. This rate has been used as AFA in every subsequent segment of this proceeding and the Department has received no comments challenging the reliability of the margin. No information has been presented in the current review. Thus, the Department finds that the margin calculated in the 1999–2000 review is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as AFA for China Kingdom, Weishan Zhenyu and the PRC-wide entity, we determine that this rate has probative value. Accordingly, we determine that the highest rate determined in any segment of this administrative proceeding (*i.e.*, 223.01 percent) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

Normal-Value Comparisons

To determine whether Yancheng Hi-King's sales of the subject merchandise to the United States were made at prices below NV, Yancheng Hi-King's United States prices were compared to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For Yancheng Hi-King, the Department based United States price on export price (''EP'') in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, foreign inland freight, foreign brokerage and handling expenses, and ocean freight were deducted from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 29744, 39754 (July 11, 2005).

For purposes of calculating NV, we selected surrogate values for the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. *See* section 773(c)(3) of the Act. In choosing surrogate values, we selected, where possible, a publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (''*Chlorinated Isocyanurates*''). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12442 (March 13, 1998). We used the usage rates reported by the respondents for materials, energy, labor, by-products, and packing. For a more detailed explanation of the methodology used in calculating various surrogate values, *see Factor Valuation Memo.*

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs reported by the Yancheng Hi-King for the POR. To calculate NV, the reported per-unit factor quantities was multiplied by publicly available surrogate values (except where noted below). As appropriate, we adjusted input prices by including freight costs to reflect delivered prices. For a detailed explanation of all surrogate values used for respondents, see Factor Valuation Memo.

Except where discussed below, we valued raw material inputs using September 2003-August 2004 weighted-average Indian import values derived from the *World Trade Atlas* online (''*WTA*'') (*see* Factor Valuation Memo). The Indian import statistics we obtained from the *WTA* were published by the

DGCI&S, Ministry of Commerce of India and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, they were converted to U.S. dollars using the exchange rate for India on the date of the applicable sale. The daily exchange rate was the exchange rate data from the Department's website, which are taken from publicly available data from the Federal Reserve and Dow Jones. *See http://www.ia.ita.doc.gov/exchange/index.html.* Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the publicly available information for inflation using Indian wholesale price indices (''WPIs'') as published in the International Monetary Fund's *International Financial Statistics* (''*IFS*''). *See Factor Valuation Memo.*

In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*i.e.*, Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. *See, also, Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in the Department's final determination at 69 FR 20594 (April 16, 2004). Also consistent with our policy, we excluded, in a few instances, import data that appeared to be aberrational when compared to the average import value of all countries not excluded. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594, April 16, 2004, and accompanying Issues and Decision Memorandum at Comment 5. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies.

Surrogate Valuations

To value the input of whole live crawfish we used publicly available data for Spanish imports of whole live crawfish from Portugal. The Department obtained the data from ''aduanas e I.especiales,'' the Spanish Customs database for foreign trade statistics (Estadisticas Comercio Exterior).

The Department derived a price for polyethylene bags during the POR from Indian import statistics for HTS subheading 3923.2100 from the *WTA.*

To value a by-product, crawfish scrap, the Department used a price quote from Indonesia for wet crab and shrimp shells. *See* Factor Valuation Memo, Attachment 5. The Department has used this surrogate value in previous segments of this proceeding and interested parties have not submitted any additional information for valuing this by-product.

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for China published by Import Administration on its Web site. *See http://www.ia.ita.doc.gov/wages/index.html.*

To calculate the cost of coal, the Department used Indian import data for steam coal (HTS subheading 2701.1902) during the POR from the *WTA.*

To value water, the Department used the industrial water rates within the Maharashtra Province of India from June 2003. To achieve comparability of water prices to the factors reported for the POR, we adjusted this factor value to reflect inflation to the POR using the WPI for India, as published in the 2005 *IFS.*

To value SG&A, factory overhead and profit, the Department used the 2002–2003 financial statements from Nekkanti Sea Foods Ltd. (''Nekkanti''). *See* Factor Valuation Memo, at Attachment 13.

For foreign inland freight, respondent reported that all raw materials were delivered by truck. Respondent reported the distance of the material inputs in kilometers, from the supplier of the material input to the factory. In calculating the freight rate, the Department used the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). To value the cost of truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per-metric ton basis published in the Iron and Steel Newsletter, April 2002, and inflated the value to be contemporaneous to the POR. To derive the freight cost for each material input, the Department multiplied the surrogate freight value by the freight distance and subsequently multiplied this value by the reported quantity of the input consumed in the production of one unit of the subject merchandise during the POR. The Department added the freight expense to the cost of the material input to determine gross material costs.

To value the inland freight expense for packaged crawfish tail meat from the producer to the port of export, the Department used an Indian refrigerated truck freight rate based on price quotations from CTC Freight Carriers of Delhi, India, placed on the record of the antidumping investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China. This rate was contemporaneous with the POR. The Department has placed this information on the record of this proceeding (*see* Factor Valuation Memo, Attachment 10).

To value brokerage and handling, the Department used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in the February 28, 2005, submission from Essar Steel Ltd. (''Essar Steel'') in the antidumping duty administrative review of Certain Hot-Rolled Carbon Steel Flat Products from India, and the March 9, 2004, submission from Pidilite Industries Ltd. (''Pidilite'') in the antidumping duty investigation of Carbazole Violet Pigment 23 from India. *See* Public version of section C questionnaire response from Essar Steel Limited, dated February 28, 2005; and Public version of section C questionnaire response from Pidilite Industries Ltd., dated March 9, 2004. The reported rate of Essar Steel was contemporaneous with the POR. Since the Pidilite rate was dated from October 2002 through September 2003, it was necessary to inflate the rate to be contemporaneous with the POR. The Department has placed this information on the record of this proceeding (*see* Factor Valuation Memo, Attachment 11).

Where respondent used an NME shipper, we valued international freight expenses using freight quotes from Maersk Sealand, a market-economy shipper. These quotes have been used in prior reviews of this case. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of*

Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Administrative Review, 66 FR 20634 (April 24, 2001). We obtained quotes for each month of the POR, from the PRC to Long Beach, and took a simple average. *See* Factor Valuation Memo, Attachment 12.

Currency Conversions

We made currency conversions using exchange rates obtained from the Web site of Import Administration at *http://ia.ita.doc.gov/exchange/index.html*.

Preliminary Results of the Review

The Department preliminarily finds that the following margins exist for the following exporters under review during the period September 1, 2003, through August 31, 2004:

FRESHWATER CRAWFISH TAIL MEAT FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
China Kingdom International	223.01
Weishan Zhenyu Foodstuff Co., Ltd.	223.01
Yancheng Hi-King Agriculture Developing Co., Ltd.	32.53
PRC-wide Rate (including Yancheng Yaou Seafood Co., Ltd.)	223.01

The Department will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Case briefs from interested parties may be submitted not later than October 31, 2005, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than November 7, 2005, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited. Any interested party may request a hearing within 30 days of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should include (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, no later than 120 days after the date of publication of this notice.

Assessment of Antidumping Duties

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes for companies with a calculated rate, where possible, the Department calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC on a per-unit basis. Specifically, the Department divided the total dumping margins (calculated as the difference between normal value and export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash-deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by China Kingdom and Weishan Zhenyu, the cash-deposit rate will be equal to 223.01 percent; (2) for subject merchandise exported by Yancheng Hi-King, we will establish a per-kilogram cash deposit rate which will be equivalent to the company-specific cash deposit established in this review; (3) the cash-deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (4) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Yancheng Yaou), the cash-deposit rate will be the PRC-wide rate of 223.01 percent; (5) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 30, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–20287 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Initiation of New Shipper Review

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

EFFECTIVE DATES: October 7, 2005.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China (''PRC''), received before August 31, 2005,[1] meets

[1] The Order for certain frozen warmwater shrimp from the PRC was published on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China,* 70 FR 05149 (February 1, 2005) (''*PRC Shrimp Order*''). Therefore, a request for a new shipper review based on the semi-annual anniversary month, August, was due to the Department by the final day of August 2005. *See* 19 CFR 351.214(d)(1).

the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is July 16, 2004, through July 31, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Walker at (202) 482–0413, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain frozen warmwater shrimp from the PRC was published on February 1, 2005. *See PRC Shrimp Order.* On August 26, 2005, we received a new shipper review request from Zhanjiang Regal Integrated Marine resources Co., Ltd. (''Regal''). On September 16, 2005, we requested that Regal correct certain filing deficiencies. *See* the Department's letter dated September 16, 2005. On September 20, 2005, Regal resubmitted their new shipper request. Regal certified that they are both the producer and exporter of the subject merchandise upon which the request for a new shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff act of 1930 (''the Act'') and 19 CFR 351.214(b)(2)(i), Regal certified that it did not export frozen warmwater shrimp to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Regal certified that, since the initiation of the investigation, it has never been affiliated with any exporter or producer who exported frozen warmwater shrimp to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Regal also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, Regal submitted documentation establishing the following: (1) The date on which they first shipped frozen warmwater shrimp for export to the United States and the date on which the frozen warmwater shrimp was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment,[2] and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted customs database queries to confirm the Regal's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the requested submitted by Regal meets the threshold requirements for initiation of a new shipper review for shipments of frozen warmwater shrimp from the PRC produced and exported by Regal.

The POR is July 16, 2004, through July 21, 2005, *See* 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of this review no later than 180 days from the date of initiation, and final results of this review no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

Because Regal has certified that they produced and exported the frozen warmwater shrimp on which they based their request for a new shipper review, we will instruct U.S.Customs and Border Protection to allow, at the option of the importer, the posting of a bond or security in lieu of cash deposit from each entry of frozen warmwater shrimp that was both produced and exported by Regal until the completion of a new shipper review, pursuant to section 751(a)(2)(B)(iii) of the Act.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(A)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 30, 2005.

Barbara E. Tillman,

Acting Assistance Secretary for Import Administration.

[FR Doc. 05–20286 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–05–M

[2] Regal made no subsequent shipments to the United States, which the Department confirmed with U.S. Customs and Border Protection.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Carbon Steel Flat Products From Brazil: Notice of Intent To Rescind Administrative Review

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

SUMMARY: On April 22, 2005, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Brazil for the period March 1, 2004, through February 28, 2005. The Department intends to rescind this review after determining that one of the parties subject to this review did not have entries during the period of review (POR) upon which to assess antidumping duties, and that the other party had no entries in addition to those that are already being examined in an ongoing new shipper review.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi at (202) 482–0405 or (202) 482–8221, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Brazil for the period March 1, 2004, through February 28, 2005. See *Notice of Opportunity to Request Administrative Review of Antidumping Duty Order, Finding or Suspended Investigation,* 70 FR 9918 (March 1, 2005). On March 31, 2005, United States Steel Corporation (USSC) and Nucor Corporation (Nucor), domestic producers of the subject merchandise, made timely requests that the Department conduct an administrative review of Companhia Siderurgica Nacional (CSN) and Companhia Siderurgica de Tubarao (CST). On April 22, 2005, in accordance with section 751(a) of the Tariff Act of 1930 as amended (the Act), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. See *Notice of Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews,* 70 FR 20862 (April 22, 2005).

On April 28, 2005, the Department issued its antidumping duty questionnaire to CSN and CST. Both CSN and CST requested rescission of this administrative review.

Scope of the Order

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn (max)	P (max)	S (max)	Si	Cr	Cu	Ni (max)
0.10–0.14	0.90	0.025	0.005	0.30–0.50	0.30–0.50	0.20–0.40	0.20

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu (max)	Ni (max)	Mo (max)
0.10–0.16	0.70–0.90	0.025	0.006	0.30–0.50	0.30–0.50	0.25	0.20	0.21

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt) (max)	Cb (max)
0.10–0.14	1.30–1.80	0.025	0.005	0.30–0.50	0.50–0.70	0.20–0.40	0.20	0.10	0.08

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications.

[In percent]

C (max)	Mn (max)	P (max)	S (max)	Si (max)	Cr (max)	Cu (max)	Ni (max)	Nb (min)	Ca	A1
0.15	1.40	0.025	0.010	0.50	1.00	0.50	0.20	0.005	Treated	0.01–0.70

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thickness ≤ 0.148 inches and 65,000 psi minimum for ''thicknesses'' > 0.148 inches; account for 64 FR 38650; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this order is dispositive.

Intent To Rescind Administrative Review

On May 3, 2005, CSN submitted a letter to the Department indicating that it did not have any shipments or entries of subject merchandise during the POR. On May 10, 2005, CST submitted a letter to the Department certifying that the only shipments or entries of subject merchandise it had during the POR are currently being reviewed by the Department as part of a new shipper review of CST for the period March 1, 2004, through August 31, 2004. The Department conducted an internal customs data query to confirm that CSN had no entries of subject merchandise into the United States during the POR, and that CST had no entries of subject merchandise other than those already being reviewed as part of the current new shipper review. The customs data showed no entries of subject merchandise by CSN during the POR, and no additional entries by CST that should be reviewed.

On May 12, 2005, the Department asked the interested domestic parties to submit comments by May 19, 2005, on the requests for rescission. On May 19, 2005, Nucor filed comments objecting to the rescission of the administrative review for CSN, arguing that CSN had sales during this POR that are currently being examined as part of the first administrative review period. Nucor argued that those sales should be reviewed in the current period and that the Department should not limit its decision-making authority by rescinding the current review. Nucor also argued that CST did not certify that it had no sales during the current POR, and that although CST's sales are being reviewed under another proceeding, since CST was the only party that requested that review, it could withdraw its new shipper request subsequent to a rescission of the 2004–2005 proceeding. Should this occur, Nucor claimed it would be prejudiced by a lack of review of sales in either proceeding. Nucor also stated that it is developing evidence that CST was affiliated with other producers by ownership and control mechanisms through Companhia Vale do Rio Doce (''CVRD'') at the time of the investigation, and that Nucor will seek to have the new shipper review rescinded on this basis. Nucor concluded that it would be inappropriate and premature to rescind the 2004–2005 review. Nucor has not thus far submitted any evidence of this affiliation claim to the Department.

On May 26, 2005, Nucor filed additional comments arguing that the Department should rescind the 2003–2004 review of CSN's sales and instead review them under the 2004–2005 proceeding. On June 3, 2005, CSN responded to Nucor's letter, noting that Nucor incorrectly identified the issue as to which review period the Department should assign CSN's U.S. sale, and pointing out that the purpose of administrative reviews is to determine the dumping duties to be assessed on entries of subject merchandise made during the POR, citing section 751(a)(2)(C) and the Department's consistent practice of rescinding all administrative reviews where no entries were made during the review period. CSN cited *Stainless Steel Sheet and Strip in Coils from Taiwan: Notice of Final Results of Administrative Review,* 67 FR 6682 (Feb. 13, 2002), and accompanying Issues and Decision Memorandum at Comment 30, in which the Department stated that its interpretation of the statute and regulations, as affirmed by the Court of Appeals for the Federal Circuit, does not support conducting an administrative review when the evidence on the record indicates that respondents had no entries of subject merchandise during the POR. CSN also cited *Stainless Steel Bar from Italy: Preliminary Results and Partial Rescission of Administrative Review,* 70 FR 17656 (April 7, 2005) (''*Stainless Steel Bar from Italy: Preliminary Results*''); *Cut-to-Length Carbon Steel Plate from Romania: Final Results and Partial Rescission of Administrative Review,* 70 FR 12651 (March 15, 2005); *Petroleum Wax*

Candles from the People's Republic of China: Rescission of Administrative Review, 69 FR 46510 (August 3, 2004); *Hot-Rolled Carbon Steel Flat Products from India: Rescission of Administrative Review,* 69 FR 42967 (July 19, 2004); *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 69 FR 40859 (July 7, 2004); *Corrosion-Resistant Carbon Steel Flat Products from Korea: Partial Rescission of Antidumping Duty Administrative Review,* 69 FR 34646 (June 22, 2004); and *Allegheny Ludlum Corp.* v. *United States,* 346 F.3d 1368, 1374 (CIT 2003), in which the court upheld the Department's policy of rescinding administrative reviews where there are no entries during the POR. CSN pointed out that Nucor failed to identify even one case in which the Department conducted an administrative review in the absence of any POR entries.

Pursuant to 19 CFR 351.213(d)(3), the Department will rescind an administrative review if we conclude that during the POR there were no entries, exports, or sales of the subject merchandise. The Department's practice, supported by substantial precedent, requires that there be entries during the POR upon which to assess antidumping duties. See, e.g. *Stainless Steel Bar from Italy: Preliminary Results.* CSN certified that it had no entries of subject merchandise during the 2004–2005 POR, which the Department corroborated on the basis of official data from the U.S. Bureau of Customs and Border Protection. Further, the Department made a preliminary determination in the 2003–2004 administrative review to review CSN's U.S. sale of further manufactured merchandise made after the POR that is linked to an entry during that POR. See *Certain Hot-Rolled Carbon Steel Flat Products from Brazil; Preliminary Results of Antidumping Administrative Review,* 70 FR 17406 (April 6, 2005). The final results of that review are now being published with a signature date of October 3, 2005. CSN had no additional entries to review in the current POR. Finally, as CST had no entries in addition to those already being reviewed as part of a new shipper review, we have preliminarily determined to rescind the 2004–2005 administrative review.

Public Comment

An interested party may request a hearing within 20 days of publication of this notice. Any hearing, if requested, will be held 34 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 20 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 7 days from the case brief after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. We will issue our final decision concerning the conduct of the review no later than 120 days from the date of publication of this notice.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: October 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5539 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil

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

SUMMARY: On April 6, 2005, the U.S. Department of Commerce (''the Department'') published the preliminary results of administrative review of the antidumping duty order covering certain hot-rolled flat-rolled carbon quality steel products from Brazil. *See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 17406 (April 6, 2005) (''*Preliminary Results*''). The merchandise covered by this order is certain hot-rolled flat-rolled carbon quality steel from Brazil as described in the ''Scope of the Order'' section of this notice. The period of review (''POR'') is March 1, 2003, through February 29, 2004. We invited parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we made an adjustment to the window period for home market sales. We also made a correction to further manufacturing costs in the United States based upon verification findings. However, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi at (202) 482–0405 or (202) 482–8221, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2005, the Department published in the **Federal Register** its preliminary results in this administrative review. On May 27, 2005, Nucor Corporation (''Nucor''), a domestic interested party in accordance with section 771(9)(C) of the Tariff Act of 1930, as amended (''the Act''), submitted comments. On June 3, 2005, we received a letter from Companhia Siderurgica Nacional (''CSN''), the foreign manufacturer and exporter of the subject merchandise in accordance with section 771(9)(A) of the Act, and Companhia Siderurgica Nacional, LLC (''CSN, LLC''), CSN's U.S. affiliate, responding to Nucor's comments. On July 7–8, 2005, the Department conducted a sales verification of CSN, LLC in Terre Haute, Indiana, followed by a cost verification on July 20–22, 2005. As stated in the *Preliminary Results,* the briefing schedule was extended due to these verifications. On August 24, 2005, we received a case brief from CSN and CSN, LLC, and on August 25, 2005, we received a case brief from Nucor. As per the Department's request, CSN and CSN, LLC resubmitted their case brief on August 26, 2005, incorporating revised bracketing. We received a rebuttal brief from CSN and CSN, LLC on August 29, 2005, and a rebuttal brief from Nucor on August 30, 2005. We asked Nucor to resubmit a revised rebuttal brief with corrected bracketing, which we received on September 2, 2005. No hearing was requested by the September 2, 2005, deadline given in the Department's August 15, 2005, memorandum advising parties of the briefing schedule. (*See* Memorandum to the File from Kristin Najdi, Case Analyst: Antidumping Administrative Review of Certain Hot-

Rolled Carbon Steel Flat Products from Brazil, Briefing Schedule—Notification of Parties). No public hearing was held.

On July 12, 2005, because it was not practicable to complete the final results of this review within the original time period, the Department published in the **Federal Register** a notice extending the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Act. *See Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Brazil,* 70 FR 39995 (July 12, 2005).

Scope of the Order

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of the Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
—SAE/AISI grades of series 2300 and higher.
—Ball bearing steels, as defined in the HTSUS.
—Tool steels, as defined in the HTSUS.
—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
—ASTM specifications A710 and A736.
—USS Abrasion-resistant steels (USS AR 400, USS AR 500).
—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn (max)	P (max)	S (max)	Si	Cr	Cu	Ni (max)
0.10–0.14	0.90	0.025	0.005	0.30–0.50	0.30–0.50	0.20–0.40	0.20

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu (max)	Ni (max)	MO (max)
0.10–0.16	0.70–0.90	0.025	0.006	0.30–0.50	0.30–0.50	0.25	0.20	.021

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu	Ni (max)	V (wt) (max)	cb (max)
0.10–0.14	1.30–1.80	0.025	0.005	0.30–0.50	0.50–0.70	0.20–0.40	0.20	0.10	0.08

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications.

[In percent]

C (max)	Mn (max)	P (max)	S (max)	Si (max)	Cr (max)	Cu (max)	Ni (max)	Nb (min)	CA	AL
0.15	1.40	0.025	0.010	0.50	1.00	0.50	0.20	0.005	Treated	0.01–0.70

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thickness ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; account for 64 FR 38650; Tensile Strength = 80,000 psi minimum.

—Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm ^{2} and 640 N/mm ^{2} and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm ^{2} and 690 N/mm ^{2} and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

—Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

—Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under this order is dispositive.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary (''Decision Memorandum''), which is hereby adopted by this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the Central Records Unit in Room B–099 of the main Commerce building, and can also be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Change Since the Preliminary Results

Based on our analysis of comments received, we made a correction to the window period for home market sales. We also made a correction to further manufacturing costs in the United States based upon verification findings. See the Decision Memorandum.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of March 1, 2003, through February 29, 2004:

Manufacturer/exporter	Weighted-average margin (percentage)
Companhia Siderúrgica Nacional	0.00

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise produced by CSN. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposits

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of hot-rolled flat-rolled carbon-quality steel products from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) For the company covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company-specific rate from the final determination; (3) if the exporter is not a firm covered in this review or the investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final determination; and (4) if neither the exporter nor the producer is a firm covered in this review or the investigation, the cash deposit rate will be 42.12 percent, the ''All Others'' rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant

entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties. This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Date of Sale
Comment 2: General and Administrative Expenses
Comment 3: Treatment of Non-Dumped Sales
Comment 4: Expand Cost Reporting Period to Cover the 90/60 Window Period
Comment 5: Window Period for Home Market Sales

[FR Doc. E5–5540 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review

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

EFFECTIVE DATE: October 7, 2005.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''), received before August 31, 2005, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is February 1, 2005, through July 31, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Walker at (202) 482–0413, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). The notice of opportunity to request an administrative review on certain preserved mushrooms from the PRC was published on February 1, 2005. *See Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation*, 70 FR 5136 (February 1, 2005).[1] On August 23, 2005, we received a new shipper review request from an exporter Guangxi Eastwing Trading Co., Ltd. (''Guangxi Eastwing'') and its supplier Raoping CXF Foods, Inc. (''Raoping CXF'').

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff act of 1930 (the ''Act'') and 19 CFR 351.214(b)(2)(i), Guangxi Eastwing certified that it did not export preserved mushrooms to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii)(B), Raoping CFX, the producer of the mushrooms exported by Guangxi Eastwing, provided a certification that it did not export the subject merchandise to the United States during the POI. In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Guangxi Eastwing certified that, since the initiation of the investigation, it has never been affiliated with any exporter or producer who exported preserved mushrooms to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Guangxi Eastwing also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, Guangxi Eastwing submitted documentation establishing the following: (1) the date on which it first shipped preserved mushrooms for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted customs database queries to substantiate that Guangxi Eastwing's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the request submitted by Guangxi Eastwing meets the threshold requirements for initiation of a new shipper review for shipments of preserved mushrooms from the PRC produced by Raoping CXF and exported by Guangxi Eastwing.

The POR is February 1, 2005, through July 31, 2005. *See* 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of this review no later than 180 days from the date of initiation, and final result of this review no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

Guangxi Eastwing has certified that it exported, but did not produce, the preserved mushrooms on which it based its request for a new shipper review. Therefore, we will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of preserved mushrooms that were produced by Raoping CXF and exported by Guangxi Eastwing until the completion of the new shipper review, pursuant to section 751(a)(2)(B)(iii) of the Act.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 30, 2005.

Barbara E. Tillman,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5542 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] Therefore, a request for a new shipper review based on the semi–annual anniversary month, August, would be due to the Department by the last day in August 2005. *See* 19 CFR 351.214(d)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia

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

FOR FURTHER INFORMATION CONTACT: Shane Subler or Constance Handley at (202) 482–0189 or (202) 482–0631, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce,14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bars (rebar) from Latvia. We preliminarily determine that sales of subject merchandise by Joint Stock Company Liepajas Metalurgs (LM) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 7, 2005.

Background

On September 7, 2001, the Department issued an antidumping duty order on rebar from Latvia. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On September 1, 2004, the Department issued a notice of opportunity to request the third administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 53407 (September 1, 2004). On September 27, 2004, in accordance with 19 CFR 351.213(b), LM requested an administrative review. On September 30, 2004, also in accordance with 19 CFR 351.213(b), the petitioners[1] requested an administrative review of LM. On October 22, 2004, the Department published the notice of initiation of this antidumping duty administrative review, covering the period September 1, 2003, through August 31, 2004 (the POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 62022 (October 22, 2004).

On November 5, 2004, the Department issued its antidumping questionnaire to LM, specifying that the responses to Section A and Sections B–D would be due on November 26, 2004, and December 13, 2004, respectively.[2] The Department received timely responses to Sections A–D of the initial antidumping questionnaire and associated supplemental questionnaires.

On April 26, 2005, the Department published a notice of a sixty–day extension of the preliminary results of this administrative review. *See Steel Concrete Reinforcing Bars from Latvia: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 21397. On July 18, 2005, the Department published a notice extending the deadline for the preliminary results for an additional 60 days. *See Steel Concrete Reinforcing Bars from Latvia: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 41208. This second notice extended the deadline for the preliminary results to September 30, 2005.

From August 23 through September 2, 2005, the Department verified LM's sales and cost questionnaire responses at LM's offices in Liepaja, Latvia. The Department will release its verification report under separate cover.

Scope of the Order

The product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non–deformed or smooth bars) and rebar that has been further processed through bending or coating.

HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Fair Value Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales of products sold in the United States and comparison market that are identical with respect to the matching characteristics. Pursuant to section 771(16) of the Act, all products produced by the respondent that fit the definition of the scope of the order and were sold in the comparison market during the POR fall within the definition of the foreign like product. We have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: type of steel, yield strength, and size. Where there were no sales of identical merchandise in the comparison market, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above.

Date of Sale

LM used the commercial invoice date as the date of sale in its response. In order to determine whether the invoice date is the appropriate date of sale, we requested that LM submit extensive sales documentation for all U.S. sales during the POR. LM provided us with this information in two submissions dated June 7, 2005, and July 6, 2005. The company's submitted sales documentation included contract addenda and commercial invoices for all U.S. sales.

After reviewing LM's submitted sales documentation, we have preliminarily determined that the date of the contract addendum is the date of sale because this date best reflects the determination of the material terms of sale. The use of contract date as the date of sale is consistent with the Department's use of contract date in *Hot–Rolled Steel from Thailand*,[3] in which the Department

[1] The petitioners in this case are the Rebar Trade Action Coalition (RTAC) and its individual members — Gerdau AmeriSteel, CMC Steel Group, Nucor Corporation, and TAMCO.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. (continued...)(...continued) Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

[3] *See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, Subject: Issues and Decision Memorandum for the Final Results of*

Continued

determined that the material terms of sale for the respondent's U.S. sales did not change between its final contract and final invoice. Because information in LM's contract addenda and invoices is business proprietary, we have explained the date of sale methodology in the analysis memorandum for this determination. *See* the *Memorandum from Shane Subler, International Trade Compliance Analyst, to Constance Handley, Program Manager, Re: Analysis Memorandum for Joint Stock Company Liepajas Metalurgs*, dated September 30, 2005 (*Analysis Memorandum*), for further explanation of the selected date of sale. For all home market sales, we have preliminarily used the invoice date as the date of sale based on information on the record.

Export Price

We calculated an EP for all of LM's sales because the merchandise was sold directly by LM to the first unaffiliated purchaser for delivery to the United States, and because constructed export price (CEP) was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included inland freight, domestic brokerage and handling expenses, and dunnage expenses.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate); that the time of the sales reasonably corresponds to the time of the sale used to determine EP; and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that LM had a viable home market for rebar. As such, LM submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section below.

B. Cost of Production Analysis

Because we disregarded below–cost sales in the final results of the second administrative review, we have reasonable grounds to believe or suspect that home market sales of the foreign like product by LM have been made at prices below the cost of production (COP) during the third POR. As a result, the Department initiated a COP inquiry for LM for the third POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP, by model, based on the sum of materials, fabrication, and general and administrative (G&A) expenses. In accordance with the Department's standard practice, we relied on LM's submitted average COP calculations for the entire POR. Based on our findings at verification, we adjusted LM's submitted calculations for general and administrative (G&A) expenses, interest expenses, and indirect selling expenses. *See the Analysis Memorandum*.

2. Test of Comparison Market Sales Prices

We compared the weighted–average COPs for LM to its home–market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model–specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below–cost sales where (1) 20 percent or more of LM's sales of a given product during the POR were made at prices below the COP, because such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted–average COPs for the POR, we determined that the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that LM made sales below cost, and we disregarded such sales where appropriate.

C. Calculation of Normal Value Based on Comparison–Market Prices

We determined NV for LM as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments for LM's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses) and adding U.S. imputed credit expenses. In LM's case, the calculation of imputed credit expenses results in a negative number because all of LM's U.S. sales are prepaid. Therefore, the adjustment for U.S. imputed credit reduces NV. In addition, based on findings at verification, we adjusted the reported dates of payment and imputed credit fields for specific sales. *See the Analysis Memorandum* for details on adjustments to these specific sales.

Imputed Credit

At verification, we found that LM did not have any short–term loans in lats during the POR. Furthermore, we found that LM did not correctly calculate the U.S. dollar interest rate used in its imputed credit expense calculation for U.S. sales. Therefore, LM did not have verified interest rates for either its U.S. or home market sales. As a result, we have preliminarily recalculated LM's home market and U.S. imputed credit expenses by using published short–term interest rates in both lats and dollars.

To calculate a surrogate interest rate for home market and U.S. imputed credit expenses, we have followed the guidelines of *Policy Bulletin 98.2* (Policy Bulletin)[4] to select a surrogate interest rate. The *Policy Bulletin* states that the Department must select surrogate interest rates that are reasonable, readily obtainable, and representative of usual commercial behavior. *See Policy Bulletin* at 5. With respect to the calculation of a surrogate U.S. dollar interest rate, the *Policy Bulletin* states,

> For dollar transactions, we will generally use the average short–term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted–average data for commercial and

the Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand, dated April 13, 2004 (*Hot-Rolled Steel from Thailand*).

[4] *See Import Administration Policy Bulletin from Carlo Lavanga, Office of Policy, to Robert S. LaRussa, Assistant Secretary for Import Administration, Topic: Imputed credit expenses and interest rates*, dated February 23, 1998 (*Policy Bulletin*).

industrial loans maturing between one month and one year from the time the loan is made.[5]

Therefore, we have used a POR–average of the interest rates on nonfinancial commercial paper with a thirty–day maturity. These rates are published on the website of the Board of Governors of the Federal Reserve System (www.federalreserve.gov/releases/h15/data.htm).

The Commodity Futures Trading Commission (CFTC), a government agency that regulates commodity and financial futures, defines commercial paper as ''Short–term promissory notes issued in bearer form by large corporations, with maturities ranging from 5 to 270 days.''[6] Therefore, the use of thirty–day nonfinancial commercial paper rates published by the Federal Reserve complies with the *Policy Bulletin's* requirement to use short–term lending rates on commercial and industrial loans with a maturity of between one month and one year. We have selected the thirty–day rate because it is reflective of the circumstances of sales in this proceeding. For further discussion on proprietary information related to the selection of the thirty–day nonfinancial commercial paper rate, *see* the *Analysis Memorandum*.

For the calculation of home market imputed credit expenses, we have followed the *Policy Bulletin's* guidelines for calculating an interest rate when the respondent received no loans in the currency of home market transactions. The *Policy Bulletin* at page 6 states, ''For foreign currency transactions, we will establish interest rates on a case–by-case basis using publicly available information, with a preference for published average short–term lending rates.'' Therefore, in the home market, we have preliminarily used a POR–average of the one–month Riga Interbank Offer Rate (RIGIBOR), which is published on the Web site of the Bank of Latvia, Latvia's central bank, at http://www.bank.lv/eng/main/finfo/nt/rgbidrgbor/. The Bank of Latvia defines RIGIBOR as a money market index based on the quotes of the seven largest Latvian banks participating in the Latvian money market. This meets the *Policy Bulletin's* criteria of using surrogate interest rates that are easily obtainable, reasonable, and reflective of commercial behavior. We note that in *Silicon Metal from Brazil*,[7] the Department also used a short–term money market rate as a surrogate for home market interest rates because ''this suggests that it is derived from a comprehensive market for short–term debt instruments.'' The underlying U.S. and Latvian interest rates used in the calculation are located at Attachments 1 and 2 of the *Analysis Memorandum*.

D. Level of Trade Adjustment

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction. The NV level of trade is that of the starting–price sales in the comparison market. For EP sales, the U.S. level of trade is also the level of the starting–price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the level of trade of the export transaction, we make a level–of-trade adjustment under section 773(a)(7)(A) of the Act.

In conducting our level–of-trade analysis, we examine the types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar. We found the following.

For both the home market and U.S. market, LM reported one channel of distribution: direct sales. The company reported three customer categories in the home market: (1) traders; (2) end users; and (3) service centers. For all three customer categories, LM performed the following selling activities: negotiations with customers, order processing, packing, and delivery services. Accordingly, we preliminarily determine that LM's home market sales through these three channels of distribution constitute a single LOT.

LM reported one customer category in the U.S. market: traders. In comparing the company's U.S. sales to its home market sales, we found that the selling functions performed by LM were very similar in the U.S. and Latvian markets. For U.S. sales, LM conducts negotiations with the traders, processes orders, and arranges delivery to the port. Therefore, we preliminarily determine that U.S. sales and home market sales were made at the same level of trade.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted–average margin exists for the period September 1, 2003, through August 31, 2004:

Producer	Weighted–Average Margin (Percentage)
Joint Stock Company Liepajas Metalurgs	8.84

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue,

(2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

[5] *See Policy Bulletin* at 6.

[6] *See* http://www.cftc.gov/opa/glossary/opaglossary__co.htm.

[7] *See Memorandum from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shizad, Assistant Secretary for Import Administration, Subject: Issues and Decision Memorandum for the Administrative Review of Silicon Metal from Brazil - 7/1/1999 through 6/30/2000; Final Results* (February 12, 2002) (*Silicon Metal from Brazil*).

Assessment

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of the sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. In addition, based on proprietary information in a June 17, 2005, memorandum placed on the record of the proceeding by the Department, we have adjusted the calculation of the importer–specific duty assessment rate. For an explanation of the adjustment to the calculated assessment rate, *see* the *Analysis Memorandum*.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of rebar from Latvia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate listed above for LM will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.21 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2005.

Barbara E. Tillman,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5569 Filed 10–6–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844, C–560–819]

Notice of Initiation of Countervailing Duty Investigations: Certain Lined Paper Products from India (C–533–844) and Indonesia (C–560–819)

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

ACTION: Initiation of countervailing duty investigation.

SUMMARY: The Department of Commerce is initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain lined paper products from India and Indonesia receive countervailable subsidies.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords and Eric B. Greynolds (India) or Indonesia, David Layton or David Neubacher (Indonesia) AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–5823,(202) 482–3146 and (202) 482–6071,(202) or 482–0371 and (202) 482–5823, respectively.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petitions

Between September 9 and September 26, 2005, the Department of Commerce (''the Department'') received Petitions, and amendments to the Petitions, (''the Petitions'') filed in proper form by Association of American School Suppliers (''Petitioner'').

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (effective January 1, 1995) (''the Act''), Petitioner alleges that manufacturers, producers, or exporters of certain lined paper products (''certain lined CLPP paper'' or ''subject merchandise'') from India and Indonesia receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury, to an industry in the United States. On September 21, 2005, the Department issued a memo clarifying that the official filing date of the Petitions was September 9, 2005. *See Memorandum from the Team to Acting Deputy Assistant Secretary Barbara Tillman: Decision Memorandum Concerning Filing Date of Petitions*, September 21, 2005, (explaining that the proper file date is September 9, 2005, as it was filed at the ITC after the noon deadline on the previous day).

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because they are interested parties, as defined in sections 771(9)(E) and (F) of the Act, and have demonstrated sufficient industry support in accordance with section 702(c)(4)(A) of the Act. *See infra*, ''Determination of Industry Support for the Petitions.''

Scope of Investigation

S*ee Appendix I.*

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit (''CRU'') in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 - Attn: James Terpstra. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of India and Indonesia for consultations with respect to the Petitions. The Department held consultations with the Government of Indonesia on September 23, 2005. The points raised in the consultations are described in the consultation memorandum to the file dated September 26, 2005, and in the Government of Indonesia's September 22, 2005, and September 26, 2005, submissions to the Department, both of which are on file in the CRU. The Government of India declined the Department's invitation for consultations.[1]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (1) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (2) determine industry support using a statistically valid sample.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1 (CIT 2001) (citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988)).

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. *See Indonesia Initiation Checklist, India Initiation Checklist* at Attachment II (Industry Support). Based on our analysis of the information submitted in the Petitions we have determined that there is a single domestic like product, certain lined paper products, which is defined further in the ''Scope of the Investigations'' section in Appendix I, and we have analyzed industry support in terms of that domestic like product.

Our review of the data provided in the petition and other information readily available to the Department indicates that Petitioner has established industry support representing at least 25 percent of the total production of the domestic like product, and more than 50 percent of the production of the domestic like product produced by that portion of the industry, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. In addition, the Department received no opposition to the Petitions from domestic producers of the like product. Therefore, the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the Petitions. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Indonesia Initiation Checklist* and *India Initiation Checklist* at Attachment II (Industry Support).

The Department finds that Petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(E) and (F) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigations that it is requesting the Department initiate. *See Indonesia Initiation Checklist and India Initiation Checklist.*

Injury Test

Because India and Indonesia are each a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from India and Indonesia materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causations

With regard to India and Indonesia, Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulative imports of the subject merchandise. Petitioner contends that the industry's injured condition is illustrated by the decline in its customer base, market share, domestic shipments, prices and profit. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Indonesia Initiation Checklist, India Initiation Checklist* at Attachment III (Injury).

Initiation of Countervailing Duty Investigations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to Petitioner supporting the allegations.

[1] *See* Memorandum to the File from Maura Jeffords Regarding Subject Consultations and the Government of India (GOI), Sept. 22, 2005.

The Department has examined the countervailing duty petitions on certain lined paper products from India and Indonesia and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain lined paper products from India and Indonesia receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Indonesia Initiation Checklist* and *India Initiation Checklist*.

We are including in our investigations the following programs alleged in the Petitions to have provided countervailable subsidies to producers and exporters of the subject merchandise in India and Indonesia:

I. India:

A. *Duty Entitlement Passbook Scheme (''DEPS'')*

B. *Export Processing Zones and Export Oriented Units*
1. Duty Free Import of Capital Goods and Raw Materials
2. Reimbursement of Central Sales Tax Paid on Domestically–Sourced Materials
3. Duty Drawback on Furnace Oil Sourced from Domestic Companies

C. *Pre–Shipment and Post Shipment Export Financing*

D. *Income Tax Exemption Schemes under Sections 10A, 10B and 80 HHC*

E. *Export Promotion Capital Goods Scheme (''EPCGS'')*

G. *Market Access Initiative*

H. *Market Development Assistance*

I. *Status Certificate Program*

J. *State Programs*
1. State of Gujarat Sales Tax Program
2. State of Maharashtra Sales Tax Program

II. Indonesia

A. *Provision of Logs at Less Than Adequate Remuneration*
1. Provision of Fiber at Preferential Rates

2. Government Ban on Log Exports

B. *Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program)*

C. *Accelerated Depreciation*

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in Indonesia:

A. *Non–Enforcement of Banking Regulations at Conglomerate–Owned Financial Institutions*

Petitioner alleges that the Government of Indonesia's non–enforcement of its laws intended to ensure prudent lending and the solvency of lending institutions permitted financial institutions controlled by forest industry conglomerates to provide credit to producers of the subject merchandise which would not have otherwise been available. In particular, Petitioner asserts that Sinar Mas/APP's affiliated bank, Bank Internasional Indonesia (BII), made loans to its affiliates that exceeded the legal loan exposure limit of the bank to any one affiliated company.

Petitioner provided insufficient information regarding the existence of a financial contribution or specificity.

B. *Government Protection from Bankruptcy*

Sinar Mas/APP had amassed an estimated debt of $13.4 to $13.9 billion in high yield bonds and loans from several domestic and international financial institutions and Export Credit Agencies (ECAs). In March 2001, Sinar Mas/APP unilaterally ceased all of its debt payments. Of this estimated debt, $1.3 billion was owed to BII. In May 2001, the BII and the Sinar Mas/APP debt owed to the bank were placed under the control of the Indonesian Bank Restructuring Agency (IBRA), a government entity created under the Indonesian Ministry of Finance. In assuming the Sinar Mas/APP debt, IBRA received a lien on all Sinar Mas/APP assets, which gave the agency first rights to Sinar Mas/APP assets. Because IBRA never attempted to exercise its liens, Petitioner alleges that IBRA provided a shield for Sinar Mas/APP preventing foreign creditors from collecting on the estimated $12.6 billion or forcing Sinar Mas/APP into bankruptcy. Sinar Mas/APP continued to operate without any changes to ownership.

Petitioner provided insufficient information regarding the existence of a financial contribution or specificity.

C. *Invalidation of Bonds Through Court Action*

Sinar Mas/APP sued in Indonesian court to invalidate bonds it had issued with an estimated value of $550 million. The bonds were registered with the U.S. Securities and Exchange commission, underwritten by Morgan Stanley, and held by international investors. The District Court of Kuala Tungkal ruled that the bonds were invalid on the grounds that they were concocted by the foreign institutions to earn excessive fees. Therefore, the court ruled that Sinar Mas/APP did not have to repay the $550 million in bonds or the accrued interest to its creditors.

Petitioner provided insufficient information regarding the financial contribution or specificity. Moreover, according to the information provided by Petitioner, the financial institutions still have the option of appealing the Indonesian court decision. Therefore, the judicial process in this claim has not finished its course.

D. *Tax Holidays, Import Duty Exemption and Other Tax Benefits*

The Department found in *Indonesian Textiles*[2] that the Indonesian Ministry of Finance may grant industries a variety of tax benefits, such as tax holidays, exemption from capital stamp duties and different levels of exemption from corporate taxes. The industries approved for the tax benefits are deemed ''priority'' industries by the Ministry of Finance and also are listed on two priority lists called Daftar Skala Priorities (DSP).

We do not plan to investigate these alleged subsidies because they were recurring subsidies which occurred in 1983, 22 years ago, and there has been no new information provided by Petitioner to indicate that these programs are still in existence.

E. *Working Capital Export Credits*

Beginning in June 1983, Indonesian state and private banks offered working capital export credits to domestic companies exporting goods other than gas and oil. The banks decided which companies could borrow and the interest rate to charge. The Department preliminarily found this to be a countervailable subsidy.

We do not plan to investigate these alleged subsidies because they were recurring subsidies which occurred in 1983, 22 years ago, and there has been no new information provided by Petitioner to indicate that these programs are still in existence.

Other

A. *Provision of Capital on Preferential Terms Prior to the Indonesian Financial Crisis*

In its September 9th filing, Petitioner alleged that preferential financing was provided to the forest industry during the 1990's and included information regarding loans to Bob Hasan's Kalimanis Group. In its September 22nd submission, Petitioner stated that it did not know whether any members of the Bob Hasan Group produced or exporter subject merchandise, and reserved the right to provide additional information.

[2] *See Preliminary Affirmative Countervailing Duty Determinations; Certain Textile Mills Products and Apparel from Indonesia*, 49 FR 49672 (December 12, 1984) (*Indonesian Textiles*).

Therefore, we are not including this allegation in our investigation at this time.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petitions has been provided to the Government of India and Government of Indonesia. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of these initiations, whether there is a reasonable indication that imports of certain lined paper products from India and Indonesia are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(I) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretaryfor Import Administration.

Appendix I

Scope of the Investigation

The scope of this investigation includes certain lined paper products, typically school supplies,[1] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[2] including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear–out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this petition whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this petition are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
- three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper, '' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled,[3] measuring 6 inches by 9 inches;

Also excluded from the scope of these investigations are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™.[4]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[5]
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2–3/8'' from the top of the front

[1] For purposes of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic.

[2] There shall be no minimum page requirement for looseleaf filler paper.

[3] ''Gregg ruling'' consists of single– or double–margin vertical ruling line down the center of the page. For a six–inch by nine–inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[4] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[6]

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[7]

Merchandise subject to this investigation is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS).[8] The tariff classifications are provided for convenience and U.S. Customs and Border Protection purposes; however, the written description of the scope of the investigation is dispositive.

[FR Doc. E5–5541 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–DS–S

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[8] During the investigation additional HTS codes may be identified.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, November 1, 2005 from 9 a.m. to 4 p.m. The Advanced Technology Program Advisory Committee is composed of ten members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on American Competitiveness and the U.S. Electronics Sector, Nanotechnology, the Current State of Aquaculture and International Economic Challenges. A discussion scheduled to begin at 2 p.m. and to end at 4 p.m. on November 1, 2005, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Donna Paul no later than Friday, October 28, and she will provide you with instructions for admittance. Ms. Paul's e-mail address is *donna.paul@nist.gov* and her phone number is 301/975–2162.

DATES: The meeting will convene Tuesday, November 1, at 9 a.m. and will adjourn at 4 p.m. on Tuesday, November 1, 2005.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Donna Paul, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4700, telephone number (301) 975–2162.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2004, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: October 3, 2005.

William Jeffrey,

Director.

[FR Doc. 05–20197 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Environmental Impact Statement (DEIS), Notice of Public Comment Period for the DEIS and Schedule of Public Hearings for the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management's Review of Amendments to the Alaska Coastal Management Program

AGENCY: Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management (OCRM).

ACTION: Notice of Availability of DEIS, Notice of Public Comment Period for the DEIS and Schedule of Public Hearings.

SUMMARY: NOAA's Office of Ocean and Coastal Resource Management is issuing this notice to advise the public that a DEIS for OCRM's review of amendments to the Alaska Coastal Management Program has been prepared and is available for public review and comment. Written requests for the DEIS and written comments on the DEIS can be submitted to the individual listed in

the section **FOR FURTHER INFORMATION CONTACT.** Public hearings will be held on October 31, 2005 and November 1, 2005. The public comment period commenced on September 23, 2005 and will close on November 7, 2005.

Public Comment Hearings: The start of the public comment period on the DEIS was September 23, 2005, and will end on November 7, 2005. Two public hearings will be held; one on October 31, 2005 and one on November 1, 2005, in Juneau and Anchorage, Alaska, respectively. The public hearing on Monday, October 31, 2005 will be held in Juneau, Alaska at the Centennial Hall Convention Center, Egan Room, (101 Egan Drive) and will begin at 10 a.m. and last until 3 p.m. The public hearing on Tuesday, November 1, 2005 will be held in Anchorage, Alaska at the Hotel Captain Cook (939 West Fifth Avenue) and will begin at 1 p.m. and last until 6 p.m.

DEIS Availability and Review

Copies of the DEIS are available either on CD or hard copy by contacting Helen Bass at the **FOR FURTHER INFORMATION CONTACT** section below. In addition, the DEIS has been posted on OCRM's Web site at *http://coastalmanagement.noaa.gov/pcd/up.html* and the Alaska Coastal Management Program's Web site at *http://www.alaskacoast.state.ak.us.*

Comments from interested parties on the DEIS are encouraged and may be presented orally at the public hearings. Written comments may be submitted to OCRM during the public hearings and at the address (including e-mail address) listed in the section entitled **FOR FURTHER INFORMATION CONTACT.**

OCRM encourages all interested parties to provide comments concerning the scope and content of the DEIS. Comments should be as specific as possible and address the analysis of potential of alternatives. Reviewers should organize their comments so that it is meaningful and makes the agency aware of the viewer's interests and concerns using quotations and other specific references to the text of the DEIS and related documents. Matters that could have been raised with specificity during the comment period on the DEIS may not be considered if they are raised later in the decision process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to OCRM in a timely manner so that OCRM has an opportunity to address them.

SUPPLEMENTARY INFORMATION: The DEIS discloses the environmental consequences associated with OCRM's review of amendments to the State of Alaska's federally-approved coastal management program (CMP). OCRM's approval of Alaska's request to incorporate changes into the Alaska CMP would allow the State to continue its certification as a federally-approved CMP, receive Coastal Zone Management Act (CZMA) funds to implement the revised program, and conduct State and federal consistency reviews based on the revised program policy. Incorporation of Alaska's new laws and regulations and one Executive Order into its program will result in the following changes:

- Eliminate the Alaska CMP Coastal Policy Council and transfer of its functions to the Alaska Department of Natural Resources;
- Replace current statewide coastal standards with new standards, along with mandated revisions for all district plans to achieve new standards and meet new policy development requirements;
- Assure that matters regulated or authorized by State or federal law are not duplicated by coastal or district enforceable policies, and that district plans address matters specific to local concern;
- Exempt certain activities from the coastal consistency review process through coverage under the State's ABC list review or Department of Environmental Conservation review; and
- Limit the parties who have standing to file legal claims challenging Alaska CMP consistency decisions.

The proposed review will be completed, and OCRM's decision finalized by December 31, 2005. Depending on the alternative implemented, there may be positive socio-economic benefits associated with a more efficient permitting process, negative impacts to subsistence resources due to changes in Alaska's coastal standards and procedures for district plan development, or long-term negative environmental and socio-economic impacts associated with Alaska's withdrawal from the federal CZMA program.

The purpose and need for OCRM's review of the amendments is reviewed in the DEIS. All reasonable, prudent and feasible alternatives are being considered, including the no-action alternative.

FOR FURTHER INFORMATION CONTACT: Helen Bass, Environmental Protection Specialist, National Oceanic and Atmospheric Administration, OCRM/CPD, N/ORM3 Station 11207, 1305 East-West Highway, Silver Spring, MD 20910 or *Helen.Bass@noaa.gov.* Ms. Bass may be contacted during business hours at (301) 713–3155, extension 175 (telephone) and 301–713–4367 (fax).

The comment period will close on November 7, 2005.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 3, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Ocean and Atmospheric Administration.

[FR Doc. 05–20326 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 041108311–5001–02; I.D. 092705A]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide Year 2006 Cage Tags

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

ACTION: Notice of vendor to provide year 2006 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog allocation owners that they will be required to purchase their year 2006 cage tags from a vendor. The intent of this notice is to comply with regulations for the surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to Brian R. Hooker, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, (978) 281–9220; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fisheries regulations at 50 CFR 648.75(b) authorize the Regional Administrator of the Northeast Region, NMFS, to specify in the Federal Register a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the year 2006 Federal

surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners in these fisheries within the next several weeks.

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

Dated: September 30, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20298 Filed 10–06–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100405A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of its Ecosystem Scientific and Statistical Committee (SSC) in Tampa, FL on Thursday, October 27, 2005.

DATES: The meeting will be held Thursday, October 27, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Quorum Hotel - Tampa, 700 North Westshore Boulevard, Tampa, FL 33609.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813.348.1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Ecosystem Scientific and Statistical Committee (SSC) in Tampa, Florida to review the work it has done to date in compiling information to use in developing a fisheries ecosystem plan (FEP), and will discuss a timeline for completion of a draft FEP. The SSC will also discuss the impacts of Hurricanes Katrina and Rita relevant to fishery management on the Gulf of Mexico Ecosystem and may make recommendations to the Council.

Copies of the agenda and other related materials can be obtained by calling 813.348.1630. Although other non-emergency issues not on the agendas may come before the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 4, 2005.

Emily Menashes,

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

[FR Doc. E5–5526 Filed 10–6–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Wednesday, October 26, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–20360 Filed 10–5–05; 2:10 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice reopening competitions or extending application deadline dates for certain direct grant and fellowship programs.

SUMMARY: The Secretary extends the deadline dates for the submission of applications for several programs. In all of the affected competitions the Secretary is making new awards for fiscal year (FY) 2006. The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. The reopening and extension of the programs or competitions are intended to help potential applicants compete fairly with other applicants under these programs.

Note: Two of the affected programs or competitions are administered by the Office of Postsecondary Education and three are administered by the Office of Special Education and Rehabilitative Services. You can find information related to each of these competitions under the ''List of Programs Affected'' in this notice.

Eligibility: The reopening or extension of deadline dates in this notice applies to you if you are: (1) an institution of higher education, state educational agency (SEA), local educational agency (LEA), non-profit organization or other public or private organization applicant that is located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (*see http://www.fema.gov/news/disasters.fema*) and you were adversely affected by Hurricanes Katrina and/or Rita, or (2) an individual applicant who resides or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (*see http://www.fema.gov/news/disasters.fema*) and you were adversely affected by Hurricanes Katrina and/or Rita. You must provide a certification in your application that you meet one of these criteria for submitting an application on the *Extended Deadline* and be prepared to provide appropriate supporting documentation, if requested. If you are submitting the application electronically, the submission of the application serves as your attestation that you meet the criteria for submitting an application on the *Extended Deadline.*

Note for Individual Applicants Under Competition 84.170A, Jacob K. Javits Fellowship Program:

The reopening or extension of deadline date for this competition also applies to you if you cannot obtain your undergraduate academic records or references from your undergraduate institution because the institution is in a federally-declared disaster area as determined by FEMA (*see http://www.fema.gov/news/disasters.fema*) and was adversely affected by Hurricanes Katrina and/or Rita.

DATES: The new deadline date for transmitting applications under each competition is listed with that competition in the ''List of Programs

Affected.'' If the program is subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

ADDRESSES: The address and telephone number for obtaining applications for, or information about, an individual program are in the application notice for that program. We have listed the date and **Federal Register** citation of the application notice for each program.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number, if any, listed in the individual application notice. If we have not listed a TDD number, you may call the Federal Relay Service (FRS) at 1–800–877–8339.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the latest list and addresses of individual SPOCs on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html*

You can also find the list of SPOCs in the appendix to the Forecast of Funding Opportunities under the Department of Education Discretionary Grant Programs for Fiscal Year (FY) 2005 and 2006. This is available on the Internet at: *http://www.ed.gov/funding.html.*

SUPPLEMENTARY INFORMATION: The following is specific information about each of the programs or competitions covered by this notice:

LIST OF PROGRAMS AFFECTED

CFDA No. and Name	Publication Date and Federal Register Citation	Original Deadline for Transmittal of Applications	Extended Deadline for Transmittal of Applications	Original Deadline for Intergovernmental Review	Extended Deadline for Intergovernmental Review
Office of Postsecondary Education					
84.200A: Graduate Assistance in Areas of National Need.	8/22/05 (70 FR 48940)	11/14/05	12/1/05	1/16/06	2/1/06.
84.170A: Jacob K. Javits Fellowship Program.	6/14/05 (70 FR 34454)	10/3/05; Free Application for Federal Student Aid 1/31/06	12/1/05 Free Application for Federal Student Aid 1/31/06	N/A	N/A.
Office of Special Education and Rehabilitative Services					
84.129B: Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling.	7/20/05 (70 FR 41693)	9/6/05	10/19/2005	N/A	N/A.
84.129L, P, and Q: Rehabilitation Training: Rehabilitation Long-Term Training.	8/3/05 (70 FR 44588)	9/19/05	10/19/2005	N/A	N/A.
84.373X: Special Education—Technical Assistance on State Data Collection—IDEA General Supervision Enhancement Grant.	8/4/05 (70 FR 44914)	10/3/05	10/19/2005	N/A	N/A.

If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the individual application notices.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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: October 4, 2005.

Jack Martin,

Chief Financial Officer.

[FR Doc. 05–20263 Filed 10–6–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the DOE/NSF Nuclear Science Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee has been renewed for a two-year period, beginning October 1, 2005.

The Committee will provide advice to the Associate Director of the Office of Science for Nuclear Physics (DOE), and the Assistant Director, Directorate for Mathematical and Physical Sciences (NSF), on scientific priorities within the field of basic nuclear science research. The Secretary of Energy has determined that renewal of the Committee is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on October 1, 2005.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 05–20256 Filed 10–6–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management; Notice of Availability of Draft Section 3116 Determination Concerning Disposal of Residual Tank Wastes in Tanks 18 and 19 at the Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft determination concerning the permanent, in-situ disposal of residual tank wastes (including tank structure and equipment) in liquid radioactive waste tanks 18 and 19 at the F-Tank Farm (FTF) at the Savannah River Site (SRS) near Aiken, South Carolina. DOE prepared the draft determination pursuant to Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which authorizes the Secretary of Energy, in consultation with the Nuclear Regulatory Commission, to determine that certain waste from reprocessing is not high-level waste (HLW) if the provisions set forth in section 3116 are satisfied. Although not required by the Act, DOE is making the draft determination available for public review and comment.

DATES: The comment period will end on November 21, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The draft waste determination is available on the Internet at *http://apps.em.doe.gov/swd*, and is publicly available for review at the following locations: U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586–5955, or Fax: (202) 586–0575; and U.S. Department of Energy, Savannah River Operations Office, Public Reading Room, 171 University Parkway, Aiken, SC 29801, Phone: (803) 641–3320, or Fax: (803) 641–3302. Written comments should be addressed to: Mr. Matthew Duchesne, U.S. Department of Energy, Office of Environmental Management, EM–2, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments can be filed electronically by e-mail to *matthew.duchesne@em.doe.gov*, or by Fax at (202) 586–4314.

SUPPLEMENTARY INFORMATION: Since 1954, SRS Tank Farms F and H have received over 140 million gallons (Mgal) of waste from SRS nuclear material processing facilities. Much of this waste resulted from the reprocessing of spent nuclear fuel for defense purposes, which has been commingled with non-reprocessing waste. The waste tanks contain two distinct types of radioactive waste material, approximately 3 Mgal of radioactive sludge and approximately 34 Mgal of salt waste. DOE's plans call for stabilizing and disposing of retrieved sludge in a deep geologic repository for spent nuclear fuel and high-level radioactive waste. Regarding the salt waste, DOE contemplates removing fission products and actinides from these materials using a variety of technologies and solidifying the remaining low-activity salt stream into a grout matrix, known as saltstone grout, suitable for disposal in vaults at the Saltstone Disposal Waste Determination.

This Determination addresses only the permanent disposal of the residual materials contaminating Tank 18 and Tank 19, as well as the structure of the tanks themselves and ancillary equipment. Both tanks have a nominal operating capacity of 1.3 Mgal. Waste removal operations for Tank 18 were initiated in 1985 and completed in 2003. Tank 18 now holds approximately 4.3 thousand gallons (Kgal) of residual material. Waste removal operations for Tank 19 were initiated in 1981 and completed in 2001, and it now holds approximately 15.1 Kgal of residual material. DOE plans to fill both tanks with a reducing grout designed to stabilize and solidify the residual material. This method was chosen as the least hazardous and most environmentally preferable alternative. It will reduce migration of contaminants into the environment; prevent inadvertent intrusion; minimize free-standing liquids; and minimize void spaces in the tank. After final pouring of the stabilizing grout, a layer of higher-strength grout will be poured into the tanks to further discourage human/animal inadvertent intrusion. In addition, institutional controls (access restriction and groundwater monitoring) will be implemented and maintained in accordance with Federal and State agreements.

Final Determination: Section 3116 authorizes the Secretary of Energy, in consultation with the Nuclear Regulatory Commission (NRC), to determine that certain waste from reprocessing is not HLW if the provisions set forth in Section 3116 are satisfied. DOE will issue a final waste determination for Tanks 18 and 19 following the completion of consultation with the NRC, and consideration of any public comments.

Issued in Washington, DC, on October 3, 2005.

Mark A. Gilbertson,

Deputy Assistant, Secretary for Environmental Cleanup and Acceleration.

[FR Doc. 05–20257 Filed 10–6–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050066, ERP No. D–FAA–B40165–MA, New Bedford Regional Airport Improvements Project, To Enhance Aviation Capacity, Air Traffic, Jet Traffic, Air Cargo and General Aviation Traffic, Southeastern Massachusetts Region, City of New Bedford, Bristol County, MA.

Summary: EPA commented on the lack of information to characterize the severity of adverse direct and indirect impacts to wetlands, and encouraged the FAA to consider enhancement of a less damaging runway safety area alternative. The comments also requested a mitigation plan to compensate for unavoidable losses at wetlands.

Rating EO2

EIS No. 20050137, ERP No. D–AFS–B65013–VT, Green Mountain National Forest, Propose Revised Land and Resource Management Plan, Implementation, Forest Plan Revision, Addison, Bennington, Rutland,

Washington, Windham and Windsor Counties, VT.

Summary: EPA has no objections to the proposed project, but supports alternatives C, D or E as those that best address resource protection.

Rating LO

EIS No. 20050226, ERP No. D–FHW–B40095–RI, U.S. Route 6/Route 10 Interchange Improvement Project, To Identify Transportation Alternative, Funding, City of Providence, Providence County, RI.

Summary: EPA has environmental concerns about the impacts to water and air quality as well as environmental justice issues.

Rating EC2

EIS No. 20050247, ERP No. D–SFW–K64025–AZ, Cabeza Prieta National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Stewardship Plan, Implementation, Ajo, AZ.

Summary: EPA has no objection to the proposed project.

Rating LO

EIS No. 20050256, ERP No. D–AFS–J65446–MT, Beaverhead-Deerlodge National Forest Draft Revised Land and Resource Management Plan, Implementation, Beaverhead, Butte-Silver Bow, Deerlodge, Granite, Jefferson, Madison Counties, MT.

Summary: EPA generally supports the forestwide aquatic strategy, watershed restoration and revised management practices. However, EPA expressed environmental concerns about continued impacts to water quality, the level of watershed protection and restoration, management direction for roads and other resources, and environmental protection management measures.

Rating EC2

EIS No. 20050301, ERP No. D–FAA–A12043–00, PROGRAMMATIC—Horizontal Launch and Reentry of Reentry Vehicles, Facilitate the Issuance of Licenses in United States.

Summary: EPA has no objection to the proposed action.

Rating LO

EIS No. 20050315, ERP No. D–AFS–J65449–UT, Fishlake National Forest Off-Highway Vehicle Route Designation Project, Proposes to Designate a System of Motorized Road, Trails, and Areas to Revise and Update the Existing Motorized Travel Plan, UT.

Summary: EPA expressed environmental concerns about the preferred alternative because of potential adverse impacts to source water, streams and water quality, wetlands and aquatic resources. EPA supports the transition from unmanaged motorized recreation to restricted travel and suggests the final EIS include specific analyses of the direct, indirect and cumulative impacts of this proposed plan.

Rating EC2

EIS No. 20050240, ERP No. DS–FTA–B54007–WA, Silver Line Phase III (previously known as South Boston Pier) Project, Updated Information to Physically Integrate Silver Line Phase I and II, Massachusetts Bay Transportation Authority's, Funding, MA.

Summary: EPA has no objections to the proposed project.

Rating LO

Final EISs

EIS No. 20050341, ERP No. F–COE–G32058–00, Arkansas River Navigation Study, To Maintain and Improve the Navigation Channel in Order to Enhance Commercial Navigation on the McCellan Kerr Arkansa River Navigation System (MKARNS), Several Counties, AR and Several Counties, OK.

Summary: No formal comment letter was sent to the preparing agency.

Dated: October 4, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–20207 Filed 10–6–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/26/2005 Through 09/30/2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050401, Draft Supplement, SFW, CA, Southern Sea Otters (Enhydra lutris nereis) Translocation Program, New and Updated Information, San Nicolas Island, Southern California Bight, CA, Comment Period Ends: 01/05/2006, Contact: Greg Sander 805–644–1766 Ext. 315.

EIS No. 20050402, Final EIS, FHW, UT, Iron County Transportation Corridors, Construction from Station Road 56 to Exit 51 on Interstate 15, Funding and Right-of-Way Grant, Southwest of the Cedar City Limits, Iron County, UT, Wait Period Ends: 11/07/2005, Contact: Gregory S. Punske 801–963–0182.

EIS No. 20050403, Final EIS, AFS, CA, Watdog Project, Proposes to Reduce Fire Hazards, Harvest Trees, Using Group Selection Methods, Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA, Wait Period Ends: 11/07/2005, Contact: Susan Joyce 530–532–6500.

EIS No. 20050404, Draft EIS, DOI, OH, First Ladies National Historic Site General Management Plan, Implementation, Canton, OH, Comment Period Ends: 11/30/2005, Contact: Nick Chevance 402–661–1844.

EIS No. 20050405, Draft EIS, NPS, NV, Clean Water Coalition Systems Conveyance and Operations Program, Construction, Operation and Maintenance, City of Las Vegas, City County, NV, Comment Period Ends: 12/06/2005, Contact: Michael Boyles 702–293–8978.

EIS No. 20050406, Draft EIS, FHW, WA, South Park Bridge Project, Proposes to Rehabilitate or Replace the Historic South Park Ridge over the Duwamish Waterway at 14th/16 Avenue S, U.S. Coast Guard Permit and U.S. Army COE Section 10 and 404 Permits, King County, WA, Comment Period Ends: , 11/21/2005, Contact: Jim Leonard 360–753–9408.

EIS No. 20050407, Final EIS, NPS, AZ, Saguaro National Park Fire Management Plan, Implementation, Tucson, AZ, Wait Period Ends: 11/07/2005, Contact: Sarah Craighead 520–733–5101.

EIS No. 20050408, Final EIS, FHW, WI, US 41 Highway Corridor Project, Transportation Improvement between the Cities of Oconto and Perhtigo, Funding, Marinette and Oconto Counties, WI, Wait Period Ends: 11/07/2005, Contact: Johhny Gerbitz 608–829–7500.

EIS No. 20050409, Final EIS, AFS, OR, Joseph Creek Rangeland Analysis Project, Proposal to Allocate Forage for Commercial Livestock Grazing on Eleven Allotment, Wallowa-Whitman National Forests, Wallowa Valley Ranger District, Wallowa County, OR, Wait Period Ends: 11/07/2005, Contact: Alicia Glassford 541–426–5689.

EIS No. 20050411, Draft EIS, IBR, CA, Central Valley Project, West San

Joaquin Division, Long-Term Water Service Contract Renewal, Cities of Avenal, Coalinga and Huron, Fresno, King and Merced Counties, CA, Comment Period Ends: 11/25/2005, Contact: Joe Thompson 559–487–5179.

EIS No. 20050412, Final EIS, FHW, UT, US 6 Highway Project, Improvements from Interstate 15 (I–15) in Spanish Fork to Interstate (I–70) near Green River, Funding, Right-of-Way Permit and U.S. Army COE Section 404 Permit, Utah, Wasatch, Carbon, Emery Counties, UT, Wait Period Ends: 11/07/2005, Contact: Jeff Berna 801–963–0182.

EIS No. 20050413, Draft Supplement, FHW, NC, NC 12 Replacement of Herbert C. Bonner Bridge (Bridge No. 11) New and Updated Information, over Oregon Inlet Construction, Funding, U.S. Coast Guard Permit, Special-Use-Permit, Right-of-Way Permit, U.S. Army COE Section 10 and 404 Permit, Dare County, NC , Comment Period Ends: 11/23/2005, Contact: John F. Sullivan 919–856–4346.

EIS No. 20050414, Draft EIS, NRC, NY, Generic—License Renewal of Nuclear Plants for Nine Mile Point Nuclear Station, Units 1 and 2, Supplement 24 to NUREG 1437, Implementation, Lake Ontario, Oswego County, NY, Comment Period Ends: 12/22/2005, Contact: Leslie C. Fields 301–415–1186.

EIS No. 20050415, Draft EIS, FRA, PA, Pennsylvania High-Speed Maglev Project, Construction between Pittsburgh International Airport (PIA) and Greensburg Area, The Pennsylvania Project of Magnetic Levitation Transportation Technology Deployment Program, Allegheny and Westmoreland Counties, PA, Comment Period Ends: 12/06/2005, Contact: David Valenstein 202–493–6368.

EIS No. 20050416, Draft EIS, NOA, TX, PROGRAMMATIC—Texas National Estuarine Research Reserve and Management Plan, Mission-Aransas Estuary, Site Designation, Federal Approval, TX, Comment Period Ends:11/23/2005, Contact: Laurie McGilvray 301–563–1158.

EIS No. 20050417, Final Supplement, COE, MD, Poplar Island Environmental Restoration Project, Habitat Restoration and Dredged Material Capacity, Chesapeake Bay, Talbot County, MD, Wait Period Ends: 11/07/2005, Contact: Mark Mendelsohn 410–962–9466.

Dated: October 4, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–20208 Filed 10–6–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–64–A (Auction No. 64); DA 05–2423]

Television Station Construction Permits

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 11 full power television station construction permits scheduled to commence on March 15, 2006 (Auction No. 64). This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 64.

DATES: Comments are due on or before October 14, 2005, and reply comments are due on or before October 21, 2005.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction64@fcc.gov*. Parties who file also by paper must file an original and four copies of each filing. U.S. Postal Service first class, express or priority mail must be addressed to the Office of the Secretary, 445 12th Street, SW., Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Lynne Milne at (202) 418–0660. *For general auction questions:* Debbie Smith or Lisa Stover at (717) 338–2888. *For service rule questions:* Shaun Maher at (202) 418–2324 or Shaleim Henry at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 64 Comment Public Notice* released on September 23, 2005. The complete text of the *Auction No. 64 Comment Public Notice*, including attachments and any related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 64 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or BCPI Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 05–2423 for the Auction No. 64 Comment Public Notice. The *Auction No. 64 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/64/*.

I. Television Construction Permits in Auction No. 64

A. Open Construction Permits

1. By the *Auction No. 64 Comment Public Notice*, the Wireless Telecommunications Bureau and the Media Bureau (collectively referred to as the Bureaus) announce that the ten construction permits listed in Attachment A of the *Auction No. 64 Comment Public Notice* as open are available to any interested party. Long-form applications (FCC Forms 301) were filed previously for some of these stations. The pending applications for these stations are listed in Attachment A of the *Auction No. 64 Comment Public Notice*. Any party filing for a station with a pending application should understand that it is likely that its application will be mutually exclusive with the previously-filed application. Even if there is no pending long-form application for a station listed in Attachment A of the *Auction No. 64 Comment Public Notice*, applicants specifying the same construction permit will be considered mutually exclusive for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant for the same construction permit in Auction No. 64 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 64 and will remain subject to the Commission's anti-collusion rule, 47 CFR 1.2105(c), but, having purchased no bidding eligibility, will not be eligible to bid.

2. The Commission's competitive bidding rules will be used to select among mutually exclusive applicants for these 10 construction permits in Auction No. 64. Those wishing to participate in the auction, including those entities listed in Attachment A of the *Auction No. 64 Comment Public*

Notice with a pending long-form application, will be required to file a short-form application (FCC Form 175) prior to the short-form deadline which will be announced in a subsequent public notice.

B. Closed Construction Permit

3. The construction permit listed in Attachment B of the *Auction No. 64 Comment Public Notice*, identified as station TV–NTSC011–51, is the subject of pending, mutually exclusive applications for a new full power analog television station that were filed prior to July 1, 1997. The Commission's competitive bidding rules will be used in Auction No. 64 to select among mutually exclusive applicants for construction permit TV–NTSC011–51. Pursuant to the Congressional directive of 47 U.S.C. Section 309(l)(3) and procedures set forth in the *Broadcast Auctions First Report and Order*, 63 FR 48615 (September 11, 1998), participation in competitive bidding for a construction permit for station TV–NTSC011–51 will be limited to those nine applicants identified in Attachment B of the *Auction No. 64 Comment Public Notice: Edward I. St. Pe, Fant Broadcasting Development, LLC, George S. Flinn, Jr., KB Communications Corp., KM Communications, Inc., Marri Broadcasting, LP, Natchez Trace Broadcasting Company, United Television, Inc., and Winstar Broadcasting Corp.*

C. FRN Submission Requirement

4. The nine applicants identified in Attachment B of the *Auction No. 64 Comment Public Notice* that wish to participate in the auction are required to file a short-form application (FCC Form 175) and select TV–NTSC011–51 prior to the short-form deadline which will be announced in a subsequent public notice. In addition, each applicant identified in Attachment B of the *Auction No. 64 Comment Public Notice* that wishes to remain eligible for competitive bidding for station TV–NTSC011–51 must provide its FCC Registration Number (FRN) prior to 5 p.m. Eastern Time (ET) on November 16, 2005. An FRN for an applicant identified in Attachment B is necessary in order for the FCC Auction System to display TV–NTSC011–51 in the construction permit selection list on its electronic short-form application. If an applicant fails to provide this information in the prescribed manner and before the deadline specified, the applicant will not be able to select a construction permit for station TV–NTSC011–51 in its electronic short-form application, its long-form application will be dismissed, and it will no longer be eligible for competitive bidding for a construction permit for station TV–NTSC011–51.

5. To submit an FRN for association with construction permit TV–NTSC011–51, each applicant listed in Attachment B of the *Auction No. 64 Comment Public Notice* must provide, prior to 5 p.m. ET on November 16, 2005, its precise applicant name and FRN in an e-mail to *auction64@fcc.gov* or by facsimile to Kathryn Garland at (717) 338–2850. Applicants that do not have an FRN must obtain one by registering using the FCC's Commission Registration system (CORES). To access CORES, click on the CORES link under Related Sites on the FCC Auctions page at *http://wireless.fcc.gov/auctions/*. Next, follow the directions provided to register and receive an FRN. Each applicant should retain this number and password and keep such information strictly confidential.

6. Interested parties should note that some of the stations listed in Attachment A of the *Auction No. 64 Comment Public Notice* are single channel, digital-only television stations. Those stations are identified in Attachment A of the *Auction No. 64 Comment Public Notice* as DTV. These stations must be operated in digital television mode. Those stations indicated in Attachments A and B of the *Auction No. 64 Comment Public Notice* as NTSC are single-channel stations that must be operated as either NTSC analog stations or, if they meet the Commission's interference requirements, may be operated as DTV stations.

7. To allow an adequate period of time before issuance of bidding rules, to permit notice and comment on proposed auction procedures, and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Bureaus seek comment on a variety of auction-specific procedures prior to the start of Auction No. 64.

II. Auction Structure

A. Simultaneous Multiple-Round Auction Design

8. Auction No. 64 will use the FCC's Integrated Spectrum Auction System (ISAS or FCC Auction System), a redesign of the previous auction application and bidding systems. The Bureaus propose to award all construction permits included in Auction No. 64 in a simultaneous multiple-round auction. As described further below, this methodology offers every construction permit for bid at the same time with successive bidding rounds in which eligible bidders may place bids. That is, bidding will remain open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

B. Upfront Payments and Bidding Eligibility

9. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum. As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, the Bureaus propose the schedule of upfront payments for each construction permit as set forth in Attachments A and B of the *Auction No. 64 Comment Public Notice*. The Bureaus seek comment on this proposal.

10. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachments A and B of the *Auction No. 64 Comment Public Notice*, on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that construction permit. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold

provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. The Bureaus seek comment on this proposal.

C. Activity Rules

11. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity will be the sum of the bidding units associated with the construction permits upon which it places a bid during the current round and the bidding units associated with the construction permits upon which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing the bidder's ability to bid on some construction permits or eliminating the bidder from further bidding in the auction.

12. The Bureaus propose to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureaus propose that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureaus further propose that the Bureaus retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. For example, when monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held construction permits. The Bureaus seek comment on these proposals.

13. For Auction No. 64, the Bureaus propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by four-thirds (4/3).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

14. The Bureaus seek comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

15. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

16. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) the bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

17. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

18. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

19. The Bureaus propose that each bidder in Auction No. 64 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The Bureaus seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

20. For Auction No. 64, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction

starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

21. The Commission will conduct Auction No. 64 over the Internet. Alternatively, telephonic bidding will also be available. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

22. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details on viewing round results, including the location and format of downloadable round results files will be included in the same public notice.

23. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureaus seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

24. The Bureaus seek comment on the use of minimum opening bid amounts and/or reserve prices in Auction No. 64. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

25. The Bureaus propose to establish minimum opening bid amounts for Auction No. 64. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool.

26. For Auction No. 64, the proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service, proposed population coverage, market size, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 64 is set forth in Attachments A and B of the *Auction No. 64 Comment Public Notice*. The Bureaus seek comment on this proposal.

27. If commenters believe that these minimum opening bid amounts will result in substantial numbers of unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on such factors as the potential value of the spectrum being auctioned including the type of service, proposed population coverage, market size, and other relevant factors that could reasonably have an impact on valuation of the broadcast spectrum. The Bureaus also seek comment on whether, consistent with 47 U.S.C. Section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

C. Bid Amounts

28. In each round, eligible bidders will be able to place bids on a particular construction permit in any of nine different amounts, if a bidder has sufficient eligibility to place a bid on the particular construction permit. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount calculated using a smoothing formula and additional amounts calculated using a bid increment percentage.

i. Minimum Acceptable Bid Amounts

29. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount calculated using a smoothing formula, as described below. The Bureaus will round the result using the Bureaus standard rounding procedures, in which results above $10,000 are rounded to the nearest $1,000, results below $10,000 but above $1,000 are rounded to the nearest $100, and results below $1,000 are rounded to the nearest $10.

30. For Auction No. 64, the Bureaus propose to calculate minimum acceptable bid amounts by using a smoothing formula, as was done in several other auctions. The smoothing formula calculates minimum acceptable bid amounts by first calculating a percentage increment. The percentage increment for each construction permit is a function of bidding activity on that construction permit in prior rounds; therefore, a construction permit that has received many bids will have a higher percentage increment than a construction permit that has received few bids.

31. The calculation of the percentage increment used to determine the minimum acceptable bid amounts for each construction permit for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round, except for Round 1 calculations, for which the activity index from the prior round is set at 0 because there is no prior round. The current activity index is equal to a weighting factor times the number of bidders that submit bids on the construction permit in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the construction permit. Smoothing formula equations and examples are shown in Attachment C of the *Auction No. 64 Comment Public Notice.*

32. In the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

ii. Additional Bid Amounts

33. The acceptable bid amounts in addition to the minimum acceptable bid amount for each construction permit are calculated using a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc.

34. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

D. Provisionally Winning Bids

35. At the end of a bidding round, a provisionally winning bid amount for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. If the auction were to end with no higher bids being placed for that construction permit, the winning bidder would be the one that placed the selected provisionally winning bid. However, the remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

36. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids confer activity.

E. Information Regarding Bid Removal and Bid Withdrawal

37. For Auction No. 64, the Bureaus propose the following bid removal and bid withdrawal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed in that round. Once a round closes, a bidder may no longer remove a bid. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment.

38. For auctions for which bid withdrawals are permitted, a bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109. The Bureaus seek comment on these bid removal and bid withdrawal procedures.

39. In the *Part 1 Third Report and Order*, 63 FR 2315 (Jan. 15, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular construction permit if the Bureaus find that a bidder is abusing the Commission's bid withdrawal procedures.

40. Applying this reasoning, the Bureaus propose to limit each bidder in Auction No. 64 to withdrawing provisionally winning bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The one round in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in the one round in which a bidder's one withdrawal is used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureaus seek comment on this proposal. The Bureaus also invite comments on whether bid withdrawals should not be permitted in Auction No. 64 in light of the site-specific nature of television broadcast authorizations, the small number of construction permits available in this auction, or other factors.

F. Stopping Rule

41. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 64, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits.

42. Bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or places any withdrawals. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

43. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 64:

a. Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal or submits any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. The Bureaus further seek comment on whether this modified stopping rule should be used

at any time or only in stage two of the auction.

b. Keep the auction open even if no bidder submits any new bids, applies a waiver or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

c. Declare that the auction will end after a specified number of additional rounds (which is called a special stopping rule). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

44. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the minimum acceptable bid percentage for the limited number of construction permits on which there is still a high level of bidding activity. The Bureaus seek comment on these proposals.

IV. Due Diligence

45. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the TV or DTV Table of Allotments and allotting the TV channel(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act contained in 47 CFR chapter 1, part 1, subpart I.

46. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 64 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 64 are strongly encouraged to continue such research during the auction.

47. Potential bidders should note that, in November of 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service, including rules to provide interference protection for eligible Class A television stations from new full power television stations, in the *Class A Report and Order,* 65 FR 29985 (May 10, 2000).

48. Given the Commission's ruling in the *Class A Report and Order,* a winning bidder in Auction No. 64, upon submission of its long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate any full power television station proposed in this auction. Information about the identity and location of Class A television stations is available from the Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mb*) and on the Media Bureau's Class A television Web page: *http://www.fcc.gov/mb/video/files/classa.html.*

49. Potential bidders for any new television facility in this auction are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

V. Conclusion

50. Comments are due on or before October 14, 2005, and reply comments are due on or before October 21, 2005. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission. Parties who file comments by paper must file an original and four copies of each filing. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

51. The Bureaus also require that all comments and reply comments be filed electronically to the following address: *auction64@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to *Auction No. 64 Comments* and the name of the commenting party. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection between 8 a.m. and 4:30 p.m. Monday through Thursday or 8 a.m. to 11:30 a.m. on Friday in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and will also be posted on the Web page for Auction No. 64 at *http://wireless.fcc.gov/auctions/64.*

52. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of

the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions Spectrum and Access Division, WTB.

[FR Doc. 05–20355 Filed 10–6–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, October 12, 2005. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: *Appointment of Financing Corporation Directors.*

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

By the Federal Housing Finance Board.

Dated: October 5, 2005.

John P. Kennedy,

General Counsel.

[FR Doc. 05–20350 Filed 10–5–05; 1:40 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Cross County Bancshares, Inc., Wynne, Arkansas; to acquire 13.91 percent of the voting shares of First Southern Bank, Batesville, Arkansas (a de novo bank).

2. First Horizon National Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Town and Country Bank of the Ozarks, Republic, Missouri.

Board of Governors of the Federal Reserve System, October 4, 2005.

Margie Shanks,

Associate Secretary of the Board.

[FR Doc. E5–5532 Filed 10–6–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Assistant Secretary for Planning & Evaluation; Medicaid Program; Meeting of the Medicaid Commission—October 26–27, 2005

AGENCY: Assistant Secretary for Planning & Evaluation (ASPE), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medicaid Commission. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Medicaid Commission will advise the Secretary on ways to modernize the Medicaid program so that it can provide high-quality health care to its beneficiaries in a financially sustainable way.

DATES: *The Meeting:* October 26–27, 2005. The meeting will begin at 9 a.m. each day.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by October 18, 2005 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES:

The Meeting: The meeting will be held at the following address: Holiday Inn on The Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, United States, telephone: 1 (202) 638–1616, fax: 1 (202) 638–0707.

Web site: You may access up-to-date information on this meeting at *http://www.cms.hhs.gov/faca/mc/default.asp.*

FOR FURTHER INFORMATION CONTACT: Nancy Barnes, Executive Secretary, (202) 205–9164.

SUPPLEMENTARY INFORMATION: On May 24, 2005, we published a notice (70 FR 29765) announcing the Medicaid Commission and requesting nominations for individuals to serve on the Medicaid Commission. This notice announces a public meeting of the Medicaid Commission.

Topics of the Meeting: The Commission will discuss options for making longer-term recommendations on the future of the Medicaid program that ensure long-term sustainability. Issues to be addressed may include, but are not limited to: Eligibility, benefit design, and delivery; expanding the number of people covered with quality care while recognizing budget constraints; long term care; quality of care, choice, and beneficiary satisfaction; and program administration. The Commission may discuss the need to divide into subgroups for the purpose of focusing on particular issues within this broad subject, including a discussion of which members would serve on which subgroup.

Procedure and Agenda: This meeting is open to the public. There will be a public comment period at the meeting. The Commission may limit the number and duration of oral presentations to the time available. We will request that you declare at the meeting whether or not

you have any financial involvement related to any services being discussed.

After the presentations and public comment period, the Commission will deliberate openly. Interested persons may observe the deliberations, but the Commission will not hear further comments during this time except at the request of the Chairperson. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

Dated: October 3, 2005.

Michael J. O'Grady,

Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

[FR Doc. 05–20189 Filed 10–6–06; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Correction To A Notice of Meetings

With this Notice, AHRQ is publishing a correction to the following ''Study Section'' meetings published in the **Federal Register** on September 15, 2005, Volume 70, Number 178, Page 54558, see also *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05–18388.htm,* reflect correct dates:

- Name of Subcommittee: Health Research Dissemination and Implementation.
- Date: October 20, 2005.
- Name of Subcommittee: Health Care Technology and Decision Sciences.
- Date: October 27, 2005.
- Name of Subcommittee: Health Care Quality and Effectiveness Research.
- Date: October 28, 2005.

Dated: September 30. 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–20250 Filed 10–6–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section

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 committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health(NIOSH).

Times and Dates: 8 a.m.–5 p.m., October 18, 2005. 8 a.m.–5 p.m., October 19, 2005.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314, telephone 703–684–5900, fax 703–684–1403.

Status: Open 8 a.m.–8:30 a.m., October 18, 2005. Closed 8:30 a.m.–5 p.m., October 18, 2005. Closed 8 a.m.–5 p.m., October 19, 2005.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant applications received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–8:30 a.m. on October 18, 2005, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the study section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in subsections (c)(4) and (c)(6), of the section 552b, Title 5, United States Code, and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone 404–498–2511, fax 404–498–2569.

This notice is being published less than 15 days prior to the meeting due to the unexpected urgency of the topics that will be discussed.

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: October 3, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–20174 Filed 10–6–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1513]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Disclosure of Ownership and Financial Control Interest Statement; *Form No.:* CMS–1513 (OMB #0938–0086); *Use:* This information must be collected by State agencies and CMS regional offices to determine whether providers/suppliers meet the eligibility requirements for Titles XVIII, XIX, Clinical Laboratory Improvement Amendments (CLIA), and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Recordkeeping and Reporting—Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 125,000; *Total*

Annual Responses: 125,000; *Total Annual Hours:* 62,500.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on November 7, 2005.

OMB Human Resources and Housing Branch, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 29, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–20101 Filed 10–6–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1557 and CMS–1880/1882 and CMS 10142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form Clinical Laboratory Improvement Amendments (CLIA) and supporting regulations under 42 CFR 493.1–493.2001; *Form Number:* CMS–1557 (OMB#: 0938–0544); *Use:* This form is used by the State agency to determine a laboratory's compliance with CLIA. This information is needed for a laboratory's CLIA certification and recertification; *Frequency:* Recordkeeping and Reporting—Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal, State, Local or Tribal Government; *Number of Respondents:* 25,000; *Total Annual Responses:* 12,500; *Total Annual Hours:* 6,250.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Request for Certification as a Supplier of Portable X-Ray Services and Portable X-Ray Survey Report Form under the Medicare and Medicaid Program—Portable X-Ray Survey Report and Supporting Regulations under 42 CFR 486.100–486.110; *Form Number:* CMS–1880/1882 (OMB#: 0938–0027); *Use:* The Medicare program requires portable X-ray suppliers to be surveyed for health and safety standards. The CMS–1882 is the survey form that records survey results. The CMS–1880 is used by the surveyor to determine if a portable X-ray applicant meets the eligibility requirements. This information serves as a screen for the State survey agency to determine if the portable X-ray supplier has the basic capabilities to participate in the Medicare program. CMS will use this information to make certification decisions; *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 655; *Total Annual Responses:* 98; *Total Annual Hours:* 172.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage and Prescription Drug Plans (PDP) contained in 42 Code of Federal Regulation (CFR): 422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350 ; *Form Number:* CMS–10142 (OMB#: 0938–0944); *Use:* Under the Medicare Modernization Act, Medicare Advantage Organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing bid to CMS for approval. The BPT software is used by MAOs and PDPs to price their plan benefit package. The BPT software is used by CMS to review and approve the plan pricing proposed by each organization; *Frequency:* Reporting '' On occasion, Annually and As required by new legislation; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 350; *Total Annual Responses:* 350; *Total Annual Hours:* 12,050.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS'' Web site address *at http://www.cms.hhs.gov/regulations/pra/,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on December 6, 2005.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Melissa Musotto, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 30, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–20228 Filed 10–6–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10171]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health

and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because the normal procedures are likely to cause a statutory deadline to be missed which may result in public harm.

Section 1860D–23 and 1860D–24 of the Social Security Act, added by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), requires the Secretary to establish requirements for prescription drug plans to ensure the effective coordination between Part D plans, State pharmaceutical assistance programs and other payers. These requirements have been codified into the Code of Federal Regulations at 42 CFR 423.464.

Part D sponsors will be responsible for making system changes related to enrollment file sharing, claims processing and payment, reconciliation and tracking of the true out-of-pocket expenditures of beneficiaries prior to the implementation of Part D (January 1, 2006). System changes must also be implemented by State pharmaceutical assistance programs so that they may provide additional drug benefits at the pharmacy to Part D beneficiaries. In addition to making system changes, these changes must be tested, which will require additional time prior to January 1, 2006. Failure to make system changes may result in the delay in the implementation of the program and may result in a direct harm to beneficiaries since delays or mistakes in claims processing may result in beneficiaries not receiving their medications, or being unable to pay for medications out-of-pocket until the system issue is resolved.

CMS is requesting OMB review and approval of this collection by November 8, 2005, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by November 7, 2005.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Coordination of Benefits between Part D Plans and Other Prescription Coverage Providers; *Use:* This information is necessary to assist with coordination of prescription drug benefits provided to the Medicare beneficiary at the pharmacy; *Form Number:* CMS–10171 (OMB#: 0938–NEW); *Frequency:* On occasion and monthly; *Affected Public:* Business or other for-profit, Federal, State, Local and Tribal Government; *Number of Respondents:* 56,320; *Total Annual Responses:* 2,153,767,270; *Total Annual Hours:* 1,017,914.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *paperwork@cms.hhs.gov,* or call the Reports Clearance Office at (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be received by the designees referenced below by November 7, 2005: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Melissa Musotto, CMS–10171. and, OMB Human Resources and Housing Branch, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 30, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–20229 Filed 10–6–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0178]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 7, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Under the regulations implementing the Federal Import Milk Act (FIMA) (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit. Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the

milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50° F. In addition, the regulations in part 1210 (21 CFR part 1210) require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22).

In the **Federal Register** of May 31, 2005 (70 FR 30951), FDA published a 60-day notice requesting public comment on the information collection provisions.

FDA received one letter in response, which contained several comments and suggestions. These suggestions and FDA's responses follow.

The comment stated that the collection of information in forms FDA 1815, FDA 1993, FDA 1994, FDA 1995, FDA 1996, and FDA 1997 is necessary and that most of these forms provide practical information. However, the comment requested a number of changes to the forms. First, the comment suggested that certification of tuberculosis-free status in Form FDA 1815 and Form FDA 1994 should be done in a manner consistent with the U.S. Department of Agriculture's Animal Plant Health and Inspection Service (APHIS) guidelines entitled ''Bovine Tuberculosis Eradication Uniform Methods and Rules'' (APHIS 91–45–011). Another comment suggested that that Form FDA 1815 and Form FDA 1995 include a requirement that the submitter certify that the dairy cows are free from brucellosis and that the certification of brucellosis-free status should be done in a manner consistent with the APHIS guidelines published in the document entitled ''Brucellosis Eradication: Uniform Methods and Rules'' (APHIS 91–45–013).

FDA agrees that, where possible, Federal agencies should act in a consistent manner. However, FDA declines to make the suggested changes to its forms because such changes are not necessary. The two referenced documents are published by APHIS as part of its national animal disease eradication efforts undertaken by the National Center for Animal Health Programs under the statutory authority provided by the Animal Health Protection Act (7 U.S.C. 8301–8320). These are domestic programs in the United States which are designed to address the general health status of U.S. domestic cattle. Under the statutory authority provided by FIMA, FDA regulates all foreign-produced milk and cream imported into the United States. FIMA requires certification of the general health of the animal, which certification is obtained by FDA on Form FDA 1995. Although the two statutory authorities may differ, the practices presented in the APHIS documents already are being followed by FDA. FDA considers the status of the brucellosis and tuberculosis control programs in the country offering milk for importation into the United States and bases its acceptance decision on that status.

Another comment stated that Form FDA 1996 and Form FDA 1997 do not provide practical information and should be made consistent with Form FDA 2359a, which, the comment states, is ''utilized to ensure milk sanitation standards are met at the farm level.''

FDA disagrees that Form FDA 1996, ''Dairy Farm Sanitation Report,'' and Form FDA 1997, ''Score Card for Sanitary Inspection of Milk Plants,'' do not provide practical information. The information collected on these two forms is used by the agency in determining whether the imported milk or cream offered for import meet FIMA's requirements for sanitary inspections of dairy farms and plants (21 U.S.C. 142). FDA also disagrees that the two forms should be made consistent with Form FDA 2359a because that form is used domestically for inspection of facilities producing Grade ''A'' milk products. FDA does not use it for inspections of facilities producing manufacturing-grade milk domestically. Thus, it would be inappropriate for FDA to use it for inspection of foreign facilities manufacturing non-Grade ''A'' milk products.

The comment also opposed electronic submission of the forms and suggested that several changes should be made to the requirements of FIMA and the agency's related Compliance Policy Guide. These comments are outside the scope of the four collection of information topics on which the notice solicits comments and, thus, will not be addressed here.

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 1815/Permits granted on certificates	1210.23	8	1	8	0.5	4.0
FDA 1993/Application of permit	1210.20	8	1	8	0.5	4.0
FDA 1994/Tuberculin test	1210.13	1	1	1	0.5	0.5
FDA 1995/Physical examination of cows	1210.12	1	1	1	0.5	0.5
FDA 1996/Sanitary inspection of dairy farms	1210.11	8	200	1,600	1.5	2,400

TABLE 1.— ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 1997/Sanitary inspections of plants	1210.14	8	1	8	2.0	16.0
Totals						2,425.0

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
1210.15	8	1	8	.05	0.40

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the number of current permit holders and the number of inquiries that FDA has received regarding requests for applications in the past 3 years. No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. Low burden has been estimated for Forms FDA 1994 and 1995 because they are not are not used often. The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms.

Dated: October 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20148 Filed 10–6–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0404]

Pediatric Ethics Subcommittee of the Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of the Pediatric Ethics Subcommittee of the Pediatric Advisory Committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Ethics Subcommittee of the Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Pediatric Advisory Committee on FDA, and certain Department of Health and Human Services (HHS), regulatory issues.

Date and Time: The meeting will be held on November 15, 2005, from 8:30 a.m. to 4 p.m.

Addresses: Electronic copies of the documents for public review can be viewed at the Pediatric Advisory Committee (PAC) Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Ethics Subcommittee meeting for 11–15–05.) Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select Docket No. 2005N–0404 entitled ''Leuprolide IRB Referral'' and follow the prompts to submit your statement. Written comments should be submitted to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please submit comments by 4:30 p.m. on November 1, 2005. Received comments may be viewed on the FDA Web site at: *http://www.fda.gov/ohrms/dockets*, or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Location: Washington DC North/Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Jan N. Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14C–06), Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov*. Please call the FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001, for up-to-date information on this meeting.

Agenda: The Pediatric Ethics Subcommittee of the Pediatric Advisory Committee will meet to discuss a referral by an Institutional Review Board (IRB) of a proposed clinical investigation involving children as subjects, that is regulated by FDA and may be supported by HHS. The proposed clinical investigation is entitled ''Gonadotropin Releasing Hormone (GnRH) Agonist Test in Disorders of Puberty.'' Because the proposed clinical investigation would be regulated by FDA, and conducted or supported by HHS, both FDA and the Office for Human Research Protections, HHS, will participate in the meeting.

After presentation of an overview of the IRB referral process, background information on disorders of puberty and

hormonal actions of leuprolide, an overview of the protocol and the referring IRB's deliberations on the protocol, and a summary of public comments received concerning whether the protocol should proceed, the subcommittee will discuss the proposed protocol and develop a recommendation regarding whether the protocol should proceed. The subcommittee's recommendation will then be presented to the FDA Pediatric Advisory Committee on November 16, 2005; the announcement of the November 16 and 17, 2005, Pediatric Advisory Committee meeting can be found elsewhere in this issue of the **Federal Register**.

Elsewhere in this issue of the **Federal Register** is also a notice announcing a public comment period concerning whether the proposed clinical investigation should proceed. Information regarding submitting comments during that period is contained in that notice.

The background materials for the subcommittee meeting will be made publicly available no later than the day before the meeting and will be posted under the PAC Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Advisory Committee, Pediatric Ethics Subcommittee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by November 4, 2005. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon.

Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by November 4, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Jan Johannessen at least 7 days prior to the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 3, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20302 Filed 10–5–05; 11:25 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services (HHS), when that research is also regulated by FDA.

Date and Time: The meeting will be held on Wednesday, November 16, 2005, from 8 a.m. to 6 p.m., and Thursday, November 17, 2005, from 8 a.m. to 5 p.m.

Location: Washington DC North/Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Jan N. Johannessen, Office of Science and Health Coordination of the Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, rm. 14C–06) Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov* or FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up to date information on this meeting.

Agenda: On Wednesday, November 16, 2005, the committee will hear and discuss the recommendation of the Pediatric Ethics Subcommittee from its meeting on November 15, 2005, regarding a referral by an Institution Review Board of a proposed clinical investigation involving children as subjects that is regulated by FDA and is conducted or supported by the Department of Health and Human Services. The committee will also discuss pediatric obesity and clinical trial designs for the evaluation of devices intended to treat pediatric obesity.

On Thursday, November 17, 2005, the committee will continue its discussion of clinical trial designs for, and ethical issues related to, the evaluation of devices intended to treat pediatric obesity.

The background material will become available no later than the day before the meeting and will be posted under the Pediatric Advisory Committee (PAC) Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Advisory Committee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 4, 2005. Oral presentations from the public will be scheduled on Wednesday, November 16, 2005 between approximately 1:30 p.m. and 2:30 p.m. and Thursday, November 17, 2005, between approximately 9:15 a.m. and 10:15 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by November 4, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Jan Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 3, 2005.

Jason D. Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20303 Filed 10–5–05; 11:25 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0404]

Solicitation of Public Review and Comment on Research Protocol: Gonadotropin-releasing Hormone Agonist Test in Disorders of Puberty

AGENCY: Office of Public Health and Science and Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS), and the Food and Drug Administration (FDA), are soliciting public review and comment on a proposed research protocol entitled ''Gonadotropin-releasing Hormone (GnRH) Agonist Test in Disorders of Puberty.'' The proposed research would be conducted at the University of Chicago Hospitals General Clinical Research Facility and supported by the National Center for Research Resources of the National Institutes of Health (NIH). Public review and comment are solicited regarding the proposed research protocol under the requirements of HHS and FDA regulations.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. on Tuesday, November 1, 2005.

ADDRESSES: Electronic copies of the documents for public review can be viewed at the Pediatric Advisory Committee (PAC) Docket Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Ethics Subcommittee meetings.) Submit written comments to the Division of Dockets Management (HFA–305), Docket No. 2005N–0404, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be viewed on FDA's Web site at *http://www.fda.gov/ohrms/dockets/05n0404/05n0404.htm*, or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kevin Prohaska, Office for Human Research Protections, The Tower Building, 1101 Wootton Pkwy., suite 200, Rockville, MD 20852, 240–453–6900, FAX: 240–453–6909, e-mail: *kprohaska@osophs.dhhs.gov*; or Jan N. Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14C–06), Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov*.

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS that are not otherwise exempt and that propose to involve children as subjects require Institutional Review Board (IRB) review in accordance with the provisions of HHS regulations for the protection of human subjects in 45 CFR part 46, subpart D. Under FDA's interim final rule effective April 30, 2001, FDA adopted similar regulations in part 50, subpart D (21 CFR part 50, subpart D) to provide safeguards for children enrolled in clinical investigations of products regulated by FDA. Because the proposed research, ''Gonadotropin-releasing Hormone (GnRH) Agonist Test in Disorders of Puberty,'' would be supported by NIH, a component of HHS, and would be regulated by FDA, both HHS and FDA regulations apply to this proposed research.

Under HHS regulations in 45 CFR 46.407, and FDA regulations in § 50.54, if an IRB reviewing a protocol to be conducted or supported by HHS for a clinical investigation regulated by FDA does not believe that the proposed research involving children as subjects meets the requirements of HHS regulations in 45 CFR 46.404, 46.405, or 46.406, and FDA regulations in §§ 50.51, 50.52, or 50.53, respectively, the research may proceed only if the following conditions are met: (1) IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (2) the Secretary (HHS) and the Commissioner (FDA), after consultation with experts in pertinent disciplines (e.g., science, medicine, education, ethics, law) and following opportunity for public review and comment, determine either: (a) That the research in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406 under HHS regulations, and §§ 50.51, 50.52, or 50.53 under FDA regulations, or (b) that the following conditions are met: (i) The research or clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research or clinical investigation will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408 and § 50.55.

HHS has received a request on behalf of the University of Chicago Hospitals' IRB to review under 45 CFR 46.407 the protocol entitled ''Gonadotropin-releasing Hormone (GnRH) Agonist Test in Disorders of Puberty.'' The principal investigator proposes to administer leuprolide 10 micrograms/kilogram to approximately 300 subjects with and without a disorder of puberty followed by serial blood determinations of endogenous sex-related hormones. Serial blood draws will be done through an indwelling venous catheter using an automated pump. Children will be closely supervised in the research facility for two overnight stays. The specific aim of the study is to test the hypothesis that the response to the injection of the GnRH agonist, leuprolide acetate, will distinguish among the causes of precocious puberty and delayed puberty.

The University of Chicago Hospitals IRB determined that the full protocol was not approvable under 45 CFR 46.404, 46.405, or 46.406 because the proposed administration of leuprolide acetate poses more than minimal risks to the control subjects, there is no prospect of direct benefit to the individual control subjects, the interventions or procedures do not present an experience to the control group that is reasonably commensurate with those inherent in their expected medical situation, and the control group does not have the condition or disorder under study. However, the IRB did find that this research presents a reasonable opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children. Accordingly, the University of Chicago Hospitals IRB forwarded the protocol to OHRP under 45 CFR 46.407 for consideration. Because this clinical investigation is regulated by FDA, FDA's regulations at part 50, subpart D, specifically § 50.54, apply as well.

In accordance with 45 CFR 46.407(b) and § 50.54(b), OHRP and FDA are soliciting public review and comment

on this proposed clinical investigation. In particular, comments are solicited on the following questions: (1) What are the potential benefits, if any, to the subjects and to children in general; (2) what are the types and degrees of risk that this research presents to the subjects; (3) are the risks to the subjects reasonable in relation to the anticipated benefits, and is the research likely to result in knowledge that can be generalized about the subjects' disorder or condition; and (4) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children.

To facilitate the public review and comment process, FDA has established a public docket and placed in that docket information relating to the proposed clinical investigation, including the following items: Correspondence from the University of Chicago referring the proposed research protocol to HHS for consideration under 45 CFR 46.407, correspondence from FDA and OHRP to the University of Chicago regarding the proposed protocol, the research protocol, NIH's grant funding the protocol, IRB's deliberations on the proposed research, and the parental permission documents. Electronic copies of these documents can be viewed at PAC's Docket Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Ethics Subcommittee of PAC meetings.) These materials are also available on OHRP's Web site at *http://www.hhs.gov/ohrp/children/*. (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**.)

All written comments concerning this proposed research should be submitted to FDA's Division of Dockets Management under 21 CFR 10.20, no later than 4:30 p.m. on Tuesday, November 1, 2005. The background materials and received comments may be viewed on FDA's Web site at *http://www.fda.gov/ohrms/dockets/05n0404/05n0404.htm* or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The background materials may also be viewed on OHRP's Web site at *http://www.hhs.gov/ohrp/children/*. (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**.)

Dated: October 3, 2005.

Jason D. Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20301 Filed 10–5–05; 11:25 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group. Subcommittee F—Manpower & Training, NCI–F Initial Review of Manpower and Training Grants.

Date: October 25–26, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20234 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute Clinical Sciences and Epidemiology.

Date: November 7, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Time: 7 p.m. to 11 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Select Bethesda, Versailles I, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian E. Wojcik, PhD, Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2114, Bethesda, MD 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 30, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20251 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute Basic Sciences.

Date: November 7–8, 2005.

Time: November 7, 2005, 7 p.m. to 11 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Select Bethesda, Versailles I, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Time: November 8, 2005, 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Health Scientific Administrator, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 30, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20252 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, R21 Clinical Research Panel II.

Date: October 28, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeanette M. Hosseini, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd, Suite 401, Bethesda, MD 20892, (301) 594–9096.

Dated: September 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20236 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group Clinical Trials Review Committee.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore Inner Harbor, 300 Light Street, Baltimore, MD 21202.

Contact Person: Patricia A. Haggerty, PhD, Section Chief, Clinical Studies and Training Scientific Review Group Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7194, MSC 7924, Bethesda, MD 20892, 301/435–0288, *haggertp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20222 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Genetics of Hypertension Associated Treatment (GENHAT)

Date: October 10, 2005.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Erma Jenkins, Review Branch, Room 7178A, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institute of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Education Project Applications (R25s)

Date: October 27, 2005.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6702 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–0314, *huangz@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20226 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: November 3, 2005.

Time: 11:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838. (Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS.)

Dated: September 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20232 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Beta Cell Regeneration for Diabetes Therapy.

Date: November 3, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20219 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, RFA–05–001 Leadership for HIV/AIDS Clinical Trials Networks: Vaccine.

Date: October 16–18, 2005.

Time: October 16, 2005, 7 p.m. to 6 p.m. October 18, 2005.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas J. Hiltke, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *thiltke@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, RFA–05–001 Leadership for HIV/AIDS Clinical Trials Networks: Microbicides

Date: October 18–20, 2005.

Time: October 18, 2005, 7 p.m. to 6 p.m. October 20, 2005.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Marc L. Lesnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3264, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–6636, *ml436d@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, RFA–05–001 Leadership for HIV/AIDS Clinical Trials Networks: Prevention.

Date: October 20–22, 2005.

Time: October 20, 2005, 7 p.m. to 6 p.m. October 22, 2005.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas J. Hiltke, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *thiltke@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Leadership for HIV/AIDS Clinical Trials Networks.

Date: October 23–25, 2005.

Time: October 23, 2005, 7 p.m. to 6 p.m. October 25, 2005.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Kenneth E. Santora, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ks216i@nih.gov*.

Name of Committee: National Institutes of Allergy and Infectious Diseases Special Emphasis Panel, RFA–05–001 Leadership for HIV/AIDS Clinical Trial Networks: Clinical Optimization.

Date: October 25–27, 2005.

Time: October 25, 2005, 7 p.m. to 6 p.m. October 27, 2005.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Hagit David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–4596, *hdavid@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, RFA 05–001 Leadership for HIV–AIDS Clinical Trials Network (Adult).

Date: October 27–29, 2005.

Time: October 27, 2005, 8 a.m. to 10 p.m. October 29, 2005.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2606, *tshahan@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20220 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Research Program Projects (P01s).

Date: October 20, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Hlth. Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20221 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Teleconference review of an unsolicited complement program project application.

Date: October 20, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3118, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *qvos@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20223 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Sciences Subcommittee.

Date: October 27–28, 2005.

Time: October 27, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Time: October 28, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: September 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20225 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Child Interventions Panel.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center for Leadership Dev., DOLCHE Hotel & Conference Destination, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959, *csarampo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: September 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20233 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disease; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: November 16–17, 2005.

Open: November 16, 2005, 6 p.m. to 6:20 p.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 16, 2005, 6:20 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 17, 2005, 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, (301) 496–4129.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20235 Filed 10–5–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: October 20–21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Rm. 3266, Bethesda, MD 20892–7616, (301) 451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbioloby and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 23, 2005.

Anthony M. Coelho Jr.,

Acting Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 05–20237 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, CDRC Conflicts.

Date: October 27, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20238 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (53)—R13 Conference Grant Applications

Date: October 4, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Fishers Building, 5635 Fishers Lane, 3146, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, (301) 443–2369, *lgunzera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20239 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (50)—Training Applications (T32S).

Date: October 18, 2005.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project, Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *Igunzera@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (51).

Date: November 3, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project, Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *Igunzera@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 DD (50) RFA–006–002.

Date: November 21–22, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304, 301–443–2926, *skandasa@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH52 Fellowship Applications.

Date: December 5, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *Igunzera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20241 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Endoscopic Clinical Research in Pancreatic and Biliary Diseases.

Date: November 1, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 772, 6707 Democracy Boulevard, Bethesda, MD 20892–5452; (301) 594–2242; *sahaia@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Boston Area Community Health (BACH).

Date: November 8, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452; (301) 594–7791, *goterrobinsonsonc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 29, 2005

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20247 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–19, Review R13.

Date: October 27, 2005.

Time: 11 a.m. to 12 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892; (301) 594–4827.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–21 Review R13.

Date: November 2, 2005.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38J, Bethesda, MD 20892–6402; (301) 594–4809; *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20248 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, October 20, 2005, 8:30 a.m. to October 21, 2005, 3 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD, 20814 which was published in the **Federal Register** on September 9, 2005, 70 FR 53674–53675.

The dates and times of the meeting are the same but the location has changed to the Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD. The meeting is closed to the public.

Dated: September 30, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20249 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Member Conflict

Date: October 6, 2005

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431, *mgren1@nida.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel

Date: November 8, 2005

Time: 11:05 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: September 30, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20253 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health

Date: November 9–10, 2005

Time: November 9, 2005, 9 a.m. to 5 p.m.

Agenda: Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Time: November 10, 2005, 9 a.m. to 12:30 p.m.

Agenda: Same as above.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, (301) 402–1770.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/orwh/*, where an agenda

and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20224 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Renal and Urological Studies integrated Review Group Cellular and Molecular Biology of the Kidney Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Fellowships.

Date: October 19, 2005.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095H, MSC 7854, Bethesda, MD 20892, 301–402–3962, *masoodk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development of Methods for In Vivo Imaging and Bioengineering Research.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Oncogenesis.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Joanna M. Watson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892, (301) 435–1048, *watsonjo@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—B Study Section.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov*.

Name of Committee: Center for Scientific Special Emphasis Panel, Small Business Medical Imaging: Ultrasound.

Date: October 24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Hector Lopez, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–2392, *lopezh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and Neuroprosthetics/Brain Disorders and Clinical Neuroscience/SBIR.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–0902, *charlesvi@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Genetics Study Section.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Cardiovascular Devices.

Date: October 24–25, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–2204, *matusr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodegeneration, Neuroinflammation, Oxidate Stress and Mitochondria.

Date: October 24–25, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham, 2500 Calvert Street NW., Washington, DC 20037.

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator,

MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F03B Biophysical and Physiological Neuroscience.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F03A Biochemical and Molecular Neuroscience.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, (301) 402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group. Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 24–25, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044, *leszczyd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—A Study Section.

Date: October 24–25, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: October 24–25, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Neurotoxicology.

Date: October 24, 2005.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Bioengineering.

Date: October 24, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Reproductive Endocrinology.

Date: October 24, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hemoglobin Stabilizing Protein.

Date: October 24, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Behavioral Aspects of Addiction.

Date: October 24, 2005.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Behavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.

Date: October 24–25, 2005.

Time: 8:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *shirelym@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893,

Dated: September 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20218 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personel information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Chemoprevention.

Date: October 19, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fovea Development.

Date: October 19, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–03–106: Innovations in Biomedical Computational Science and Technology.

Date: October 24, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Novel Technologies for In Vivo Imaging and Image-Guided Cancer Interventions.

Date: October 24–25, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, (301) 435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: October 25–26, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.

Date: October 25–26, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, (301) 435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Rheumatology and Dermatology: Special Emphasis Panel.

Date: October 25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, (301) 451–1327, *tthyagar@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.

Date: October 25–26, 2005.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: October 25–26, 2005.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7184, Bethesda, MD 20892, (301) 435–2270.

Name of Committee: Center for Scientific Review Emphasis Panel, Molecular, Cellular, and Developmental, Neurobiological Small Business Applications.

Date: October 25, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Silver Spring, 8506 Fenton Street, Silver Spring, MD 20910.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN Bioengineering Research Partnerships.

Date: October 25, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–0902, *charlesvi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Biobehavior Regulation.

Date: October 25, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Lattice Structure/Function.

Date: October 25, 2005.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel Erythrocyte Hydration.

Date: October 25, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118,

MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Topics in Virology.

Date: October 26–27, 2005.

Time: 8 a.m. to 5 p.m

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business Medical Imaging: PET/MRI/X-Ray.

Date: October 26, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Shared Instrumentation: Computer Cluster and Lithography System.

Date: October 26, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zhenya Li, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022B, MSC 7849, Bethesda, MD 20892, (301) 435–2417, *lizhenya@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel MHC Transcription in Tumor Immunology.

Date: October 26, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Neurodegeneration and Glia.

Date: October 26, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Arthropod Development.

Date: October 26, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *hoffeldt@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Anterior Eye Disease Study Section.

Date: October 26–28, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20231 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Infection.

Date: October 13, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952; *menzelro@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B Study Section.

Date: October 20–21, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1219; *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Emphasis Panel, Diagnosis of Eating Disorders.

Date: October 20, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Inn at the Colonnade, 4 West University Parkway, Baltimore, MD 21218.

Contact Person: Deborah L. Young-Hyman, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7759, Bethesda, MD 20892, 301–451–8008; *younghyd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: October 20–22, 2005.

Time: 5 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, 301–435–1741; *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Synthetic and Biological Chemistry Review Panel.

Date: October 25, 2005.

Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator; Center for Scientific Review; National Institutes of Health; 6701 Rockledge Drive, Room 4095D, MSC 7806; Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurodifferentiation, Plasticity, and Regeneration Study Section.
Date: October 26–27, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jury's Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Stress, Emotion, and Health.
Date: October 26, 2005.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Computing and Health Informatics Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evalaute grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Health Services Organization and Delivery Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Kathy Salaita, SCD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014–2, MSC 7770, Bethesda, MD 20892, 301–451–8504, *dalaitak@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Pooks Hill Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Neelakanta Ravindranath, PhD, MVSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, (301) 435–1034, *ravindrn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology Fellowship and AREA.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Paek-Gyu Lee, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 402–7391, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Medical Imaging: Optical and Video.
Date: October 27, 2005.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, 301–435–0912, *levinv@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Language and Communication Study Section.
Date: October 27–28, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.
Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.
Date: October 27–28, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Rouge, 1315 16th St., NW., Washington, DC 20036.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.
Date: October 27–28, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davisy@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Holiday Inn Downtown, 1155 14th Street, NW., Washington, DC 20005.

Contact Person: Ping Fan, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr,nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysical and Biochemical Sciences Fellowships Review Panel.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3120, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *litwackm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NeuroPharmacology Small Business.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jerome Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507, *wujekjer@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Child Psychopathology and Developmental Disabilities Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0676, *siroccok@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Arlington, 950 North Stafford Street, Arlington, VA 22203.

Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health; 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: October 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Nori Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.

Date: October 27–28, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20805.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301/435–1503, *elwoodwi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project Grant in Cell Biology.

Date: October 27, 2005.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dry Eye/Glaucoma.

Date: October 27, 2005.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Olfaction.

Date: October 27, 2005.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186,

MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships—Biomedical Sensing.

Date: October 27, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, (301) 435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT Member Conflicts.

Date: October 27, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nuclear Membrane Proteins.

Date: October 27, 2005.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jonathan Arias, PHD, Scientific Review Administrator, National Institutes of Health, 6701 Rockledge Drive, Room 5170 MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Approaches in Cancer Therapeutics.

Date: October 27, 2005.

Time: 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Watson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892, 301–435–1048, *watsonjo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 30, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–20254 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: North-2'-Deoxy-Methanocarbathmydines as Antiviral Agents Against Poxvirus

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license to practice the following invention as embodied in the following patent applications: HHS Ref. No. E–047–2005; U.S. Provisional Patent Application Number 60/684,811, filed on May 25, 2005 to N&N Scientific, having a place of business in Maryland but incorporated in Illinois. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before December 6, 2005 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Robert M. Joynes, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *joynesr@od.nih.gov;* Telephone: (301) 594–6565; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The field of use may be limited to the treatment of poxviruses.

The subject invention relates to a method for the prevention or treatment of poxvirus infection by administering an effective amount of an antiviral agent comprising a carbocyclic 2'-deoxynucleoside analog (as described in U.S. Patent Nos. 5,629,454 and 5,869,666) to an individual in need thereof. North-methanocarbathymidine (N–MCT), a thymidine analog with a pseudosugar moiety locked in the northern conformation, which was previously shown to exert strong activity against herpes simplex virus types 1 and 2, has been identified as exhibiting potent activity against poxviruses. N–MCT effectively blocks poxvirus synthesis through its phosphorylated metabolite, which is more efficiently produced in poxvirus-infected cells. This compound is approximately seven times more potent than cidofovir against vaccinia and cowpox in cell culture. The higher potency and target specificity of N–MCT against poxvirus, as well as its high margin of safety, makes it a highly desirable agent against the poxviridae family. In addition, the mechanism of N–MCT may be different from that of cidofovir, making it even more desirable due to the scarcity of the potential available efficacious anti-pox agents currently under development.

The licensed territory will be exclusive worldwide.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 27, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–20242 Filed 10–6–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance

Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service positions of the Department.

EFFECTIVE DATES: This Notice is effective October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Carmen Arrowood, Office of the Chief Human Capital Office, telephone (202) 357–8348.

SUPPLEMENTARY INFORMATION: Each Federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Adamoli, Joseph B.
Adams, Audrey L.
Aguilar, David V.
Ahern, Jayson P.
Alexander, Jane A.
Arcos, Cresencio
Balaban, Richard L.
Bathurst, Donald G.
Beardsworth, Richard
Bergman, Cynthia L.
Besanceney, Brian R.
Blair, James D.
Bone, Craig, E. RADML
Boudreaux, Chad
Boyd, David G.
Brice-O'Hara, Sally RADM
Broderick, Matthew E.
Buikema, Edward G.
Cannatti, Ashley
Charbo, Lawrence Scott
Cira, Anthony Thomas
Cuddihy, Joseph D.
Currier, John P. RADML
DiGregorio, Elizabeth L.
Dinanno, Thomas G.
Dolan, Kay Frances
Dooher, John C.
Duke, Elaine C.
Dunham, Carol A.
Dunlap, James L.
Fagerholm, Eric N.
Filler, Joshua D.
Forman, Marcy M.
Fonash, Peter M.
Hale, Janet
Hall, Michael J.
Hasting, Charles R.
Hastings, Scott O.
Hill, Kenneth
Holcomb, Lee B.
Irving, Paul D.
James, Ronald J.
Jones, Rendell L.
Kelleher, John J.
Kent, Donald H.
Khatri, Prakash I.
Kubricky, John J.
Kunkel, David W. RADM
Ladd, Paul E.
Lang, Gary J.
Langlois, Joseph E.
Lederer, Calvin M.
Lockwood, Thomas
Lumsden, Sheila
Lynch, Dennis F.
MacDonald, John R.
Mandelker, Sigal P.
Maner, Andrew B.
Martinez-Fonts, Alfonso
Matticks, John
Maursstad, David I.
Mayer, Matt A.
McCampbell, Christy
McCarthy, Maureen I.
McDonald, Sallie
McKennis, Amy D.
McNamara, John C.
McQueary, Charles E.
Mitchell, Andrew
Mocny, Robert A.
Nagel, Brian K.
Nimmich, Joseph L. RDML
O'Neill, James P.
O'Reilly, Terrance M.
Ostergaard, Daniel J.
Oxford, Vayl S.
Paar, Thomas C.
Parent, Wayne
Prewitt, Keith L.
Prillaman, K. Gregg
Quinn, Thomas
Reyes, Juan
Richmond, Susan
Riggs, Barbara S.
Robles, Alfonso
Rogers, George D.
Rossides, Gale D.
Rothwell, Gregory D.
Runge, Jeffrey W.
Santana, Catherine Y.
Schied, Eugene H.
Schmitz, Michael T.
Shingler, Wendell C.
Sirois, R. Dennis RADM
Smith, Robert M.
Sposato, Janis A.
Stalhschmidt, Patricia K.
Stallworth, Charles E.
Stenger, Michael C.
Stephan, Robert B.
Stephens, Michael P.
Sullivan, Daniel
Sullivan, Mark J.
Sutherland, Daniel W.
Tambone, Victor J.
Teufel, Hugo
Thomson, E. Keith
Torres, John
Trissell, David A.
Turner, Pamela J.
Turner, Todd H.
Vanacore, Michael J.
Venuto, Kenneth T. RADM
Vint, Norbert E.
Walker, Carmen H.
Weber, Robert W.
West, Robert C.
Whitehead, Joel R. RDML
Whitford, Richard A.
Wiggins, Michael
Williams, Dwight
Williams, James A.
Williams, Richard N.
Wood, John F.
Woodson, Mary Ann

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 30, 2005.

Rodney Markham,

Director, Executive Resources, Office of the Chief Human Capital Office.

[FR Doc. 05–20167 Filed 10–6–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–22611]

Neptune LNG, L.L.C., Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce that they have received an application for the licensing of a

liquefied natural gas (LNG) deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: The Deepwater Port Act of 1974, as amended, requires any public hearing on this application to be held not later than June 5, 2006, and requires a decision on the application to be made not later than September 5, 2006.

ADDRESSES: The public docket for USCG–2005–22611 is maintained by the: Docket Management Facility, U.S. Department of Transportation, 400 Seventh, Street SW., Washington, DC 20590–0001.

Docket contents are available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its website for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202–267–1752, e-mail: *RBachman@comdt.uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Receipt of Application

On February 17, 2005, the Coast Guard and MARAD received an application from Neptune LNG, L.L.C., a subsidiary of Suez LNG North America L.L.C., for all Federal authorizations required for a license to own, construct, and operate a deepwater port governed by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 et seq. (the Act). Requested supplemental application materials were received on September 7, 2005. On September 30, 2005, we determined that the application contains all information required by the Act.

Background

According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed by the Secretary of Transportation. Statutory and regulatory requirements for licensing appear in 33 U.S.C. 1501 et seq. and in 33 CFR Part 148. Under delegations from and agreements between the Secretary of Transportation and the Secretary of Homeland Security, applications are processed by the Coast Guard and MARAD. Each application is considered on its merits.

The Act provides strict deadlines for processing an application. Once we determine that an application contains the required information, we must hold public hearings on the application within 240 days, and the Secretary of Transportation must render a decision on the application within 330 days. We will publish additional **Federal Register** notices to inform you of these public hearings and other procedural milestones, including environmental review. The Secretary's decision, and other key documents, will be filed in the public docket.

At least one public hearing must take place in each adjacent coastal State. For purposes of the Act, Massachusetts is the adjacent coastal State for this application. Other States can apply for adjacent coastal State status in accordance with 33 U.S.C. 1508(a)(2).

Summary of the Application

Neptune LNG, L.L.C. proposes to construct, own and operate a deepwater port, named Neptune, in the Federal waters of the Outer Continental Shelf on blocks NK 19–04 6525 and NK 19–04 6575, approximately 22 miles northeast of Boston, Massachusetts, in a water depth of approximately 250 feet. The Neptune deepwater port would be capable of mooring up to two approximately 140,000 cubic meter capacity LNG carriers by means of a submerged unloading buoy system.

The LNG carriers, or shuttle regasification vessels (SRVs), would be equipped to store, transport and vaporize LNG, and to odorize and meter natural gas which would then be sent out by conventional subsea pipelines. Each SRV carrier would have insulated storage tanks located within its hull. Each tank would be equipped with an in-tank pump to circulate and transfer LNG to the vaporization facilities located on the deck of the SRV. The proposed vaporization system would be closed-loop water-glycol, re-circulating heat exchangers heated by steam from boil-off gas/vaporized LNG-fired boilers.

The major fixed components of the proposed deepwater port would be an unloading buoy system, eight mooring lines consisting of wire rope and chain connecting to anchor points on the seabed, eight suction pile anchor points, approximately 2.5 miles of natural gas flow line with flexible pipe risers and risers manifolds, and approximately 11 miles of 24-inch natural gas transmission line with a hot tap and transition manifold to connect to the existing Algonquin Hubline℠.

Neptune would have an average throughput capacity of 400 million standard cubic feet per day (MMscfd) and a peak capacity of approximately 750 MMscfd. Natural gas would be sent out by means of two flexible risers and a subsea flowline leading to a 24-inch gas transmission line. These risers and flow line would connect the deepwater port to the existing 30-inch Algonquin Hubline℠. No onshore components or storage facilities are associated with the proposed deepwater port application.

Construction of the deepwater port components would be expected to take 36 months, with a startup of commercial operations in late 2009. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 20 years.

Dated: October 4, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, Coast Guard.

H. Keith Lesnick,

Senior Transportation, Specialist, Deepwater Ports Program Manager, Maritime Administration.

[FR Doc. 05–20278 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–915–1640–PM]

Notice of Temporary Closure for Maryland Point Property, Charles County, MD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure for Maryland Point Property, Charles County, Maryland.

SUMMARY: The Bureau of Land Management-Eastern States (BLM–ES) is temporarily closing the Maryland Point property formerly known as the Maryland Point Naval Observatory. This closure complies with the requirements of the Federal Land Policy and Management Act to provide for the safety of the public. The authority for this closure is found in 43 CFR 8364.1. The closure is necessary to protect the public from hazardous materials and conditions remaining from past military use.

DATES: This temporary closure will be effective the date this notice is published in the **Federal Register** and will continue until remediation of hazards are completed, and an Activity Plan for Maryland Point is completed and approved.

FOR FURTHER INFORMATION CONTACT: Gary Cooper, BLM–ES, Lower Potomac Field Station Manager, 10406 Gunston Road, Lorton, Virginia 22079, at (703) 339–8009.

SUPPLEMENTARY INFORMATION: The BLM-administered public lands affected by this closure total approximately 23 acres, more or less, and include the driveway from the gate on Maryland State Highway 224 and the fenced portion of the property.

Information as to when the area will no longer be closed to entry will be posted at the Lower Potomac Field Station at the address stated above. In addition, the BLM plans to announce the lifting of the closure through the media, including announcements in local newspapers. This former military installation has not been opened to the public in at least the last 30 years. No recreational activities have occurred at this property since the BLM acquired the property from the U.S. Navy in 2002, pending a study of the conditions at the site. This study is completed, and the hazards to the public are documented in a BLM contractor's report titled ''Maryland Point Removal of Existing Structures Design.'' The BLM is now seeking funds to remove hazardous materials at the site. Subsequently, an activity plan and Environmental Assessment will be completed to determine impacts to sensitive areas, habitat, and visitor safety. It is necessary that this area be closed until the hazards are remediated, and the activity plan is completed.

Prohibited Act: Under 43 CFR 8364.1 and 8360.0–7, the Bureau of Land Management is providing notice that no entry will be allowed to the closure area without risk of penalty.

Exemptions: Persons who are exempt from these rules include: any Federal, State or local office employee or volunteer in the scope of his or her duties; members of any organized rescue or fire-fighting force in performance of an official duty; contractors and their employees while engaged in official duty; and others authorized in writing by the Bureau of Land Management.

Penalties: Penalties for violating this closure notice are found in 43 CFR 8360.0–7. Any person who fails to comply with a closure order may be fined not more than $1,000 or imprisoned for no more than 12 months, or both.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. 05–20085 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–DQ–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 24, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Rita beginning on September 23, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under the Stafford Act will be limited to 75 percent of the total eligible costs. For a 34-day period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Vice Admiral Thad Allen, of the United States Coast Guard is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Cameron, Calcasieu, Beauregard, Vermilion, and Jefferson Davis for Individual Assistance.

All parishes in the State of Louisiana for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance, at 75 percent Federal funding of total eligible costs. For a 34-day period, assistance for debris removal and emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20282 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 5 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 Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 30, 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 Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

The parishes of Sabine and St. Landry 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.)

(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.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20288 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 3 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 Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 29, 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 Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Mary, Terrebonne, and Vermilion Parishes for Public Assistance [Categories C-G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance).

(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.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20290 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 4 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 Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 29, 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 Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

The parishes of Ascension, St. Martin, Vernon, and West Baton Rouge 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.)

(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.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20289 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1606–DR]

Texas; Amendment No. 2 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 Texas (FEMA–1606–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 30, 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 Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

Angelina, Brazoria, Fort Bend, Harris, Montgomery, Nacogdoches, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Walker Counties 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.)

(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.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20283 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1606–DR]

Texas; 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 for the State of Texas (FEMA–1606–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 2005, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security as follows:

I have determined that the damage in certain areas of the State of Texas resulting from Hurricane Rita beginning on September 23, 2005, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of September 24, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, for a total of 34 days, through and including October 27, 2005.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify Governor Perry and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(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.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20284 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1606–DR]

Texas; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1606–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: September 24, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from Hurricane Rita beginning on September

23, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation and the Other Needs Assistance under the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Chambers, Galveston, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, and Tyler for Individual Assistance.

All 254 counties in the State of Texas for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance, at 75 percent of the total eligible costs. For a period of up to 72 hours, assistance for debris removal and emergency protective measures, including direct Federal assistance, will be funded at 100 percent of the total eligible costs.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20291 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Countywide Per Capita Impact Indicator

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

ACTION: Notice.

SUMMARY: FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2005 will be increased.

EFFECTIVE DATE: October 1, 2005 and applies to major disasters declared on or after October 1, 2005.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Response and Recovery Directorate Policy No. 9122.1 provides that FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $2.94 for all disasters declared on or after October 1, 2005.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.6 percent for the 12-month period ended in August 2005. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2005.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20293 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Statewide Per Capita Impact Indicator

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

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2005 will be increased.

EFFECTIVE DATE: October 1, 2005 and applies to major disasters declared on or after October 1, 2005.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.18 for all disasters declared on or after October 1, 2005.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.6 percent for the 12-month period ended in August 2005. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2005.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20296 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Maximum Amount of Assistance Under the Individuals and Households Program, Notice of Maximum Amount of Repair Assistance, and Notice of Maximum Amount of Replacement Assistance

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

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amounts for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2005.

EFFECTIVE DATE: October 1, 2005 and applies to major disasters declared on or after October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Berl Jones, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–4235.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the ''Act''), 42 U.S.C. 5174, prescribes that FEMA must annually announce the maximum amounts for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Act with respect to any single emergency or major disaster is $27,200. The maximum amount of Repair Assistance is $5,400, and the maximum amount of Replacement Assistance is $10,900. The increases in award amounts as stated above are for any single emergency or major disaster declared on or after October 1, 2005.

FEMA bases the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 3.6 percent for the 12-month period ended in August 2005. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2005.

(Catalog of Federal Domestic Assistance No. 97.048, Individuals and Households—Housing; 97.049 Individuals and Households—Disaster Housing Operations; 97.050, Individuals and Households—Other Needs)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20292 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Notice of Adjustment of Disaster Grant Amounts

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

ACTION: Notice.

SUMMARY: FEMA gives notice of an increase of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2005.

EFFECTIVE DATE: October 1, 2005 and applies to major disasters declared on or after October 1, 2005.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act) prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Small Project Grants, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase of the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Stafford Act, to $57,500 for all disasters declared on or after October 1, 2005.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.6 percent for the 12-month period ended in August 2005. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2005.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20294 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 29, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–19889 Filed 10–6–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by November 7, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit 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.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Smithsonian's National Zoological Park, Washington, DC, PRT–700309.

The applicant requests renewal of a permit to take, import, export, re-export and purchase in interstate commerce and foreign commerce blood, hair, and other tissue samples and salvaged carcasses from any endangered or threatened wildlife exotic to the United States for the purpose of scientific research to enhance the survival of the species in the wild. Samples are to be obtained from wild, captive-held or captive-born animals. Samples collected from animals in the wild are to be taken opportunistically during immobilization of the animals by local wildlife management officials or trained veterinarians. Wild animals may be immobilized but not harmed for collection of samples. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: The Institute of Greatly Endangered and Rare Species (T.I.G.E.R.S), Myrtle Beach, South Carolina, PRT–106401.

The applicant requests a permit to export six male and one female generic tigers (*Panthera tigris*) to the Samutprakan Crocodile Farm and Zoo in Samutprakan, Thailand for the purpose of display, education, and enhancement of the survival of the species.

Applicant: Susan Mikota, dba Elephant Care International, Waveland, MS, PRT–106773.

The applicant requests a permit to import biological samples collected from Asian elephants (*Elephas maximus*) in Nepal for the purpose of scientific research (study of tuberculosis) to enhance the survival of the species in the wild.

Applicant: Los Angeles Zoo, Los Angeles, California, PRT–106091.

The applicant requests a permit to import live, captive born peninsular pronghorn juveniles (*Antilocapra americana peninsularis*) from Reserva de la Biosfera 'El Vizcaino,' Mexico for the purpose of recovery and enhancement of the survival of the species in the wild. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Feld Entertainment, Vienna, Virginia, PRT–106879.

The applicant requests a permit to export biological samples of Asian elephants (*Elephas maximus*) to the African Lion Safari, Ontario, Canada for the purpose of breeding and enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: John C.J. Wirth, Dubois, WY, PRT–110976.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David C. West, Perris, CA, PRT–110435.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Furman R. Cullum, Charleston, SC, PRT–109615.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Louis A. Souza, Salinas, CA, PRT–109575.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Stephen W. Mayes, Franklin, KY, PRT–110014.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Raymond T. Cuppy, Souderton, PRT–110044.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: James F. Hascup, Ringwood, NJ, PRT–108384.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Michael J. Vorst, Destin, FL, PRT–110049.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: September 30, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–20240 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Supplemental Environmental Impact Statement on the Translocation of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that we, the U.S. Fish and Wildlife Service (Service), have prepared a draft Supplemental Environmental Impact Statement on the Translocation of Southern Sea Otters (draft SEIS), which is available for public review. The draft SEIS evaluates options for continuing, revising, or terminating the southern sea otter translocation program (52 FR 29754; August 11, 1987). The document describes the proposed action and other alternatives under consideration and discloses the direct, indirect, and cumulative environmental effects of each of the alternatives.

DATES: We will accept comments on this draft SEIS until January 5, 2006. Public hearings regarding this draft SEIS and associated proposed rule will be held in Santa Barbara, California, on November 1, 2005, and in Monterey, California, on November 3, 2005.

ADDRESSES: Individuals who would like a copy of this draft SEIS for review should contact Greg Sanders, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003–7726. The draft SEIS is also available on the Internet at *http://ventura.fws.gov* and at the California libraries listed below:

Ventura County Library.

Santa Barbara County Library.

Monterey County Library.

Public hearing locations will be announced in the *Santa Barbara News Press* and the *Monterey Herald*.

For how to submit your comments, please see ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Greg Sanders, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003–7726 (telephone: 805/644–1766 x315; facsimile: 805/644–3958).

SUPPLEMENTARY INFORMATION: It is our intent that the draft SEIS be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this draft SEIS.

On July 27, 2000, we published a notice in the **Federal Register** (65 FR 46172) announcing our intent to prepare a supplement to our 1987 Final Environmental Impact Statement on the Translocation of Southern Sea Otters and inviting comments on the scope of the supplement. Comments submitted were considered and are reflected in the draft SEIS made available for comment through this notice.

Contrary to expectations and to the primary recovery objective of the program, the translocation of sea otters to San Nicolas Island has not resulted in an established population sufficient to repopulate other areas of the range should a catastrophic event affect the mainland population. Additionally, maintenance of a designated management (no-otter) zone has proven to be more difficult than anticipated and hinders recovery of the southern sea otter. The draft SEIS evaluates options for continuing, revising, or terminating the southern sea otter translocation program.

We consider six alternatives, including a No Action Alternative. Alternative 1 resumes implementation of the 1987 southern sea otter translocation program as originally defined. Alternative 2 resumes implementation of the 1987 southern sea otter translocation program but reduces the size of the management zone. Alternatives 3A, 3B, and 3C allow for the natural range expansion of southern sea otters through termination of the 1987 translocation program, including its associated translocation zone and management zone, but differ in the actions to be taken with sea otters existing in these zones upon termination of the program. Alternative 3A requires the short-term removal of sea otters from both the management zone and the translocation zone before natural range expansion is allowed. Alternative 3B requires the short-term removal of sea otters from the translocation zone only. The Service's proposed action (Alternative 3C) is to allow for the natural range expansion of sea otters through termination of the 1987 translocation program and to allow sea otters existing in the former translocation and management zones to remain there.

Public Comments Solicited

If you wish to comment, you may submit your comments and materials concerning this draft SEIS by any one of several methods:

(1) You may submit written comments and materials to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003–7726;

(2) You may send comments by electronic mail (e-mail) to *fw1seaotterseis@fws.gov*; or

(3) You may attend a public hearing and present oral testimony and/or written testimony.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we will withhold from the record a respondent's identity, as allowable by law. We will not consider anonymous comments. If you wish for us to withhold your name and/or address, you must state your preference 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.

This notice is provided pursuant to Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: September 20, 2005.

Michael Fris,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 05–19146 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of a Supplement to the Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Upper Mississippi River National Wildlife and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a Supplement to the Draft Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations, for the Upper Mississippi River National Wildlife and Fish Refuge (Refuge) located in Illinois, Iowa, Minnesota, and Wisconsin.

The Refuge has decided to draft a new preferred alternative (Alternative E) in the form of a Supplement to the Draft CCP and EIS. All current alternatives in the Draft CCP and EIS (Alternatives A through D) will remain and will be considered in preparing the Final CCP and EIS.

The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969, to advise other agencies and the public of our intentions.

ADDRESSES: Address comments to Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, 51 East Fourth Street, Room 101, Winona, MN 55987. Comments may also be submitted electronically to *r3planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Don Hultman at (507) 452–4232.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes.

The Service issued a Draft CCP and EIS on May 1, 2005, with a 120-day public review and comment period. The comment period ended August 31, 2005. During this time, 21 public information meetings and public workshops were held and attended by 2,900 citizens. More than 2,500 written comments were received.

The public will have an opportunity to review and comment on the Supplement for 60 days following its release. Public open houses will also be held in several communities during the comment period. Notice of availability of the Supplement will be published in the **Federal Register**. In addition, announcements of Supplement availability and public involvement opportunities will be made through special mailings, media announcements, and on the planning website listed below.

The current Draft CCP and EIS, along with other information on the planning process are available at *http://www.fws.gov/midwest/planning/uppermiss/index.html.*

We estimate that the Supplement to the Draft CCP and EIS will be available in November 2005.

Dated: September 8, 2005.

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 05–20171 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3259–EM]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3259–EM), dated September 20, 2005, and related determinations.

EFFECTIVE DATE: September 29, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 20, 2005:

Monroe County for debris removal [Category A] under the Public Assistance Program (already designated for emergency protective measures [Category B] under the Public Assistance Program.)

(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.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–20285 Filed 10–6–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–1310–DB]

Notice of Intent To Prepare an Environmental Impact Statement for the Moxa Arch Area Infill Gas Development Project, Lincoln, Sweetwater and Uinta Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and to conduct scoping for the Moxa Arch Area Infill Gas Development Project (MAIP), Lincoln, Sweetwater, and Uinta Counties, Wyoming.

SUMMARY: Under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM), Kemmerer Field Office, announces its intent to prepare an EIS on the potential impacts of a proposed natural gas development project consisting primarily of conventional gas well development, in the Moxa Arch area, Wyoming. The proposed additional wells would fill in or ''infill'' among existing wells drilled and developed under the Expanded Moxa Arch Area Natural Gas Development Project EIS and Record of Decision (ROD) (1997).

Drilling is proposed to occur over a 10-year period and the life-of-project is anticipated to be 40 years. The project area is located west of Green River, east of Lyman and Opal, and south of the Fontenelle Reservoir.

DATES: This notice initiates the public scoping process. The BLM can best use

public input if comments and resources information are submitted within 30 days of the publication of this notice. To provide the public with an opportunity to review the proposal and project information, the BLM will host meetings in Evanston, Rock Springs, and Kemmerer, Wyoming, during fall 2005. The BLM will notify the public of the meetings' dates, times, and locations at least 15 days prior to the event. Announcement will be made by news release to the media, individual mailings, and posting on the BLM Web site listed below (if available).

ADDRESSES: Please send written comments or resource information to the Bureau of Land Management, Kemmerer Field Office, Michele Easley, Project Manager, 312 Highway 189 North, Kemmerer, WY 83101. Electronic mail may be sent to: *kemmerer_wymail@blm.gov.* Please include ''ATTN: Moxa Arch Infill'' in the subject line. Additionally, the scoping notice will be posted on the Wyoming BLM NEPA Web page (if available) at *http://www.wy.blm.gov/nepa/nepadocs.htm.* If you are interested in viewing material referenced or posted on the BLM Web site, please contact the Kemmerer Field Office as to its availability.

Your input is important and will be considered in the environmental analysis process. BLM will keep respondents informed of decisions resulting from this analysis. Please note that public comments and information submitted regarding this project, including respondents' names, street addresses, and e-mail addresses, will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold any or all personal information from public review or from disclosure under the Freedom of Information Act, you must state this plainly at the beginning of your written comment. Such requests will be honored to the extent allowed by the 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.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Michele Easley, Project Manager, 312 HWY 189 N, Kemmerer, Wyoming 83101. Ms. Easley may also be reached by telephone at (307) 828–4524, or by sending an electronic message to: *Michele_Easley@blm.gov.*

SUPPLEMENTARY INFORMATION: The project area is generally located within Townships 15 through 23 North, Ranges 111 through 113 West, 6th Principal Meridian, Lincoln, Sweetwater, and Uinta Counties, Wyoming. The project area is bisected by Interstate 80 through its southern third. It includes approximately 476,260 acres of mixed Federal, State, and private lands in Sweetwater, Lincoln, and Uinta counties. Approximately 230,400 acres (48 percent) are managed by the BLM; 31,665 acres are managed by the Bureau of Reclamation (7 percent); 13,505 are owned and managed by the State of Wyoming (3 percent), and approximately 200,690 acres (42 percent) are privately owned. The Kemmerer Field Office manages the Federal mineral estate underlying the BLM-administered lands within the project area.

The project proponents are EOG Resources and other operators (henceforth referred to as the Operators) within the Moxa Arch area. Since the issuance of the Expanded Moxa Arch EIS, drilling activities have been conducted that have led to the development of about 1,400 producing gas wells as of February 2005. At that time, the Operators submitted to the BLM a proposal to infill drill within the same approximately 476,260 acre project area analyzed in the Expanded Moxa Arch EIS. The Operators propose to develop over the long term approximately 1,860 additional wells.

The Operators' proposal to conduct infill drilling among the existing wells is based on the two zones, the core and the flank, described and illustrated in the Expanded Moxa Arch Natural Gas Development Project EIS and ROD (1997).

About 1,400 producing gas wells, with their attendant service roads and pipelines, are currently active in the project area. Because of the success rate of drilling activities conducted since the issuance of the 1997 Expanded Moxa Arch Area EIS, the Operators anticipate that infill drilling would facilitate the extraction of additional gas resources and extend production. The Operators propose to infill drill and develop approximately 1,860 additional wells at the rate of about 186 wells per year over a period of 10 years, or until the resource base is fully developed. Of these additional wells, approximately 1,226 will be drilled in the proven production or ''core'' area and 635 in the remaining ''flank'' area. The anticipated life of each producing well is expected to be about 40 years.

The Operators anticipate drilling infill wells to the Frontier and Dakota formations at varying densities ranging from 67 acres to 160 acres per aliquot section (4 to 10 additional wells/section) in the core area and 320 acres per well (2 additional wells/section) in the flank area. The proposed wells would be drilled during a 10-year period after project approval.

Approximately 75 percent of the new wells drilled south of the northern boundary of Township 20 North may produce ''commingled'' gas from both the Frontier and the Dakota formations via a common well bore. The use of commingled downholes generally limits overall surface disturbance by reducing the need to drill separate wells to distinct formations. The total number of wells drilled would depend largely on factors outside of the Operators' control, such as production success, engineering technology, economics, availability of commodity markets, and lease stipulations and restrictions.

Infrastructure required to support gas production would include electric power lines, roads, gas flow lines and pipelines, well pads, water injection and evaporation facilities, and gas treatment facilities. Gas would be transported through pipelines to centralized compression and treatment facilities. Additional compression may be required on transportation pipelines to transport produced gas. Limited well site compression may be necessary. Produced water would be trucked to approved evaporation pits or water injection wells.

Major issues at this time include potential impacts to: Air quality, semi-desert ecosystems and their dependent wildlife species (including antelope, sage grouse, and white-tailed prairie dog colonies and their associated species); vegetation, including noxious weeds; reclamation; and riparian habitat associated with the Black's Fork, Hams Fork, and Green River corridors. The EIS and its information may be used to amend the Kemmerer RMP. Alternatives identified at this time include the proposed action and the no action alternatives.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 05–20198 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU75761, UTU76326]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases, UT

August 25, 2005.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), Eclipse Exploration Corporation filed a petition for reinstatement of oil and gas leases UTU75761 and UTU76326 for lands in Grand County, Utah, and it was accompanied by all required rentals and royalties accruing from April 1, 2003 and October 1, 2003, respectively, the dates of termination.

FOR FURTHER INFORMATION CONTACT: David H. Murphy, Acting Chief, Branch of Fluid Minerals at (801) 539–4070.

SUPPLEMENTARY INFORMATION: The Lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in as amended by Section 371(a) of the Energy Policy Act of 2005, Title III, the Bureau of Land Management is proposing to reinstate lease UTU75761 effective April 1, 2003, and lease UTU76326 effective October 1, 2003, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

David H. Murphy,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 05–20163 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW152216]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW152216 from Freeman Investments for lands in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW152216 effective March 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 05–20160 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–22–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW136681]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW136681 from Redstone Resources, Inc., Preston Reynolds & Co., Inc., and CH4 Energy, LLC for lands in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW136681 effective July 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 05–20161 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–22–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5700–EU; N–79995]

Notice of Intent To Prepare an Amendment to the Carson City Field Office Consolidated Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare a Resource Management Plan (RMP) amendment to address offering the sale of public land within Mineral County, Nevada not currently identified for disposal.

DATES: All relevant public meetings will be announced through the local news media, newsletters, and the BLM Web site at *http://www.nv.blm.gov/carson/* at least 15 days prior to the event. The minutes and list of attendees from each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

ADDRESSES: Comments should be addressed to Donald T. Hicks, Manager, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jo Ann Hufnagle, Lead Realty Specialist at the Carson City Field Office, (775) 885–6000. Documents pertinent to this proposal may be examined at the Carson City Field Office.

SUPPLEMENTARY INFORMATION: The proposed RMP amendment and land sale involve approximately 450 acres of public land in the vicinity of the Denton-Rawhide Mine in Mineral County, Nevada. The purpose of a sale would be to consolidate lands within and surrounding the open pit mine area into private ownership for future post-mine development, including use of the area as a landfill. As part of the RMP amendment, an EA will be prepared to analyze designation of the public land for disposal and sale of the land. Comments will be accepted throughout the RMP amendment and EA process. Prior to a sale offer, a Notice of Realty Action will be prepared and published in accordance with 43 CFR 2711.1–2. The plan amendment will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. Comments, including names and street addresses of respondents, will be available for public review at the Carson City Field Office during regular business hours 7:30 a.m. to 5 p.m. Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street 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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Donald T. Hicks,

Manager, Carson City Field Office.

[FR Doc. 05–20202 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4789; ES–053739, Group No. 42, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Illinois.

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 U.S. Army Corps of Engineers.

The lands we surveyed are:

Fourth Principal Meridian, Illinois

T. 9 S., R. 3 W.

The plat of survey represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines and the survey of the Lock and Dam No. 25 acquisition boundary on two accreted islands in the Mississippi River in Township 9 South, Range 3 West, of the Fourth Principal Meridian, in the State of Illinois, and was accepted on September 28, 2005.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: September 28, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–20172 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4789] ES–053738, Group No. 41, Missouri]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management.

ACTION: Notice of Filing of Plat of Survey; Missouri.

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 U.S. Army Corps of Engineers.

The lands we surveyed are:

Fifth Principal Meridian, Missouri

T. 54 N., Rs. 1 and 2 W.

The plat of survey represents the dependent resurvey of portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 24 acquisition boundary, in Township 54 North, Ranges 1 and 2 West, of the Fifth Principal Meridian, in the State of Missouri, and was accepted on September 28, 2005.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: September 28, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–20173 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Consultation on regulations regarding the disposition of unclaimed Native American cultural items excavated or discovered on Federal or tribal lands after November 16, 1990, pursuant to provisions of the Native American Graves Protection and Repatriation Act (NAGPRA)

AGENCY: National Park Service, Interior.

ACTION: Notice of consultation.

SUMMARY: This notice announces three consultation meetings that will be held to obtain oral and written recommendations on regulations to be drafted regarding the disposition of unclaimed Native American cultural items that are excavated or discovered on Federal or tribal lands after November 16, 1990 [43 CFR 10.7].

DATES: The three consultation meetings are scheduled for November 15–17, 2005:

1. Tribal consultation: November 15, 2005, 8:30 a.m. to noon, Albuquerque, NM. Authorized representatives of Indian tribes and Native Hawaiian organizations and traditional Native American religious leaders are invited to participate in this meeting. Tribal representatives wishing to make a public presentation at this session should submit a request to do so by November 11, 2005, including evidence that you are authorized to speak on

behalf of an Indian tribe or Native Hawaiian organization. This meeting supports the Secretary of the Interior's administrative policy on tribal consultation by encouraging maximum direct participation of representatives of tribal governments on important Departmental issues and processes.

2. Museum consultation: November 15, 2005, 1:00 p.m. to 4:30 p.m., Albuquerque, NM. Authorized representatives of museums and national museum and scientific organizations are invited to participate in this meeting. This meeting supports the Secretary of the Interior's responsibility to consult with museums and the scientific community in the development of these regulations. Museum representatives wishing to make a public presentation at this session should submit a request to do so by November 11, 2005, including evidence that you are authorized to speak on behalf of a museum or national museum or scientific organization.

3. Review Committee consultation: November 16–17, 2005, Albuquerque, NM. This meeting supports the Department of the Interior's responsibility to consult with the Review Committee regarding the development of regulations. Time will be scheduled during the Review Committee meeting for members of the public to provide oral and written recommendations. Members of the public wishing to make a public presentation at the Review Committee meeting should submit a request to do so by November 11, 2005.

Requests to make presentations at any of the sessions should be faxed to (202) 371–5197 by November 11, 2005.

Written comments may be mailed to Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW, Washington, DC 20240. Comments may also be faxed to Sherry Hutt at (202) 371–5197. Written comments should be postmarked or faxed no later than November 30, 2005.

ADDRESSES: The consultation sessions will be held at the Cochiti/Taos Room, Albuquerque Convention Center, 401 Second Street NW, Albuquerque, NM 87102. A block of lodging rooms has been set-aside at a reduced rate at the Double Tree Hotel, which is adjacent to the Convention Center. Reservations for rooms in this block may be made by calling (505) 247–3344 and referencing the National NAGPRA Program. Reservations must be made by October 31, 2005, to guarantee the reduced rate available for persons attending this meeting.

FOR FURTHER INFORMATION CONTACT: Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone: (202) 354–1479.

SUPPLEMENTARY INFORMATION: The purpose of the consultation meetings is to provide Native American organizations, museums and the scientific community, and the Native American Graves Protection and Repatriation Review Committee with an opportunity to consult on forthcoming regulations regarding the disposition of unclaimed Native American cultural items excavated or discovered on Federal or tribal lands after November 16, 1990.

The Native American Graves Protection and Repatriation Act provides criteria for determining the ownership of Native American cultural items that are excavated or discovered on Federal or tribal lands after November 16, 1990 [25 U.S.C. 3002 (a)]. The Secretary of the Interior clarified the ownership criteria by regulations published in 1995 [**Federal Register** Vol.60, no. 232, pages 62163–62164]. Ownership of such items is, with priority given in the order listed:

(1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual;

(2) In cases where the lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

(i) In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were discovered inadvertently;

(ii) In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(iii) In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were discovered inadvertently on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe:

(A) In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were discovered, or

(B) If it can be shown that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the objects [43 CFR 10.6 (a)].

The Act directs that Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary of the Interior in consultation with the Review Committee, Native American groups, representatives of museums, and the scientific community [25 U.S.C. 3002 (b)]. One section of the regulations was reserved for procedures to effect the disposition of Native American cultural items that are not claimed [43 CFR 10.7].

Participants in the consultation meetings are requested to comment on the following issues:

(1) How should the regulations deal with the distinction between cultural items for which ownership or control has been ascertained pursuant to 43 CFR 10.6 (a) but the identified lineal descendant, Indian tribe, or Native Hawaiian organization has not claimed the cultural items and cultural items for which ownership or control cannot be ascertained pursuant to 43 CFR 10.6 (a)?

(2) How long may a cultural item removed from Federal land after November 16, 1990 remain in Federal agency possession before it is considered unclaimed?

(3) What are the appropriate dispositions for unclaimed cultural items?

(4) How should the regulations deal with the management, preservation, and use of unclaimed cultural items?

Dated: September 23, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–20201 Filed 10–6–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review

Committee. The Review Committee will meet on November 16–17, 2005, in the Cochiti/Taos Room, Albuquerque Convention Center, 401 Second Street NW, Albuquerque, NM 87102, telephone (505) 768–4575. Meeting sessions will begin at approximately 8:30 a.m. and end at approximately 5:00 p.m each day. The agenda for the meeting includes an update on the status of national implementation of the Act; consultation on regulations regarding the disposition of unclaimed Native American cultural items excavated or discovered on Federal or tribal lands after November 16, 1990; consideration of requests for recommendations regarding the disposition of culturally unidentifiable human remains; discussion of the Review Committee's recommendations to Congress for 2005; discussion of the Review Committee's procedures for meetings, findings, and disputes; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

A block of lodging rooms has been set-aside at a reduced rate at the Double Tree Hotel, which is adjacent to the Convention Center. Reservations for rooms in this block may be made by calling (505) 247–3344 and referencing the National NAGPRA Program. Reservations must be made by October 31, 2005, to guarantee the reduced rate available for persons attending this meeting.

To schedule a presentation to the Review Committee during the meeting, submit a written request with an abstract of the presentation and contact information. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to Tim__McKeown@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA website, http://www.cr.nps.gov/nagpra; for the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.* Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Dated: September 23, 2005

C. Timothy McKeown,

Designated Federal Officer,Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 05–20200 Filed 10–6–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Pacific Lutheran University, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Pacific Lutheran University, Pierce County, Tacoma, WA. The human remains were removed from a site in Parkland, Pierce County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Pacific Lutheran University professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Cowlitz Indian Tribe, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; and Puyallup Tribe of the Puyallup Reservation, Washington.

Prior to 1938, human remains representing a minimum of one individual were removed from an unidentified site in Parkland, Pierce County, WA. The human remains were originally transferred to a Pacific Lutheran University faculty member who loaned them, along with other items from the same site, to the University of Washington, Burke Museum, Seattle, WA, in 1938. Most of the 1938 loan was returned in the early 1940s. However, the human remains were discovered in the Burke Museum's collections in 1995 and transferred to Pacific Lutheran University. No known individuals were identified. No associated funerary objects are present.

Funerary objects originally found with the remains, but no longer in the possession of either the Burke Museum or Pacific Lutheran University, indicate the human remains were interred during the historic period. The burial site location is located within the area ceded to the United States by the Niskwali, Payullup, Steilacoom, Squaxin, S'Homamish, Stehchass, T'Peeksin, Squiaitl, and Sa-heh-wamish in the treaty of Medicine Creek, December 26, 1854. The burial site location is believed to be located within the area recognized by a final judgment of the United States Court of Claim as the aboriginal land of the Puyallup Tribe of the Puyallup Reservation, Washington.

Officials of Pacific Lutheran University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one

individual of Native American ancestry. Officials of Pacific Lutheran University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Puyallup Tribe of the Puyallup Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact David R. Huelsbeck, Anthropology Department, Pacific Lutheran University, Tacoma, WA 98447, telephone (253) 535–7196, before November 7, 2005. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may proceed after that date if no additional claimants come forward.

Pacific Lutheran University is responsible for notifying the the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Cowlitz Indian Tribe, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; and Puyallup Tribe of the Puyallup Reservation, Washington that this notice has been published.

Dated: September 1, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–20199 Filed 10–6–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES 05–29]

Humboldt Project Conveyance, Pershing, Churchill and Lander Counties, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final environmental impact statement (FEIS).

SUMMARY: Pursuant to the National Environmental Policy Act 102(2) of 1969, the Bureau of Reclamation has prepared a FEIS for the Humboldt Project Conveyance, Pershing, Churchill, and Lander Counties, Nevada. The FEIS assesses the impacts of conveying title of the Humboldt Project (Project) and associated lands to the Pershing County Water Conservation District (PCWCD), State of Nevada, Lander County and Pershing County. The action is needed to comply with Title VIII of Pub. L. 107–282 which directs Reclamation to transfer title of the Project to the entities listed above.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the FEIS. At the end of the 30-day period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

FOR FURTHER INFORMATION CONTACT: To request a copy of the document, please call (775) 884–8352, or write or e-mail Caryn Huntt DeCarlo, Bureau of Reclamation, Lahontan Basin Area Office, 705 N Plaza, Room 320, Carson City, NV 89701, or e-mail *chunttdecarlo@mp.usbr.gov.* The FEIS is accessible from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=550.*

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** on February 26, 2003. A Notice of Availability of the Draft Environmental Impact Statement (DEIS) was published in the **Federal Register** on January 28, 2005 (70 FR 4149). The written comment period on the DEIS ended on March 28, 2005. The FEIS contains responses to all comments received and reflects comments and any additional information received during the review period.

The Project is located along the Humboldt River in northwestern Nevada. Reclamation began Project construction in 1935 and in 1941 the first water was delivered to agricultural lands in the Lovelock Valley from storage in Rye Patch Reservoir. PCWCD assumed operation of the Project in 1941. PCWCD has had several Project repayment contracts with Reclamation that have all been repaid. Project features include Battle Mountain Community Pasture, Rye Patch Dam and Reservoir, and the Humboldt Sink. Battle Mountain Community Pasture, located near Battle Mountain, is approximately 30,000 acres and is managed for grazing by the PCWCD under a lease agreement with Reclamation. Rye Patch Reservoir is located 26 miles upstream from Lovelock, is 21 miles in length, and has a capacity of 190,000 acre-feet. The State of Nevada manages the recreation at the reservoir under a management agreement with Reclamation and the PCWCD. The Humboldt Sink is also part of the Project and is managed by the State of Nevada under a management agreement with Reclamation.

Public Comment Availability

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

Dated: August 30, 2005.

Kirk C. Rodgers,

Regional Director, Mid-Pacific Region.

[FR Doc. 05–20187 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Shasta Lake Water Resources Investigation, Shasta and Tehama Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation proposes to prepare an EIS for the Shasta Lake Water Resources Investigation (SLWRI). Authorization for the investigation comes from Pub. L. 96–375, 1980; which directs the Secretary of the Interior to engage in feasibility studies related to enlarging Shasta Dam and Reservoir. Other directing legislation includes Title 34 of Pub. L. 102–575, the Central Valley Project Improvement Act and Pub. L. 108–137, the Energy and Water Development Act. In addition, enlargement of Shasta Dam was identified in the CALFED Programmatic Environmental Impact Report/Statement and Record of Decision (ROD) and in Pub. L. 108–361, the CALFED Bay-Delta authority.

DATES: A series of public scoping meetings will be held to solicit public input on the scope of the environmental document, alternatives, concerns, and

issues to be addressed in the EIS. The meeting dates are as follows:

- October 24, 2005, 10 a.m. to 1 p.m., Sacramento, CA.
- October 24, 2005, 6 to 9 p.m., Concord, CA.
- October 26, 2005, 1 to 4 p.m., Los Angeles, CA.
- November 1, 2005, 6 to 9 p.m., Fresno, CA.
- November 2, 2005, 6 to 9 p.m., Dunsmuir, CA.
- November 3, 2005, 6 to 9 p.m., Red Bluff, CA.

Submit written comments on or before December 6, 2005 to the address provided below.

ADDRESSES: The public scoping meeting locations are:

- Federal Building, 2800 Cottage Way, Rooms C–1001 and C–1002, Sacramento, CA.
- Heald Conference Center, 5130 Commercial Circle, Concord, CA.
- Metropolitan Water District of Southern California, 700 North Alameda Street Room 1–102, Los Angeles, CA.
- Piccadilly Inn, 2305 West Shaw Avenue, in Fresno, CA.
- Dunsmuir Community Building, 4835 Dunsmuir Avenue in Dunsmuir, CA.
- Red Bluff Community Center, Auditorium, 1500 South Jackson.

Written comments on the scope of the environmental document should be sent to: Ms. Sammie Cervantes, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Garcia, Reclamation Project Manager, at the above address, at 916–978–5009, TDD 916–978–5608, or via fax at 916–978–5094 or e-mail at *dgarcia@mp.usbr.gov.* If special assistance is required, please contact Ms. Cervantes at 916–978–5189, TDD 916–978–5608, or via e-mail at *scervantes@mp.usbr.gov* no less than 5 working days prior to the meetings. Further information on the investigation, including interim results, can be found on the SLWRI Web site at *http://www.usbr.gov/mp/slwri* or through the above contact persons.

SUPPLEMENTARY INFORMATION: Constructed from 1938 to 1945, Shasta Dam serves multiple purposes including flood control, irrigation and municipal and industrial water supplies, and hydropower generation. In addition, Shasta Lake significantly contributes to the regional economy through extensive recreational activities.

Initial feasibility studies in partial response to Pub. L. 96–375 culminated in a 1988 Wrap-Up Report which concluded that enlarging Shasta Dam and Reservoir could significantly increase water supply reliability, if and when water demands warranted the required financing. The current feasibility scope study primarily involving enlargement of Shasta Dam and Reservoir was reinitiated in 2000. Raising Shasta Dam is one of five surface water storage projects identified in the August 2000 CALFED ROD which includes North of Delta Off-Stream Storage, In-Delta Storage, Los Vaqueros Enlargement, and Upper San Joaquin River Basin Storage Investigation. These surface water storage projects are being developed further in separate feasibility studies.

The primary study area for the SLWRI is Shasta Dam and Reservoir; tributary rivers and streams, including the upper reaches of the Sacramento River, McCloud River, Pit River, and Squaw Creek; and the Sacramento River downstream from Shasta Dam to about the Red Bluff Diversion Dam. Because of the potential influence of a Shasta Dam modification on natural resources along the Sacramento River and on programs and projects in the Central Valley, the extended study area includes other major tributaries to the Sacramento River, the Sacramento-San Joaquin Delta, San Joaquin River basin, and service areas of the Central Valley Project (CVP) and State Water Project (SWP).

Planning studies to date have focused on identifying water resources problems and needs in the primary study area, developing a set of planning objectives to help guide the remainder of the feasibility study, and formulating several initial alternatives. These three important elements of the study are summarized below.

Problems and Needs

Major water and related resources problems and needs identified in the primary study area include:

- Anadromous Fish Restoration: The population of Chinook salmon has declined in the Central Valley. To address this salmon decline in the Sacramento River, various actions have been taken, ranging from establishing minimum flow requirements in the river to making structural changes at Shasta Dam. However, a need still exists for additional actions to benefit anadromous fish, especially in dry and critically dry water years.
- Water Supply Reliability: Demand for water in California exceeds available supplies. As the population of the Central Valley grows, the need to maintain a healthy and vibrant industrial and agricultural economy will increase while the demand for an adequate water supply becomes more acute.
- Other Resource Needs: Other identified problems and needs include the need for environmental restoration in the Shasta Lake area and downstream along the Sacramento River; the need for additional flood control along the upper Sacramento River; and growing demands for new energy sources in California and outdoor recreation in the primary study area.

Planning Objectives

The Problems and Needs in the study area were translated into Primary and Secondary Planning Objectives.

- Primary Planning Objectives: Alternatives will be formulated to address the primary objectives. The primary objectives for the SLWRI are: (1) Increase the restoration of anadromous fish populations in the Sacramento River primarily upstream from the Red Bluff Diversion Dam and (2) increase water supplies and water supply reliability for agricultural, municipal and industrial, and environmental purposes to help meet future water demands, with a focus on enlarging Shasta Dam and Reservoir.
- Secondary Planning Objectives: Through pursuit of the primary planning objectives, the following secondary objectives will be met to the extent possible: (1) Preserve and restore ecosystem resources in the Shasta Lake area and along the upper Sacramento River, (2) reduce flood damages along the Sacramento River; (3) develop additional hydropower capabilities at Shasta Dam, and (4) preserve outdoor recreation opportunities at Shasta Lake.

Initial Alternatives

From the Planning Objectives and a resulting planning constraints and criteria, a number of water resources management measures were identified. The most effective of measures were used to formulate a set of concept plans from which five initial alternatives were developed. Specific measures and combinations of measures in these initial alternatives will likely change in future studies and some may be combined with others or dropped from further consideration. In addition, other measures and combination of measures may emerge and warrant development into alternatives during the scoping process. These five initial alternatives are summarized below.

- No-Action (No Federal Action): Under the No-Action Alternative, the Federal Government would take no action toward implementing a specific plan to help increase anadromous fish survival opportunities in the upper

Sacramento River nor help address the growing water reliability issues in the Central Valley of California through the assistance of Shasta Dam and Reservoir.

• Increase Water Supply Reliability with Shasta Enlargement: The primary purpose of this initial alternative is to be consistent with the goals of the CALFED ROD, which focus on increasing CVP and SWP water supply reliability while contributing to increased anadromous fish survival. It includes raising Shasta Dam between 6.5 to 18.5 feet, which would increase storage space in Shasta Reservoir by 290,000 acre-feet and 640,000 acre-feet, respectively. The increased pool depth and volume also could contribute to incidental benefits for flood control, hydropower, and outdoor recreation.

• Increase Water Supply Reliability with Shasta Enlargement and Conjunctive Water Management: The primary purpose of this initial alternative is to increase CVP and SWP water supply reliability through a combination of enlargement of Shasta Dam and Reservoir and conjunctive water management, consistent with the goals of the CALFED ROD. This plan is similar to the above initial alternative and includes raising Shasta Dam up to about 18.5 feet. It also includes implementing a conjunctive water management component consisting primarily of contract agreements between Reclamation and Sacramento River basin water users.

• Increase Anadromous Fish Habitat and Water Supply Reliability with Shasta Enlargement: The primary purpose of this initial alternative is to address both primary objectives with a focus on increasing anadromous fish habitat and enlarging Shasta Reservoir up to about 18.5 feet. In addition to increasing the cold water pool in Shasta Lake, this alternative includes restoring inactive gravel mines along the Sacramento River to help benefit anadromous fish.

• Multipurpose with Shasta Enlargement: This initial alternative also consists of raising Shasta Dam up to about 18.5 feet. In addition, to address the primary objectives, it includes conjunctive water management and restoring inactive gravel mines and floodplain habitat along the upper Sacramento River. Features that address the secondary objectives include constructing warm water fish habitat in the Shasta Lake area, restoring one or more riparian habitat areas between Redding and Red Bluff on the Sacramento River, and possibly re-operating Shasta Dam for increased flood control.

These and other possible alternatives will be considered and developed through comments received during the scoping process. During scoping, Reclamation will be seeking input about possible methods for evaluating water management that will meet the identified water resources problems and needs consistent with the planning objectives.

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondents' identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

Dated: August 26, 2005.

Michael Nepstad,

Deputy Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 05–20169 Filed 10–6–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–6]

Circular Welded Non-Alloy Steel Pipe From China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that circular welded non-alloy steel pipe [2] from the People's Republic of China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.[3]

Background

Following receipt of a petition, on August 2, 2005, on behalf of Allied Tube and Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Maruichi American Corp., Santa Fe Springs, CA; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Western Tube Conduit Corp., Long Beach, CA; Wheatland Tube Co., Wheatland, PA.; and the United Steelworkers of America, AFL–CIO, Pittsburgh, PA; the Commission instituted investigation No. TA–421–06, Circular Welded Non-Alloy Steel Pipe from China, under section 421(b) of the Act to determine whether circular welded non-alloy steel pipe

[1] 19 U.S.C. 2451(b)(1).

[2] The products subject to this investigation include certain welded carbon quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as structural or mechanical tubing). The term carbon quality steel may include certain low alloy steel imported as other alloy steel pipes and tubes.

All pipe meeting the physical description set forth above that is used in, or intended for use in, standard and structural pipe applications is covered by the scope of this investigation. Standard pipe applications include the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and as an intermediate product for protection of electrical wiring, such as conduit shells. Structural pipe is used in construction applications.

Products not included in this investigation are mechanical tubing (whether or not cold-drawn) provided for in HTS subheading 7306.30.50, tube and pipe hollows for redrawing provided for in HTS 7306.30.5035, or finished electrical conduit provided for in HTS 7306.30.5028. API line pipe used in oil or gas applications requiring API certifications is also not included in this investigation. Similarly, pipe produced to the API specifications for oil country tubular goods use are not included in this investigation.

The subject imported products are currently provided for in the Harmonized Tariff Schedule of the United States (HTS) subheadings 7306.30.10 and 7306.30.50. Specifically, the various HTS statistical reporting numbers under which the subject standard pipe has been provided for since January 1, 1992, are as follows: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Pipe multiple-stenciled to the ASTM A–53 specification and to any other specification, such as the API-fL or 5L X–42 specifications, or single-certified pipe that enters under HTS subheading 7306.10.10, is covered by this investigation when used in, or intended for use in, one of the standard pipe applications listed above, regardless of the HTS category in which it is entered. Pipe shells that enter the United States under HTS subheading 7306.30.50, including HTS statistical reporting number 7306.30.5028, are also covered by this investigation. The investigation also covers pipe used for the production of scaffolding (but does not include finished scaffolding).

[3] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson make a negative determination.

from China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (*http://www.usitc.gov*) and by publishing the notice in the **Federal Register** of August 10, 2005 (70 FR 46543). The hearing was held on September 16, 2005 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

By order of the Commission.

Dated: October 3, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20206 Filed 10–6–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1098 (Preliminary)]

Liquid Sulfur Dioxide From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1098 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of liquid sulfur dioxide, provided for in subheading 2811.23.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by November 14, 2005. The Commission's views are due at Commerce within five business days thereafter, or by November 21, 2005.

For further information concerning the conduct of this investigation 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 and B (19 CFR part 207).

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on September 30, 2005, by Calabrian Corporation, Kingwood, Texas.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on October 20, 2005, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Russell Duncan (202–708–4727) not later than October 18, 2005, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 26, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 3, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20203 Filed 10–6–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–459 (Second Review)]

Polyethylene Terephthalate (PET) Film From Korea

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (the Act),[3] that revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 2, 2005 (70 FR 5473), and determined on May 9, 2005, that it would conduct an expedited review (70 FR 30482, May 26, 2005).

The Commission transmitted its determination in this review to the Secretary of Commerce on September 29, 2005. The views of the Commission are contained in USITC Publication 3800 (September 2005), entitled Polyethylene Terephthalate (PET) Film From Korea: Investigation No. 731–TA–459 (Second Review).

By order of the Commission.

Issued: October 3, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20204 Filed 10–6–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Shara L. Aranoff not participating.

[3] 19 U.S.C. 1675(c).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–376, 563 and 564 (Second Review)]

Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (the Act),[3] that revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on February 2, 2005 (70 FR 5478), and determined on May 9, 2005, that it would conduct expedited reviews (70 FR 30483, May 26, 2005).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on September 29, 2005. The views of the Commission are contained in USITC Publication 3801 (September 2005), entitled Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan: Investigations Nos. 731–TA–376, 563 and 564 (Second Review).

By order of the Commission.

Issued: October 3, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20205 Filed 10–6–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Shara L. Aranoff not participating.

[3] 19 U.S.C. 1675(c).

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–031]

Government in the Sunshine Act Meeting Notice

Agency Holding the Meeting: International Trade Commission.

Time and Date: October 11, 2005 at 2 p.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters to be Considered:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–6 (Remedy) (Circular Welded Non-Alloy Steel Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit Commissioners' recommendations on remedy to the President and the United States Trade Representative on or before October 21, 2005.).
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Dated: October 4, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20336 Filed 10–5–05; 12:12 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Production of Nine Satellite/Internet Broadcasts

AGENCY: National Institute of Corrections, U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Prisons (FBOP), National Institute of Corrections (NIC), is seeking applications to award a cooperative agreement for the production of satellite/Internet broadcasts. The cooperative agreement will be for a two-year period, but an award will be made for each of the two years contingent on the availability of funding for each fiscal year (e.g., FY 2006 and FY 2007.) Year 1 will consist of the following nine programs: Five of the proposed programs are nationwide satellite/Internet broadcasts (three hours each.) The other four are satellite/Internet Training Programs. Two of the four are ''site coordinator/facilitator training'' (Training for Trainers) sessions consisting of eight hours of satellite/Internet training divided over two days. The remaining two training programs are 32-hour content-driven training programs. For each 32-hour program, there will be 16 hours of live broadcast satellite/Internet training over four days (supplemented by 16 hours of off-air activities directed by our trained

site coordinators.) There will be a total of 63 hours of broadcast time in FY 2006.

Approximately 3 months before awarding Year 2, and based on satisfactory performance during Year 1, the awardee will receive information about the amount of the award and the scope of work (which will require approximately the same type of support for 9 to 11 programs consisting of 70 to 82 hours of broadcast time.) Based on this information the awardee will be required to submit another application explaining how the work will be accomplished.

DATES: Applications must be received by 4 p.m. on Thursday, November 10, 2005. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to insure delivery by the due date. Hand delivered applications can be brought to 500 First Street, NW., Room 5007, Washington, DC 20534. The security desk will call Fran Leonard at 202–307–3106, and 0 for pickup. Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement is posted on *http://www.grants.gov* as well as the NIC Web site at *http://www.nicic.org.* In addition to the announcement, both sites contain the required application forms that must be submitted. If needed, hard copies of the announcement can be obtained by calling Rita Rippetoe at 800–995–6423, extension 44222, or by e-mail at *rrippetoe@bop.gov.* Any specific questions regarding the application process should be directed to Ms. Rippetoe. All technical and/or programmactic questions concerning this announcement should be directed Ed Wolahan, Correctional Program Specialist, at 1960 Industrial Circle, Longmont, Colorado 80501, or by calling 800–995–6429, extension 131, or by e-mail at *ewolahan@bop.gov.*

SUPPLEMENTARY INFORMATION

Background: Satellite/Internet Broadcasting is defined as a training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using satellite broadcasting and the Internet to economically reach more correctional staff in federal, state and local agencies. Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field, thus reaching the entire audience at the same time with exactly the same information. In addition, NIC is creating training programs from its edited 24- and 32-hour satellite/Internet training programs that will be disseminated through the NIC Information Center.

Purpose: The purposes for funding this initiative are:

(1) Produce five three hour satellite/Internet broadcasts, disseminating current information to the criminal justice community;

(2) Produce two eight hour training sessions for site coordinators/facilitators. These sessions will train facilitators from each registered site concerning the outcomes expected and the knowledge and skills needed to facilitate the broadcast and off-air activities for the two training programs described in paragraph (3) below;

(3) Produce two satellite/Internet training programs, 16 hours in length, that respond directly to the needs identified by practitioners working in the criminal justice arena. Each 16-hour satellite/Internet training session will be delivered on four hours each day from Monday through Thursday.

(4) Produce eight to twelve hours of studio time for pre-training for Public and Media Relations. (Note: no satellite time is needed for this taping.)

Scope of Work: To address the scope of work for this project, the following will be needed:

1. *Producer Consultation and Creative Services:* The producer will: (a) Consult and collaborate with NIC's Distance Learning Manager on program design, program coordination, design of field segments and content development; (b) work with each consultant/trainer to develop their modules for delivery using the satellite/Internet format and/or the teleconference format; (c) assist in the development of scripts, graphic design, production elements and rehearsals for each module of the site coordinators' training and the satellite/Internet training programs; and (d) use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the videotaping of testimonials at conferences.

2. *Pre-Production Video:* The producer will supervise the production of vignettes to be used in each of the three hour satellite/Internet broadcasts, as well as each 16-hour satellite/Internet training program. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Manager. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Manager. A total of between 18 and 25 vignettes will be created under this cooperative agreement.

The producer will supervise camera and audio crews to capture testimonials from leaders in the correctional field at designated correctional conferences. The producer will coordinate all planning of the production and post-production for each of the nine satellite/Internet broadcasts.

Video Production: Video production for each teleconference will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voice-over, audio and music for each video, if necessary. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DV Pro Digital and/or Mini DVD.

Post Production (Studio): Innovative and thought-provoking opening sequences will be produced for each teleconference. In addition, graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, and set design and furniture for all teleconference segments. (Set design should change periodically throughout the award period.) The set will be customized to each topic. The producer will organize and supervise the complete production crew on rehearsal and production days.

3. *Production:* The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set forth below. A production crew shall include the following: Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Four (4) Camera Operators, Teleprompter Operator, On-Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personnel (fax, e-mail, and telephone.)

Each production will also have closed captioning for all programs. After each production, the studio will provide 12 VHS copies to NIC and the Master on Beta Cam and DVD. The DVD will have a splash page that will break down each module, each day, and the vignettes that have been produced for each program.

For each 3-hour program, NIC will receive one DVD with splash page. For the 8-hour program, NIC will receive two DVD's and, for the 16-hour programs, NIC will receive four DVD's with splash page on each. Each of these

will be edited to provide the necessary content under the direction of the Distance Learning Manager.

4. *Transmission:*

a. Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States;

b. Acquire downlink transponder time for KU-Band and C-Band; and

c. Purchase Internet streaming of 200 simultaneous feeds for each program. Be able to provide closed captioning on the Internet feed.

5. *Equipment:* Applicants must have a minimum of the following equipment:

a. Broadcast Studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people;

b. Four Digital Studio Cameras (one of which may be an overhead camera with robotic control);

c. Chroma Key: At least one wall with chroma key capability along with a digital ultimate keying system;

d. A tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U-Matic 3/4 & SP;

e. Advit or comparable editing bay;

f. Three-dimensional animation with computer graphics;

g. Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player—Capture Closed Captioning;

h. Ability to archive four selected satellite/Internet broadcasts from FY 2005 and all nine broadcasts from FY 2006;

i. Computer Teleprompter for at least three studio cameras;

j. Interruptible Fold Back (IFB) on In Ear Monitor (IEM) for the moderator during our three-hour programs and an (IFB) for each presenter during the eight- and sixteen-hour programs. Individual control from control room to the Distance Learning Manager.

k. Wireless microphones for each presenter during both eight- and sixteen-hour programs.

l. Microphones for the studio audience at each round table. Should be able to pick up audio during the training program.

m. Satellite Uplink and Transponder: KU-Band and C-Band/or Digital with C-Band to cover the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; and

n. Portable Field Equipment—Digital Video Cameras with recording decks, portable lighting kits, microphones (both hand-held and lapel), field monitors, audio mixers, and camera tripods.

6. *Personnel:* Applicants must have a minimum of the following qualified personnel:

a. Producer/Director.
b. Script Writer.
c. Set Designer.
d. Lighting Designer.
e. Audio Operator.
f. Graphics Operator.
g. Graphics Artist.
h. Floor Manager.
i. Studio Camera Operators (4).
j. Tape Operator.
k. Location Camera Operator.
l. Teleprompter Operator.
m. Clerical/Administrative Support.
n. Makeup Artist (as needed during production).
o. Closed Caption Operator (as needed during production).

Application Requirement: Applicants must submit an original (signed in blue ink) and five copies of their application and the required forms (see below). Applicants must prepare a proposal that describes their plan to address the requirements to produce these nine live satellite/Internet broadcasts. The plan must include a list of all required equipment, identify key operational staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with NIC's Distance Learning Manager. Please note that Standard Form 424, Application for Federal Assistance, submitted with the proposal, must contain the cover sheet, budget, budget narrative, assurances, certifications, and management plan. All required forms and instructions for their completion may be downloaded from the NIC Web site: *http://www.nicic.org*.

Authority: Public Law 93–415.

Amount Of Award: This is a cooperative agreement. A cooperative agreement is a form of assistance relationship in which the National Institute of Corrections is involved during the performance of the award. This award is made to an organization that has the capability to produce live satellite/Internet teleconferences. This initiative emphasizes television-quality production that meets or exceeds major network quality. The award will be limited to $400,000 for both direct and indirect costs related to this project. Funds may not be used to purchase equipment, for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division. All products from this funding will be in the public domain and available to interested agencies through the National Institute of Corrections.

Availability of Funds: Funds are not presently available for this cooperative agreement. The Government's obligation under this cooperative agreement is contingent upon the availability of appropriated funds from which payment for cooperative agreement purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available for this cooperative agreement and until the awardee receives notice of such availability, to be confirmed in writing. Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with Antideficiency Act, 31 U.S.C. 1341.

Award Period: This award period is from January 1, 2006 to November 30, 2007.

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team or individual with the requisite skills to successfully meet the objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member review panel.

Number of Awards: One (1).

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

NIC Application Number: 06A32. This number should appear as a reference line in your cover letter, in box 11 of Standard Form 424, and on the outside of the package sent to NIC.

(Catalog of Federal Domestic Assistance Number: 16.601; Corrections—Staff Training and Development.)

Dated: September 30, 2005.

Morris Thigpen,

Director, National Institute of Corrections.

[FR Doc. 05–20190 Filed 10–6–05; 8:45 am]

BILLING CODE 4410–36–M

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 data 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 decisions, 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) documented 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. Dates of publication in the **Federal Register** are in parentheses following the decision modified.

Volume I:

Massachusetts
MA20030001 (Jun. 13, 2003)
MA20030002 (Jun. 13, 2003)
MA20030003 (Jun. 13, 2003)
MA20030004 (Jun. 13, 2003)
MA20030007 (Jun. 13, 2003)
MA20030017 (Jun. 13, 2003)
MA20030018 (Jun. 13, 2003)
MA20030020 (Jun. 13, 2003)
MA20030021 (Jun. 13, 2003)
New Jersey
NJ20030001 (Jun. 13, 2003)
NJ20030002 (Jun. 13, 2003)
NJ20030003 (Jun. 13, 2003)
Rhode Island
RI20030001 (Jun. 13, 2003)
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GA20030055 (Jun. 13, 2003)
GA20030073 (Jun. 13, 2003)
GA20030078 (Jun. 13, 2003)
GA20030086 (Jun. 13, 2003)
GA20030087 (Jun. 13, 2003)
GA20030088 (Jun. 13, 2003)
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KY20030001 (Jun. 13, 2003)
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TN20030001 (Jun. 13, 2003)
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TN20030005 (Jun. 13, 2003)
TN20030006 (Jun. 13, 2003)
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OH20030027 (Jun. 13, 2003)
OH20030028 (Jun. 13, 2003)
OH20030029 (Jun. 13, 2003)
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CO20030009 (Jun. 13, 2003)
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AZ20030012 (Jun. 13, 2003)
AZ20030016 (Jun. 13, 2003)
AZ20030017 (Jun. 13, 2003)

California
CA20030023 (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 at Washington, DC this 28th day of September 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–19800 Filed 10–6–05; 8:45am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Intent to Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2006

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2006 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2006.

DATES: All comments and recommendations must be received on or before the close of business on November 7, 2005.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 11, 2005 (70 FR 18430), and Grant Renewal applications due on August 8, 2005, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Grant amount
Alabama:		
AL–4	Legal Services Alabama, Inc	$5,849,856
MAL	Texas RioGrande Legal Aid	29,959
Alaska:		
AK–1	Alaska Legal Services Corporation	677,222
NAK–1	Alaska Legal Services Corporation	493,519
American Samoa:		
AS–1	Uunai Legal Services Clinic	292,644
Arizona:		
AZ–3	Community Legal Services Inc	3,547,176
MAZ	Community Legal Services Inc	135,192
AZ–5	Southern Arizona Legal Aid Inc	1,710,831
NAZ–6	Southern Arizona Legal Aid Inc	581,670
AZ–2	DNA—Peoples Legal Services, Inc	491,435
NAZ–5	DNA—Peoples Legal Services, Inc	2,381,249
Arkansas:		
AR–6	Legal Aid of Arkansas, Inc	1,362,471
AR–7	Center for Arkansas Legal Services	2,033,805
MAR	Texas RioGrande Legal Aid	71,971
California:		
CA–1	California Indian Legal Services Inc	30,936
NCA–1	California Indian Legal Services Inc	806,224
CA–2	Greater Bakersfield Legal Assistance	859,454
CA–26	Central California Legal Services	2,688,892
CA–29	Legal Aid Foundation of Los Angeles	7,426,262
CA–30	Neigh. LS of Los Angeles County	4,386,626
CA–12	Inland Counties Legal Services, Inc	3,818,738
CA–27	Legal Services of Northern CA, Inc	3,322,552
CA–14	Legal Aid Society of San Diego, Inc	2,670,388
CA–31	California Rural Legal Assistance, Inc	4,383,712
MCA	California Rural Legal Assistance, Inc	2,403,727
CA–28	Bay Area Legal Aid	3,916,912
CA–19	Legal Aid Society of Orange County, Inc	3,729,812
Colorado:		
CO–6	Colorado Legal Services	3,140,767

Service area	Applicant name	Grant amount
MCO	Colorado Legal Services	135,234
NCO–1	Colorado Legal Services	87,637
Connecticut:		
CT–1	Statewide Legal Services of Connecticut	2,170,622
NCT–1	Pine Tree Legal Assistance, Inc	14,287
Delaware:		
DE–1	Legal Services Corporation of Delaware, Inc	566,144
MDE	Legal Aid Bureau, Inc	22,606
District of Columbia:		
DC–1	Neighborhood Legal Services Program of D.C.	922,278
Florida:		
FL–15	Community Legal Services of Mid-Florida	2,822,307
FL–17	Florida Rural Legal Services Inc	2,521,122
MFL	Florida Rural Legal Services Inc	817,779
FL–5	Legal Services of Greater Miami Inc	3,232,776
FL–13	Legal Services of North Florida, Inc	1,327,441
FL–16	Bay Area Legal Services, Inc	2,394,740
FL–14	Three Rivers Legal Services, Inc	1,635,010
FL–18	Coast to Coast Legal Aid of South Florida	1,695,106
Georgia:		
GA–1	Atlanta Legal Aid Society, Inc	2,358,077
GA–2	Georgia Legal Services Program	5,992,182
MGA	Georgia Legal Services Program	357,002
Guam:		
GU–1	Guam Legal Services Corporation	293,040
Hawaii:		
NHI–1	Native Hawaiian Legal Corporation	$209,035
HI–1	Legal Aid Society of Hawaii	1,204,344
MHI	Legal Aid Society of Hawaii	62,749
Idaho:		
ID–1	Idaho Legal Aid Services, Inc	1,082,519
MID	Idaho Legal Aid Services, Inc	170,196
NID–1	Idaho Legal Aid Services, Inc	59,286
Illinois:		
IL–6	Legal Assistance of Metropolitan Chicago	5,917,836
MIL	Legal Assistance of Metropolitan Chicago	227,302
IL–3	Land of Lincoln Legal Assist. Foundation	2,330,330
IL–7	Prairie State Legal Services, Inc.	2,517,012
Indiana:		
IN–5	Indiana Legal Services, Inc	4,608,798
MIN	Indiana Legal Services, Inc	103,531
Iowa:		
IA–3	Iowa Legal Aid	2,219,220
MIA	Iowa Legal Aid	34,356
Kansas:		
KS–1	Kansas Legal Services, Inc	2,160,776
MKS	Kansas Legal Services, Inc	10,823
Kentucky:		
KY–10	Legal Aid of The Blue Grass	1,177,743
KY–2	Legal Aid Society, Inc	1,095,699
KY–5	Appalachian Res. and Defense Fund of KY	1,896,241
KY–9	Kentucky Legal Aid	1,136,396
MKY	Texas RioGrande Legal Aid	38,753
Louisiana:		
LA–1	Capital Area Legal Services Corporation	1,319,610
LA–10	Acadian Legal Service Corporation	1,883,695
LA–11	Legal Services of North Louisiana, Inc	1,770,839
LA–12	South East Louisiana Legal Services Corp	2,369,992
MLA	Texas RioGrande Legal Aid	25,074
Maine:		
ME–1	Pine Tree Legal Assistance, Inc	1,075,916
MMX–1	Pine Tree Legal Assistance, Inc	113,722
NME–1	Pine Tree Legal Assistance, Inc	58,818
Maryland:		
MD–1	Legal Aid Bureau, Inc	3,612,021
MMD	Legal Aid Bureau, Inc	82,786
Massachusetts:		
MA–11	Volunteer Lawyers Project Boston Bar	1,854,184
MA–12	New Center for Legal Advocacy	831,112
MA–4	Merrimack Valley Legal Services, Inc	755,712
MA–10	Massachusetts Justice Project	1,373,555
Michigan:		
MI–12	Legal Services of South Central Michigan	1,198,354
MMI	Legal Services of South Central Michigan	548,103

Service area	Applicant name	Grant amount
MI–14	Legal Services of Eastern Michigan	1,310,087
MI–9	Legal Services of Northern Michigan	671,990
MI–15	Western Michigan Legal Services	1,544,754
MI–13	Legal Aid and Defender of Detroit	3,613,379
NMI–1	Michigan Indian Legal Services Inc	150,220
Micronesia:		
MP–1	Micronesia Legal Services	1,501,899
Minnesota:		
MN–1	Legal Aid Services of North East Minnesota	397,743
MN–6	Central Minnesota Legal Services Inc	1,223,858
MN–4	Legal Services of North West Minnesota	362,964
MMN	Southern Minnesota Regional Legal Services	182,182
MN–5	Southern Minnesota Regional Legal Services	1,131,734
NMN–1	Anishinabe Legal Services, Inc.	218,080
Mississippi:		
MS–9	North Mississippi Rural Legal Services Inc	1,890,364
MS–10	Mississippi Center for Legal Services	2,814,569
NMS–1	Mississippi Center for Legal Services	75,857
MMS	Texas RioGrande Legal Aid	51,968
Missouri:		
MMO	Legal Aid of Western Missouri	74,178
MO–3	Legal Aid of Western Missouri	1,616,969
MO–4	Legal Services of Eastern Missouri	1,785,203
MO–5	Mid-Missouri Legal Services Corporation	355,873
MO–7	Legal Services of Southern Missouri	1,540,500
Montana:		
MMT	Montana Legal Services Assoc	49,702
MT–1	Montana Legal Services Assoc	1,031,385
NMT–1	Montana Legal Services Assoc	145,302
Nebraska:		
NE–4	Legal Aid of Nebraska	1,319,810
MNE	Legal Aid of Nebraska	38,500
NNE–1	Legal Aid of Nebraska	30,164
Nevada:		
NV–1	Nevada Legal Services, Inc	1,730,119
MNV	Nevada Legal Services, Inc	2,291
NNV–1	Nevada Legal Services, Inc	121,344
New Hampshire:		
NH–1	Legal Advice & Referral Center	652,375
New Jersey:		
NJ–15	Legal Services of Northwest Jersey	357,709
NJ–16	South Jersey Legal Services	1,217,744
MNJ	South Jersey Legal Services	109,873
NJ–18	Northeast New Jersey Legal Services	1,617,559
NJ–8	Essex-Newark Legal Services Project, Inc	989,887
NJ–12	Ocean-Monmouth Legal Services	606,303
NJ–17	Central New Jersey Legal Services, Inc	993,972
New Mexico:		
NM–1	DNA-Peoples Legal Services, Inc	197,654
NNM–2	DNA-Peoples Legal Services, Inc	20,732
MNM	New Mexico Legal Aid	79,527
NM–5	New Mexico Legal Aid	2,493,302
NNM–4	New Mexico Legal Aid	424,004
New York:		
NY–21	Legal Aid Society of Northeastern New York	1,223,632
NY–24	Neighborhood Legal Services, Inc	1,224,289
NY–7	Nassau/Suffolk Law Services	1,266,562
NY–9	Legal Services for New York City	13,903,563
NY–23	Legal Assistance of Western New York	1,572,253
MNY	Legal Aid Society of Mid-New York, Inc	252,047
NY–22	Legal Aid Society of Mid-New York, Inc	1,603,889
NY–20	Legal Services of the Hudson Valley	1,629,199
North Carolina:		
MNC	Legal Aid of North Carolina	488,024
NC–5	Legal Aid of North Carolina	7,586,477
NNC–1	Legal Aid of North Carolina	199,160
North Dakota:		
MND	Southern Minnesota Regional Legal Services	105,544
ND–3	Legal Services of North Dakota Inc	513,157
NND–3	Legal Services of North Dakota Inc	245,815
Ohio:		
OH–20	Community Legal Aid Services, Inc	1,577,157
OH–18	Legal Aid Soc of Cincinnati	1,346,166
OH–21	The Legal Aid Society of Cleveland	1,969,985

Service area	Applicant name	Grant amount
OH–5	The Legal Aid Society of Columbus	1,170,122
OH–17	Ohio State Legal Services	1,621,634
MOH	Legal Services of Northwest Ohio	114,699
OH–23	Legal Services of Northwest Ohio	2,330,547
Oklahoma:		
NOK–1	Oklahoma Indian Legal Services Inc	747,182
MOK	Legal Aid Services of Oklahoma	56,979
OK–3	Legal Aid Services of Oklahoma	4,080,514
Oregon:		
OR–6	Legal Aid Services of Oregon	2,767,004
MOR	Legal Aid Services of Oregon	507,211
NOR–1	Legal Aid Services of Oregon	168,457
Pennsylvania:		
MPA	Philadelphia Legal Assistance	150,917
PA–1	Philadelphia Legal Assistance	2,794,655
PA–5	Laurel Legal Services, Inc	694,311
PA–25	MidPenn Legal Services, Inc	2,002,667
PA–8	Neighborhood Legal Services Association	1,513,429
PA–24	North Penn Legal Services, Inc	1,636,990
PA–11	Southwestern Pennsylvania Legal Aid Society	504,432
PA–26	Northwestern Legal Services	660,520
PA–23	Legal Aid of Southeastern Pennsylvania	1,026,180
Puerto Rico:		
MPR	Puerto Rico Legal Services Inc	264,740
PR–1	Puerto Rico Legal Services Inc	15,154,970
PR–2	Community Law Office, Inc	314,750
Rhode Island:		
RI–1	Rhode Island Legal Services, Inc	1,013,723
South Carolina:		
MSC	The South Carolina Centers for Equal Justice	180,110
SC–8	The South Carolina Centers for Equal Justice	4,434,391
South Dakota:		
SD–2	East River Legal Services	368,002
MSD	Dakota Plains Legal Services, Inc	3,614
NSD–1	Dakota Plains Legal Services, Inc	852,045
SD–4	Dakota Plains Legal Services, Inc	436,116
Tennessee:		
TN–9	Legal Aid of East Tennessee	1,977,306
TN–4	Memphis Area Legal Services	1,294,449
TN–10	LAS of Middle TN and the Cumberlands	2,356,518
TN–7	West Tennessee Legal Services Inc	603,903
MTN	Texas RioGrande Legal Aid	57,754
Texas:		
TX–14	Legal Aid of NorthWest Texas	6,890,321
TX–13	Lone Star Legal Aid	8,733,194
MTX	Texas RioGrande Legal Aid	1,264,810
NTX–1	Texas RioGrande Legal Aid	28,560
TX–15	Texas RioGrande Legal Aid	9,370,155
Utah:		
UT–1	Utah Legal Services, Inc	1,676,062
MUT	Utah Legal Services, Inc	61,763
NUT–1	Utah Legal Services, Inc	75,075
Vermont:		
VT–1	Legal Services Law Line of Vermont	460,129
Virgin Islands:		
VI–1	Legal Services of Virgin Islands, Inc	294,211
Virginia:		
VA–15	Southwest Virginia Legal Aid Society, Inc	747,172
VA–16	Legal Aid Society of Eastern Virginia, Inc	1,290,769
MVA	Central Virginia Legal Aid Society, Inc	143,614
VA–18	Central Virginia Legal Aid Society, Inc	916,930
VA–17	Virginia Legal Aid Society, Inc	777,788
VA–19	Blue Ridge Legal Services, Inc	646,951
VA–20	Potomac Legal Aid Society	1,007,423
Washington:		
WA–1	Northwest Justice Project	4,493,130
MWA	Northwest Justice Project	664,639
NWA–1	Northwest Justice Project	259,955
West Virginia:		
MWV	Legal Aid of West Virginia, Inc	33,286
WV–5	Legal Aid of West Virginia, Inc	2,626,531
Wisconsin:		
MWI	Legal Action of Wisconsin, Inc	82,904
WI–5	Legal Action of Wisconsin, Inc	2,978,587

Service area	Applicant name	Grant amount
WI–2	Wisconsin Judicare, Inc	841,908
NWI–1	Wisconsin Judicare, Inc	141,556
Wyoming:		
MWY	Wyoming Legal Services	11,328
NWY–1	Wyoming Legal Services	157,692
WY–4	Wyoming Legal Services	450,038

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2006.

Dated: October 4, 2005.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 05–20325 Filed 10–6–05; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: November 15, 2005.

Time of Meeting: 10 a.m.–12 noon.

Place of meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Thomas Jefferson Room 122, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than October 28, 2005. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, Washington, DC 20408, telephone number (202) 219–5250.

Dated: October 4, 2005.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 05–20300 Filed 10–6–05; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel, Literature section (National Initiatives) to the National Council on the Arts will be held by teleconference from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 on Monday, October 24, 2005 from 2 p.m. to 2:45 p.m. EDT (ending time is tentative). This meeting will be closed.

Closed meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call (202) 682–5691.

Dated: October 4, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–20193 Filed 10–6–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Availability

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: Draft Environmental Assessment for Construction of Northern Arizona University's Merriam-Powell Research Station at The Arboretum at Flagstaff, Flagstaff, Arizona.

DATES: Written comments on this notice must be postmarked by November 7, 2005, to be assured of consideration.

For Additional Information Or Comments: A copy of the Draft EA is available for review at the Flagstaff City-Coconino County Public Library, 300 West Aspen Ave., Flagstaff, Arizona. The Draft EA is also available at *http://www.nsf.gov/bio/pubs/reports/ea_mprs.doc.* The NSF will accept written comments on the Draft EA during an official public review period that will end on November 7, 2005. Please direct any requests for the Draft EA to Amy V. Whipple, Merriam-Powell Center for Environmental Research, PO Box 5640, Northern Arizona University, Flagstaff, AZ 86011 or *Amy.Whipple@NAU.EDU.* Please address any written comments on the Draft EA to Gerald B. Selzer, Director of the Field Stations and Marine Laboratories Program, 4201 Wilson Blvd., Arlington, VA 22230 or *gselzer@nsf.gov.*

SUPPLEMENTARY INFORMATION: Northern Arizona University proposes to construct and operate the Merriam-Powell Research Station (MPRS) in collaboration with and on property leased from The Arboretum at Flagstaff. This project is funded by the National Science Foundation (NSF), which is the Federal lead agency for this Environmental Assessment (EA). The proposed research station will provide facilities for visiting researchers, students, instructors, and agency personnel. It will leverage productive collaborations involving NAU researchers and the numerous field research opportunities in Northern Arizona, including the adjacent NAU Centennial Forest. The two alternatives

sites considered for the MPRS were on undeveloped land on the NAU Centennial Forest and adjacent to existing development at The Arboretum at Flagstaff. It is expected that construction will be completed in May of 2006.

A Draft Environmental Assessment (EA) has been prepared that analyzes the potential environmental effects of this proposed action. From the information contained in the Draft EA, the NSF is prepared to find that no significant environmental effects will result from construction of the Merriam-Powell Research Station on the preferred site at the Arboretum at Flatgstaff.

Dated: October 3, 2005.

Gerlad B. Selzer,

Program Director for Field Stations and Marine Laboratories, Division of Biological Infrastructure, National Science Foundation, 4201 Wilson Blvd., Room 615, Arlington, VA 22230.

[FR Doc. 05–20149 Filed 10–6–05; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

EarthScope Science and Education Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: EarthScope Science and Education Advisory Committee (#16638).

Dates/Time: 12:30 p.m.–5:30 p.m.—Thursday, October 27, 2005. 8:30 a.m.–3 p.m.—Friday October 28, 2005.

Place: EarthScope Facility Office, 1200 New York Avenue, NW., Suite 700, Washington, DC 20005.

Type of Meeting: Open.

Contact Person: Dr. Kaye Shedlock, Program Director, EarthScope Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 292–4693.

Minutes: May be obtained from the contact person listed below.

Purpose of Meeting: To provide advice and recommendations concerning support for research, education and outreach in the EarthScope Program.

Agenda: To provide advice on EarthScope Program measures of success, education and outreach plans, webpage development and other program issues.

Dated: October 4, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20274 Filed 10–6–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources

Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: November 2, 2005; 8:30 a.m. to 5 p.m.; November 3, 2005; 8:30 a.m. to 12 p.m.

Place: Conference Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

For Further Information Contact: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–5331.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice with respect to the Foundation's education and human resources programming.

Agenda:

November 2, 2005

Introduction of new Members.
Remarks by the Chair.
Presentation by the NSF Office of Cyberinfrastructure (OCI).
Presentation on the International Polar Year (IPY).
Discussion with Assistant Director.
Presentation on Evaluation and Discussion.
COV Reports and Discussion.
Staff will present a matrix of issues and recommendations that cut across all 10 COV Reports.
Discussion of *Dean's Meeting to Discuss Math & Science Teacher Preparation.*

November 3, 2005

Table Discussion on Important Questions and Issues for the Director.
Visit with NSF Director.
Next Steps.
Closing Remarks.
Housekeeping Chore: Set future meeting dates.
Adjourn.

Dated: October 4, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20260 Filed 10–6–05; 8:45 am]

BILLING CODE 7599–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for engineering (1170).

DATE/TIME: November 8, 2005, 8 a.m.–5 p.m.; November 9, 2005, 8 a.m.–1 p.m.

PLACE: National Science Foundation, Room 375.

TYPE OF MEETING: Open.

CONTACT PERSON: Deborah Young, Administrative Officer, and Office of the Assistant Director for engineering, 703–292–8301.

PURPOSE OF MEETING: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

AGENDA: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession and engineering education.

Dated: October 4, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20259 Filed 10–6–05; 8:45 am]

BILLING CODE 9555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (MPSAC), #66.

Date/Time: November 2, 2005 12 Noon–6 p.m.; November 3, 2005 8 a.m.–6 p.m.; November 4, 2005 8 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005. National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Briefing to new members about NSF and Directorate, Update on current status of Directorate, Meeting with Education and Human Resources Advisory Committee, Update on High Magnetic Field Subcommittee, Meeting of MPSAC with Divisions within MPS Directorate, Report on

NSF/MPS CyberScience Activities, Discussion of MPS Long-term Planning Activities.

Summary Minutes: May be obtained from the contact person listed above.

Dated: October 4, 2005.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 05–20273 Filed 10–6–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, and 50–530]

Arizona Public Service Company; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Arizona Public Service Company (the licensee) to partially withdraw its May 28, 2003, application for proposed amendments to Facility Operating License No. NPF–41, NF–51, and NPF–74 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, located in Maricopa County, Arizona.

The proposed amendments would modify several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs would have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that are currently not allowed by the TSs. The current SRs are not allowed to be performed in Modes 1 and 2. Several of the current SRs also cannot be performed in Modes 3 and 4.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 8, 2003 (68 FR 40709). However, the licensee partially withdrew the proposed change in two separate letters. By letter dated June 23, 2004, the licensee withdrew the proposed changes to the notes in SR 3.8.4.7 and SR 3.8.4.8 and by letter dated September 27, 2005, the licensee withdrew the proposed changes to SRs 3.8.1.9, 3.8.1.10, and 3.8.1.14.

For further details with respect to this action, see the application for amendments dated May 28, 2003, and the licensee's letters dated June 23, 2004, and September 27, 2005, which partially withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 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, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of September 2005.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5529 Filed 10–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309, License No. DPR–36]

Maine Yankee Atomic Power Company; Notice of Release of Land from the Jurisdiction of Maine Yankee Atomic Power Company's Facility Operating License No. DPR–36

On March 15, 2004, as supplemented by letters on September 2, 2004, and May 16, 2005, Maine Yankee Atomic Power Company (Maine Yankee) submitted a request to amend its license to release the remaining land under License No. DPR–36 with the exception of the land where the Independent Spent Fuel Storage Installation (ISFSI) is located, and a 3.17 acre parcel of land adjacent to the ISFSI. Notification of the amendment request was published in the **Federal Register** on May 5, 2004 (Vol. 69, No. 101, Page 69769).

The U.S. Nuclear Regulatory Commission (NRC) staff reviewed the Final Status Survey Report (FSSR) and concludes that: (i) Dismantlement and decontamination activities were performed in accordance with the approved License Termination Plan (LTP), and (ii) Maine Yankee's FSSR Supplements 1–10A demonstrate that the land to be released from Facility Operating License No. DPR–36, meets the radiological criteria for unrestricted use, as defined by 10 CFR 20.1402, by meeting site release criteria of 10 millirem (Total Effective Dose Equivalent (TEDE) per year over background (all pathways) and 4 millirem (as distinguishable from background) TEDE per year for groundwater sources of drinking water in accordance with the approved LTP. Therefore, NRC is releasing all land from the jurisdiction of license DPR–36 except the land where the ISFSI is located, and a 3.17 acre parcel of land adjacent to the ISFSI.

For further details with respect to this action, see the license amendment request dated March 15, 2004, as supplemented by letters dated September 2, 2004, and May 16, 2005, and the Environmental Assessment dated February 12, 2003, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency-wide 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/adams.html* (ADAMS Accession Nos. ML040990045, ML042600417, ML051440411, and ML030340122). 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, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 30th day of September, 2005.

For The Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–5527 Filed 10–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–27]

Pacific Gas and Electric Company; Humboldt Bay Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.72(d) to Pacific

Gas and Electric Company (PG&E or applicant). The requested exemption would allow PG&E to maintain a single set of spent fuel, high-level radioactive waste, and reactor-related Greater than Class C (GTCC) waste records in accordance with the requirements of its NRC-approved Quality Assurance program, which satisfies the criteria of 10 CFR part 50, Appendix B, for the Independent Spent Fuel Storage Installation (ISFSI) at the Humboldt Bay Power Plant (HBPP) in Humboldt County, California.

Environmental Assessment (EA)

Identification of Proposed Action

In its application for an ISFSI license, submitted on December 15, 2003, PG&E requested an exemption from the requirement in 10 CFR 72.72(d); which states in part that, ''Records of spent fuel, high-level radioactive waste, and reactor-related GTCC waste containing special nuclear material meeting the requirements in paragraph (a) of this section must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records.''

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action

The applicant stated that ISFSI spent-fuel, high-level radioactive waste, and reactor-related GTCC waste records will be maintained in a manner consistent with the records of the HBPP, which are stored in accordance with the NRC-approved Quality Assurance (QA) program. The approved QA program for the HBPP complies with the requirements established in 10 CFR part 50, Appendix B, which incorporates by reference the specific recordkeeping requirements in 10 CFR 50.71(d)(1). PG&E did not request exemption from the records retention period requirements of 10 CFR 72.72(d). The applicant seeks to provide consistency in recordkeeping practices for the records related to the proposed Humboldt Bay ISFSI and those records currently maintained under the HBPP QA program. The exemption would also preclude the need for PG&E to construct and operate a separate, second records storage facility to store a duplicate set of spent fuel, high-level radioactive waste, and reactor-related GTCC waste records.

In its application, PG&E indicated that the NRC-approved QA program for the Diablo Canyon Power Plant will be applied to all Humboldt Bay ISFSI activities, and that program meets the provisions of ANSI N45.2.9–1974. The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC as an acceptable method of satisfying the recordkeeping requirements of 10 CFR part 50, Appendix B, which states, in part, that ''[c]onsistent with applicable regulatory requirements [including 10 CFR 50.71(d)(1)], the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.'' Further requirements for the maintenance of nuclear power plant records are provided in 10 CFR 50.71(d)(1), which states, in part, that, ''The licensee shall maintain adequate safeguards against tampering with and loss of records.'' ANSI N.45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to, and need to be protected from, the same types of degradation mechanisms or loss as nuclear power plant Quality Assurance records.

Environmental Impacts of the Proposed Action

An exemption from the requirement to store a duplicate set of ISFSI records at a separate location has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at the HBPP ISFSI and does not affect the potential for radiological or non-radiological effluents associated with the ISFSI.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Consulted

On August 30, 2005, the NRC staff discussed the environmental assessment for the proposed action with Ms. Barbara Byron, Senior Nuclear Policy Advisor for the California Energy Commission (CEC). On September 14, 16, and 27, 2005, the staff provided additional details regarding the proposed storage of the Humboldt Bay ISFSI records, in response to Ms. Byron's requests for clarification. The CEC had no further comments on the EA. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action is administrative or procedural in nature and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties because it is an administrative or procedural action. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.72(d), so that PG&E may store spent fuel records for the proposed ISFSI in a single records storage facility, in accordance with its NRC-approved Quality Assurance program (which satisfies the criteria of 10 CFR part 50, Appendix B, and 10 CFR 50.71(d)(1)), will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that a Finding of No Significant Impact is appropriate, and that an environmental impact statement for the proposed exemption is not necessary.

For further details with respect to this exemption request, see the PG&E ISFSI license application, and the accompanying Safety Analysis Report, dated December 15, 2003. The request for exemption was docketed under 10 CFR 72, Docket No. 72–27. In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 30th day of September, 2005.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–5530 Filed 10–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34325]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Release of Facility for Unrestricted Use for the Department of Veterans Affairs Chicago Health Care System Lakeside Campus—Lakeside Hospital Building, Chicago, IL

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9871; fax number: (630) 515–1259; or by e-mail at *wgs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Material License No. 03–23853–01VA issued to the Department of Veterans Affairs (DVA) (the licensee), to authorize release of its Chicago Health Care System, Lakeside Campus—Lakeside Hospital Building in Chicago, Illinois for unrestricted use, and has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed amendment is to allow for the release of the licensee's Chicago, Illinois facility for unrestricted use. The DVA has occupied the Lakeside Hospital Building since it was built in about 1955, and was authorized to use byproduct, source, and special nuclear material for medical diagnosis, therapy, and research beginning in 1957. The Chicago, Illinois facility is a permittee under the DVA NRC Master Material License (MML) Number 03–23853–01VA, and on April 27, 2005, requested the NRC approve the release of the facility for unrestricted use. The approval is consistent with a November 10, 2004, Letter of Understanding (LOU) between the NRC and the DVA for DVA permittees. The LOU requires the DVA to submit for NRC review, permittee requests for the release of buildings for unrestricted use where radioactive materials with a half-life greater than 120 days were used. The DVA identified six isotopes of concern with half-lives greater than 120 days that it used in the Lakeside Hospital Building since 1957: hydrogen-3, carbon-14, chlorine-36, cobalt-60, nickel-63, and cesium-137. The DVA has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the licensee termination criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

The staff has prepared an EA in support of the proposed license amendment. Based on its review, the staff determined there were no radiological or non-radiological environmental impacts associated with the action since no radiological remediation activities were required to complete the proposed action. However, the proposed action excludes approval for the release of an area of the facility where nuclear medicine activities are being performed in compliance with 10 CFR 35.100 and 35.200, an activity in which only short-lived radioactive isotopes are used (i.e., isotopes with a half-life less than 120 days). The licensee verified compliance with 10 CFR 20.1402 in this area for isotopes with half-lives longer than 120 days. Because the LOU allows the DVA to release facilities for unrestricted use without NRC approval if only isotopes of less than 120 days were used, when the VA ceases all licensable activities related to the diagnostic nuclear medicine operation, the VA may release that area for unrestricted use without NRC approval.

III. Finding of No Significant Impact

The staff has prepared an EA in support of the proposed license amendment to release the site for unrestricted use. The staff has found that the radiological environmental impacts from the proposed amendment are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: The DVA letter dated April 27, 2005 (Accession No. ML051190353); the Final Status Survey Report, VA Chicago—Lakeside Campus, Medical Sciences Building, December 8, 2004 (Accession No. ML051190353); and the EA summarized above (Accession No. ML052690312). If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 28th day of September 2005.

For the Nuclear Regulatory Commission.

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region III.

[FR Doc. E5–5528 Filed 10–6–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52524; No. SR–DTC–2005–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Procedures Relating to the Destruction of Certain Non-Transferable Securities Certificates That Are Held in DTC's Internal Removal Account Known as PREM

September 28, 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 August 18, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC has filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this rule filing is to clarify certain procedures with respect to an earlier filing submitted by DTC and approved by the Commission that allowed DTC to destroy certain non-transferable securities certificates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B, and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to clarify certain procedures pertaining to the previously approved File No. SR–DTC–2003–09.[5] In File No. SR–DTC–2003–09, DTC proposed a new service designed to allow DTC to destroy certain certificates representing positions in securities for which transfer agent services are no longer available (''non-transferable certificates''). At the time of the original filing, DTC held 1.2 million such certificates, representing nearly 22% of DTC's entire certificate inventory. DTC instituted the Destruction of Non-Transferable Securities Certificates Program (''Program'') in order to eliminate the significant risks and costs associated with the ongoing maintenance of custody, control, and audit of these non-transferable certificates.

Prior to instituting the Program, many participants used DTC's Position Removal (''PREM'') function to have positions in issues of non-transferable certificates moved from their participant accounts to a DTC internal PREM account. However, the certificates representing those positions were still held in DTC's vaults with all the risks and costs associated with storing such certificates, maintaining the related accounts, and monitoring the status of such issues. Under the Program, DTC extended the PREM process by indicating that using PREM to move a position constituted an acknowledgement by the participant that DTC could cease crediting the security to the participant's securities account and that DTC could at its optionand based upon its own criteria include the certificates underlying the position in a certificate destruction program.

In File No. DTC–2003–09, DTC indicated that it would implement the Program ''beginning first with issues in which all participant positions have been put in PREM.'' However, the Commission's approval order of File No. DTC–2003–09 stated that ''DTC will implement this new program with issues in which all participant positions have been moved to PREM.'' DTC's intent in the original filing was to start the Program with fully PREMed issues but to thereafter continue with those issues which had not been fully PREMed. The purpose of the present filing is to clarify this point and to make clear that DTC did not in File No. DTC–2003–09 intend that in the future it would be a prerequisite for the destruction of a particular issue of non-transferable certificates that every participant must have moved their respective positions in that issue to a PREM account. DTC wishes to make clear that it may destroy any non-transferable certificates for which the positions have been PREMed even if all participants have not yet moved their positions into PREM. DTC will maintain a certificate or certificates representing those positions that have not yet been entered into PREM. DTC has no intention of clarifying or modifying any other part of File No. DTC–2003–09 with this filing.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the change is designed to facilitate the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, and the safeguarding of securities and funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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, in the public interest, and for the protection of investors.

(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 change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1)[7] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Securities Exchange Act Release No. 49930 (June 28, 2004), 69 FR 41003 (July 7, 2004).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

interest, the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2005–10 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–DTC–2005–10. 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 DTC and on DTC's Web site at *http://www.DTCC.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–DTC–2005–10 and should be submitted on or before October 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5524 Filed 10–6–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52549; File No. SR–NASD–2005–115]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASD Rule 11890

October 3, 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 September 22, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to clarify the scope of a recent amendment to NASD Rule 11890. Nasdaq proposes to implement the proposed rule change on September 26, 2005. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].[5]

* * * * *

11890. Clearly Erroneous Transactions

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant

(1) No change.

(2) Procedures for Reviewing Transactions

(A)–(B) No change.

(C) Following the expiration of the period for submission of supporting material, a Nasdaq officer shall determine whether the complaint is eligible for review. A complaint shall not be eligible for review under paragraph (a) unless:

(i) the complainant has provided all of the supporting information required under paragraph (a)(2)(B), and

(ii) *For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time,* [T]*t*he price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

Inside price	Minimum threshold
$0–0.99	$0.02 + (0.10 × Inside Price)
1.00–4.99	0.12 + (0.07 × (Inside Price − 1.00))
5.00–14.99	0.40 + (0.06 × (Inside Price—5.00))
15 or more	1.00

For a transaction to buy (sell) a Nasdaq listed security, the inside price shall be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for a transaction to buy (sell) an exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed.

(D)–(G) No change.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *http://www.nasd.com.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 11890(a) allows designated officers of Nasdaq to declare transactions that arise out of the use or operation of Nasdaq execution or communications systems to be clearly erroneous and to nullify or modify the terms of such transactions. In SR–NASD–2004–009,[6] Nasdaq established a minimum price deviation threshold to provide a ''bright line'' rule standard for determining when transactions are considered eligible for review. A transaction price that meets these thresholds does not automatically trigger a clearly erroneous determination, but if the transaction price does not meet these thresholds the transaction will not be considered for clearly erroneous review. Thus, there is now a conclusive presumption that a transaction to buy (sell) is not clearly erroneous unless its price is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

Inside price	Minimum threshold
$0–$.99	$0.02 + (0.10 × Inside Price)
1.00–4.99	0.12 + (0.07 × (Inside Price—1.00))
5.00–14.99	$0.40 + (0.06 × (Inside Price—5.00))
15 or more	1.00

Nasdaq proposes an amendment to NASD Rule 11890 to clarify that the minimum price deviation thresholds are applicable only to transactions executed during regular market hours, *i.e.*, between 9:30 a.m. and 4:00 p.m. According to Nasdaq, this amendment reflects the fact that the analysis conducted by Nasdaq to determine the appropriate levels for the thresholds was based on pricing during normal market hours, and that therefore application of the thresholds during other trading sessions is not consistent with the intent underlying the rule. Nasdaq believes that, during pre-market and post-market trading sessions, the inside price of many stocks may not fully reflect trading interest in the stock, since the range of market participants in these trading sessions is far more limited than during regular market hours. As a result, a trade that occurs at a price that deviates significantly from a stock's trading range during the most recent regular market session may nevertheless be sufficiently close to the pre-market or post-market inside price that it would not meet the minimum deviation threshold for the stock. Because the thresholds established by Nasdaq were based on analysis of trading patterns during regular market hours, Nasdaq believes that the rule should be clarified by limiting the thresholds' application to such hours. Nasdaq believes the change would result in a larger number of transactions being eligible for review under NASD Rule 11890, since transactions occurring during pre-market and post-market sessions would always be eligible for adjudication under the rule unless the market participant seeking an adjudication failed to provide the information required under NASD Rule 11890(a)(2)(B) (*i.e.*, the approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if the transactions are not anonymous, Nasdaq system used to execute the transactions, and the reason the review is being sought).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general and with Section 15A(b)(6) of the Act,[8] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Nasdaq believes that the proposed rule change would ensure that NASD Rule 11890's minimum price deviation thresholds do not bar adjudication of clearly erroneous petitions in circumstances where the wider spreads prevailing in pre-market and post-market trading may make the application of such thresholds excessively restrictive.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would make immediately eligible for adjudication clearly erroneous petitions in circumstances where the wider spreads prevailing in pre-market and post-market trading otherwise may make the application of NASD Rule 11890's minimum price deviation thresholds overly restrictive. For these reasons, the Commission designates the proposal to be effective upon filing with the Commission.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[6] Securities Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005) (SR-NASD–2004–009).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–115 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–NASD–2005–115. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–115 and should be submitted on or before October 28, 2005.

[12] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5533 Filed 10–6–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52544; File No. SR–NASD–2005–030]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (''Form BR'') and Amendments to the Uniform Application for Securities Industry Registration or Transfer (''Form U4'') and the Uniform Termination Notice for Securities Industry Registration (''Form U5'')

September 30, 2005.

I. Introduction

On March 11, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''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 adopt the Uniform Branch Office Registration Form (''Form BR'')[3] and to make conforming changes to the Uniform Application for Securities Industry Registration or Transfer (''Form U4'') and the Uniform Termination Notice for Securities Industry Registration (''Form U5''). On May 12, 2005, NASD amended the proposed rule change (''Amendment No. 1'').

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on June 2, 2005.[4] The Commission received six comment letters on the proposal, as amended.[5] On August 17, 2005, NASD submitted a response to the comment letters.[6] On August 18, 2005, NASD amended the proposed rule change (''Amendment No. 2'').[7] This order approves the proposed rule change, as amended by Amendment No. 1; grants accelerated approval to Amendment No. 2; and solicits comments from interested persons on Amendment No. 2.

II. Description of Proposed Rule Change

NASD proposes to establish Form BR, a uniform branch office registration form developed by a working group composed of representatives from NASD, the New York Stock Exchange, Inc. (''NYSE''), the North American Securities Administrators Association (''NASAA'') and various states (hereinafter referred to as the ''Working Group'').[8] The proposed Form BR would enable firms to register branch offices electronically with NASD, the NYSE, other self-regulatory organizations (''SROs''), and states, as applicable, through a single filing with the Central Registration Depository (''CRD®,'' the ''CRD system,'' or ''Web CRD''). In addition, the proposed Form BR eliminates the need for Schedule E of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of the NASD, the Commission staff has made corrections to the title of the Form BR, which was inadvertently shown in the initial filing and Amendment No. 2 to the filing, *see infra* note 7, as ''Uniform Branch Office Form.'' Telephone conversation between Richard Pullano, Associate Vice President/Chief Counsel, Registration and Disclosure, NASD, Elizabeth Badawy, Accountant, Division of Market Regulation (''Division''), Commission, and Kate Robbins, Attorney, Division, Commission, on September 20, 2005.

[4] *See* Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386. *See also* Correction, 70 FR 48802 (August 19, 2005) (including language inadvertently omitted from the first sentence of footnote 3).

[5] *See* letters from Mario DiTrapani, President, Association of Registration Management, dated June 22, 2005 (''ARM Letter''); Michael Pagano, Chief Compliance Officer, 1st Global, dated June 23, 2005 (''1st Global Letter''); Sandra T. Masek Ray, CRCP, Executive Vice President/Chief Compliance Officer, Rhodes Securities, Inc., dated June 23, 2005 (''Rhodes Letter''); Robert S. Rosenthal, Vice President & Chief Legal Officer, MML Investors Services, Inc., dated June 23, 2005 (''MML Letter''); Franklin L. Widmann, President and Chief, New Jersey Bureau of Securities, North American Securities Administrators Association, Inc., dated July 12, 2005 (''NASAA Letter''); and Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers, dated June 23, 2005 (''ACLI Letter''). In addition, the Commission received a comment letter on SR–NASD–2005–012, a filing dealing with the same substance but that had been rejected by the Commission. The letter raised a number of technical concerns which have been addressed by the NASD or will be addressed during the implementation phase for Form BR.

[6] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated August 17, 2005 (''NASD Response Letter'').

[7] *See* discussion of Amendment No. 2 in Section II, Description of Proposed Rule Change, *infra.*

[8] The NYSE also filed a proposed rule change to adopt the Form BR, which is substantially similar to NASD's proposal. The Commission is simultaneously approving the NYSE's proposed rule change. *See* Securities Exchange Act Release No. 52543 (September 30, 2005) (SR–NYSE–2005–13).

the Uniform Application for Broker-Dealer Registration (''Form BD''), the current NYSE Branch Office Application Form, and certain state branch office forms.[9]

The Working Group derived the majority of questions on the proposed Form BR from questions currently on one or more of the existing branch office forms and added questions to elicit additional information that it believed would be of regulatory value to SROs and states. To the extent possible, the proposed Form BR uses the same terms as those used in existing uniform forms.[10]

The proposed Form BR is only one component of a broader project regarding the registration of branch offices through the CRD system. NASD is planning enhancements to the CRD system to coincide with the implementation of Form BR that would enable firms to designate, and users to identify, the branch office(s) in which a registered person works. These enhancements would enable registered persons to submit the name of the branch office(s) with which they are associated via the Form U4. Firms would be able to obtain a report via Web CRD that would list individuals who are currently associated with a branch or who were associated with a branch during a specific time period. Regulators also would be able to obtain reports that would list branch offices within a firm as well as registered individuals in those branches. NASD also proposes to make certain conforming and technical changes to the current Form U4 and Form U5.

Highlights of the Proposed Form BR

There are nine sections of the proposed Form BR, as described below. The Form BR would permit applicants (*i.e.*, firms) to: (1) Apply for approval of or report a branch office (an ''initial'' filing); (2) amend information previously reported (an ''amendment'' filing); (3) terminate a branch office registration (a ''closing'' filing); or (4) withdraw an initial filing before approval by a jurisdiction or SRO (a ''withdrawal'' filing).

Section 1—General Information

Section 1 would report the applicant's CRD number, name, address, billing code, branch address, and telephone number. NASD would pre-populate the applicant's CRD number, name, and address.

Section 2—Registration/Notice Filing/Type of Office

Section 2 would ask the applicant to state where the branch would be registered (or notice filed), the type of branch office registration, and whether it would be an NASD Office of Supervisory Jurisdiction (''OSJ''). If it is not an OSJ, the applicant would be required to provide the CRD branch number, or firm billing code, for the OSJ that has supervisory responsibility over the branch and the CRD number of the supervisor in charge of that OSJ. Consistent with the concept of a uniform form, Section 2 of the proposed Form BR would give applicants the opportunity to designate whether the branch office filing is being made on behalf of a broker-dealer (''BD''), an investment adviser (''IA''), or both. This feature would enable firms to register or report IA branches in states that require such registration and reporting. Section 2 also would ask for NYSE Small Branch information.

Section 3—Types of Activities/Other Business Names/Websites

Section 3 would collect information with respect to the types of financial industry activities conducted by the applicant and any investment-related activities conducted by associated persons at the branch location. Section 3 also would ask for the names being used by any associated person to conduct investment-related activities at the branch office other than those names disclosed on the applicant's Form BD or Uniform Application for Investment Adviser Registration (''Form ADV''). Section 3 also would ask for the website addresses used by the branch office other than the applicant's primary Web site address.

Section 4—Branch Office Arrangements

Consistent with questions currently asked on Schedule E of the Form BD, Section 4 of the proposed Form BR would elicit information on branch office arrangements, including space sharing arrangements and liability for expenses. Section 4 would not require applicants to report insurance agency agreements with the main office pursuant to which the branch operates.

Section 5—Associated Individuals[11]

Section 5, which would have to be completed only for initial branch office registration filings, would ask for the names and CRD numbers of registered persons associated with a branch.[12] Individuals identified by the firm in this section would populate a dynamic ''branch roster'' of registered persons in Web CRD, which would be made available to firms. Once the branch has been established, changes to the branch roster would automatically be made through Web CRD when: (1) The ''Office of Employment Address'' question on the Form U4 is amended when an individual leaves a branch for another branch; or (2) the Form U5 is filed when an individual leaves a firm. Firms would be able to print a report, among other reports, that would list registered individuals who are currently associated with a branch, or who were associated with the branch during a specific time period. This functionality should facilitate firms' compliance with

[9] Currently, broker-dealers register or report branch offices or other business locations on Schedule E of the Form BD. NYSE member firms are required to submit the NYSE Branch Office Application Form to register a branch office with the NYSE. In addition, Connecticut, Florida, Nevada and Vermont have separate branch office forms that request similar information for firms seeking to register a branch office in those states. Moreover, more than 20 states require broker-dealers to submit a ''notice filing'' when a firm opens or closes a branch office.

With the implementation of Form BR, the NYSE would retire the current NYSE Branch Office Application Form. Seven states, Connecticut, Florida, Maine, Nevada, Texas, Vermont and West Virginia, also have indicated that they plan to use the Form BR. Other jurisdictions that currently require ''notice filings'' for branch openings and closings, including Alabama, Alaska, Hawaii, Idaho, Indiana, Illinois, Kansas, Michigan, New Mexico, Ohio, Rhode Island, South Dakota, Tennessee and Wisconsin, have indicated that they also expect to use the Form BR. Telephone conversation between John Veator, Director, Regulatory User Liaison, NASD, Elizabeth Badawy, Accountant, Division, Commission and Kate Robbins, Attorney, Division, Commission, on September 20, 2005.

The Division has granted no-action relief indicating that it will not recommend enforcement action to the Commission under Rules 15b1–1, 15b3–1, 15Ba2–2, and 15Ca2–1 under the Act for broker-dealers that file the Form BR, and do not complete Schedule E, or file amendments to Schedule E, of the Form BD, as of the date on which the transition to the Form BR begins and the CRD® no longer accepts Schedule E filings, which is currently anticipated to be October 15, 2005. *See* letter from Catherine McGuire, Chief Counsel, Division, Commission, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, NASD, dated September 30, 2005.

[10] The ''Explanation of Terms'' section of proposed Form BR would include definitions of additional terms used in the context of branch office registration and reporting, such as ''closing,'' ''person-in-charge,'' ''regular branch,'' ''small branch,'' ''supervisor,'' and ''withdrawal.'' The NYSE made slight modifications to the definitions of ''small branch'' and ''regular branch'' that were published in NASD's *Notice to Members* 04–55 to conform to its interpretive materials.

[11] NASD notes that the title of Section 5—''Associated Individuals''—refers to registered individuals who are associated with the particular branch office. Applicants would not be required to report the names of associated persons who are not registered.

[12] Firms would be required to enter the CRD number, and then the name would populate in the field.

one of the requirements contained in SEC Rule 17a–4(l).[13]

Section 6—NYSE Branch Information

Only firms registered with the NYSE would be able to view and would be required to complete Section 6. The proposed Form BR would incorporate the information elicited on the NYSE's current Branch Office Application Form and Office Space-Sharing Form. The CRD system would interact with the NYSE's branch office system on NYSE branch office registration filings.

The NYSE's current protocol for requesting approval for new branch offices would continue with the proposed Form BR. NYSE members would use Form BR to request such approvals, and the information provided by NYSE members would be transmitted to the NYSE, which, in turn, would communicate its determinations (*e.g.*, approvals) to the requesting NYSE firms through the CRD system.

Section 7—Branch Closing

Section 7 would be completed by a firm only upon the closing of a branch office registered with a jurisdiction or an SRO. Information in Section 7 would include the date operations ceased, or will cease, the location of the branch's books and records, and the name and telephone number of the contact person.

Because branch offices located close to state borders often move from one state to another, the proposed Form BR and the CRD system have been designed to accommodate such moves through amendment filings. Specifically, a firm would be able to file a single Form BR amendment that would both close the branch in one state and register or notice file the branch in another state that also has a registration or notice filing requirement. The Specific Instructions and notifications (the latter triggered by the state address change) in Section 1 (General Information) and Section 2 (Registration/Notice Filing/Type of Office) would advise applicants that the amendment has both changed the branch address to another state and closed the branch in the first state. In addition, the amendment would serve as a request to open a branch in the state to which the branch has moved if it is a state that requires registration or notice filing of branches.[14]

Section 8—Branch Withdrawal

Firms would be required to complete Section 8 only upon withdrawal of a pending application. Information in this section would include the date of withdrawal, the reason for withdrawal, and the name and telephone number of the contact person.

Section 9—Signature

Section 9 would be the signature page. The language on the signature page would be consistent with the current attestations on the Form U4 and the Form BD.

Conforming and Technical Changes to Forms U4 and U5

NASD is proposing conforming changes to the Forms U4 and U5 to fully integrate the branch office registration and reporting process through the CRD system. First, NASD is proposing changes to the ''Office of Employment Address'' to parallel the information reported on the Form BR, and to ensure the accuracy and integrity of the link between registered representatives and their branches. When completing the Form U4, the firm/individual would be asked to select the branch office(s) from which the registered person will work based on the list of branch offices identified by the firm (through the filing of Forms BR). Once the registered locations are selected, CRD® would populate the ''Office of Employment Address'' on the General Information screen on the Form U4 for each registered person with the following data elements based on information reported on the Form BR: CRD Branch Number, NYSE Branch Code Number, address, and start and end dates. The Form U5 would display the same information.[15] If the individual is not located at a registered branch office, the firm must enter the business address of the location at which the individual is employed and the location from which the individual is supervised.

NASD is also proposing to add a question to the Form U4 to elicit whether the individual has an independent contractor relationship with the firm. Information regarding independent contractors currently is elicited on Schedule E of Form BD. The Working Group initially proposed to include this question on the Form BR but subsequently decided that the independent contractor question would be more appropriately placed on the Form U4.

In addition, NASD is proposing changes to the Specific Instructions on the Forms U4 and U5 to reflect the proposed changes to the forms. NASD is proposing other technical changes to the Forms U4 and U5 as well. Specifically, NASD proposes to: (1) Add to the Forms U4 and U5 registration categories that the Commission has previously approved;[16] (2) reorganize the electronic filing representations on the Form U4, Section 6 (Regulatory Requests with Affiliated Firms) for submitting a fingerprint for registration with an affiliated firm, so that the representations would follow a more logical order (the content of the representations would not change) and modify the Specific Instructions regarding the same; (3) amend the Forms U4 and U5 to reflect the change in name of the Cincinnati Stock Exchange (CSE) to the National Stock Exchange (NSX);[17] and (4) add new instructions on the Form U5 explaining the circumstances under which the ''Office of Employment Address'' would be pre-populated.

Making the Transition to Form BR

NASD expects that the effective date of the proposed rule change will be October 31, 2005. NASD plans to announce the effective date of the proposed rule change, along with a timetable for the transition to the Form BR, in a *Notice to Members* to be published no later than 30 days following Commission approval.

NASD has designated October 15, 2005 through October 30, 2005 as a ''lock-out'' period for the CRD system, during which time NASD would help firms with branch offices in existence as of the close of business on October 14, 2005 to register these offices. During the ''lock-out'' period, NASD would create a ''conversion'' Form BR on the CRD system for all branch offices in existence as of the close of business on October 14, 2005. NASD would assign a unique branch CRD number to each of these branches and pre-populate the ''conversion'' Forms BR with limited information for each of these

[13] 17 CFR 240.17a–4(l). SEC Rule 17a–4(l) requires certain records for the most recent two-year period to be maintained at the office to which they relate.

[14] NASD states that it would view a change in location simply as an amendment filing, not a request to open a new branch.

[15] NASD states that it would remove from the Forms U4 and U5 the Specific Instructions and form fields that currently require reporting of information that would be provided via Form BR and would pre-populate the appropriate fields on the Forms U4 and U5.

[16] *See* Securities Exchange Act Release Nos. 50162 (August 6, 2004), 69 FR 50406 (August 16, 2004) (SR–NASD–2004–078) (Research Analyst (RS) and Research Principal (RP)) and 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004) (SR–PCX–2003–51) (Pacific Exchange positions Market Maker (44), Floor Broker (45), and Market Maker acting as a Floor Broker (46)).

[17] *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

branches.[18] During this ''lock-out'' period, the CRD system would not accept any branch office forms or amendments via any of the current forms or Form BR.

Starting on October 31, 2005, the new branch office functionality would be available in the CRD system. Beginning on that date, firms with branch offices in existence before the close of business on October 14, 2005 could: (1) Complete the data fields for each ''conversion'' Form BR created by NASD during the ''lock-out'' period; and (2) file through CRD® the completed Forms BR.

In addition, firms would be able to amend Forms U4 to assign each registered person to a registered branch office. Firms could assign registered persons to branches by means of either individual Form U4 filings or an electronic file transfer (*i.e.*, a ''batch'' filing) established exclusively for this purpose.

Firms with branch offices in existence before the close of business on October 14, 2005 would have until May 1, 2006 to comply with the Form BR and Form U4 filing requirements for those branch offices. Therefore, by May 1, 2006, these firms would have to have: (1) Completed and filed the ''conversion'' Form BR for each such branch; and (2) with respect to the registered persons employed by such branches, amended all applicable Forms U4 to assign these registered persons to the branch office(s) (or other locations) from which they work.

Starting on October 31, 2005, firms would have to file a Form BR to register any new branch office opened on or after October 15, 2005.[19] Once a firm has filed a Form BR, the new branch would be established on the CRD system, and CRD® would automatically populate the ''Office of Employment Address'' of the Form U4 for each person identified in Section 5 (Associated Individuals) of the Form BR. Individuals identified in this section would populate a dynamic ''branch roster'' of registered persons in CRD®. Thereafter, firms would be required to submit amended Forms U4 to assign additional registered persons to the branch, and CRD® would automatically update the ''branch roster'' of registered persons in Web CRD.[20] The ''branch roster'' would be made available to firms.

Amendment No. 2

In Amendment No. 2, NASD: (1) Indicated that it expects that October 31, 2005 will be the effective date of the proposed rule change, and that the *Notice to Members* announcing the effective date (to be published no later than 30 days following Commission approval) will provide the timetable for the transition to the Form BR; (2) replaced the ''Making the Transition to Form BR'' subsection of the ''Purpose'' section in its entirety; (3) modified the ''Conforming Changes to Forms U4 and U5'' discussion in the ''Purpose'' section with respect to (i) Changes to the ''Office of Employment Address'' section of the Form U4, (ii) reporting independent contractor relationships on the Form U4, (iii) the procedures to be followed if an individual is not located at a registered branch office, and (iv) the effective date of the proposed rule change; (4) clarified in footnote 10 that the referenced report concerns registered individuals; and (5) made other minor edits to the proposal, including technical, non-substantive changes to the proposed Form BR, modifications to Sections 1 and 6 and related Specific Instructions on the Form U4 and modifications to Sections 1 and 6 and related Specific Instructions and other technical, non-substantive changes to the Form U5.

III. Comment Summary and NASD Response Letter

As noted above, the Commission received 6 comment letters with respect to the proposed rule change.[21] NASD filed a response letter to address concerns raised by the commenters.[22]

Most of the commenters generally supported uniform electronic registration of branch offices through the CRD system.[23] The commenters discussed many of the benefits of Form BR. Three commenters indicated that the Form BR would eliminate duplicative or redundant filings;[24] one of these commenters noted that Form BR would still provide regulators with pertinent information,[25] and another noted that it would promote efficiency.[26] Another commenter also praised the efficiencies that would result from Form BR, including ''registration of both state and NASD branch offices through CRD, centralized fee collection and on-line work queues.''[27] Two commenters indicated that the Form BR would improve data accuracy.[28] One of these commenters felt that a single filing would reduce the number of clerical oversights,[29] while the other thought that the cross-checks of filings in the CRD system would serve to improve the accuracy of the data.[30] The latter commenter also stated that Form BR will assist regulators by allowing them to generate reports about branch offices and, since it will link registered persons to branches, will allow regulators to better track complaints to branches.[31]

Of the commenters who voiced support for the proposal, two of the commenters supported the proposed rule change without qualification.[32] As discussed below, the other four commenters expressed concerns about the proposed form.[33]

One of the commenters' main concerns was the potential increase in costs and administrative burden.[34] A commenter stated that ''a more reasonable amount of information should be included on the Form BR that would result in less of an administrative burden for broker-dealers.''[35] Another commenter stated that ''the complexity of the proposed Form BR is extremely burdensome and solicits information beyond that necessary to register a branch office,'' and requested that

[18] NASD noted that the conversion process would download the following data in CRD® or the Investment Adviser Registration Depository (IARD℠), as well as data provided from the NYSE and participating states: Branch Address, CRD Branch Number, NYSE Branch Code Number, NASD/NYSE Supervisor/Person-In-Charge Name and CRD Number, Operational Status, and NYSE/Jurisdiction Registration Status.

[19] Article IV, Section 8 of the NASD By-Laws requires firms to report the opening of a branch office not later than 30 days after the branch is opened.

[20] Article V, Section 2 of the NASD By-Laws requires amendments to the Form U4 to be filed within 30 days after learning of the facts or circumstances giving rise to the amendment. The ''Specific Instructions'' for completing the Form U4, as amended, address procedures for updating the Form U4 to include all branch office addresses at which the individual is employed.

[21] *See supra* note 5.

[22] *See* NASD Response Letter, *supra* note 6.

[23] One commenter stated that it ''strongly supports the efforts of NASD and other working group members to integrate branch office registration into the CRD in order to create efficiencies for member firms,'' however, the commenter later stated that it ''cannot support the Form BR as it is currently proposed.'' *See* MML Letter, *supra* note 5. Another commenter noted that ''[w]e see no viable explanation for how this initiative will result in any enhancement to any objective related to customer protection,'' and indicated that ''two things are necessary before this initiative becomes one that it can support.'' *See* 1st Global Letter, *supra* note 5.

[24] *See* ARM Letter, Rhodes Letter and NASAA Letter, *supra* note 5.

[25] *See* ARM Letter, *supra* note 5.

[26] *See* NASAA Letter, *supra* note 5.

[27] *See* MML Letter, *supra* note 5.

[28] *See* ARM Letter and NASAA Letter, *supra* note 5.

[29] *See* ARM Letter, *supra* note 5.

[30] *See* NASAA Letter, *supra* note 5.

[31] *Id.*

[32] *See* Rhodes Letter and NASAA Letter, *supra* note 5.

[33] *See* ARM Letter, 1st Global Letter, MML Letter and ACLI Letter, *supra* note 5.

[34] *See* 1st Global Letter, MML Letter and ACLI Letter, *supra* note 5.

[35] *See* 1st Global Letter, *supra* note 5.

''more information be made available regarding the workflow and data maintenance that would be required of firms before the Form BR is finalized.'' [36] One of the commenters stated that the proposed Form BR is duplicative of Schedule E of Form BD and, ''[w]ithout a formal SEC action eliminating Schedule E,'' the Form BR, ''would exacerbate administrative burdens.'' [37] NASD responded to comments regarding the burdensome nature of the proposed Form BR by reiterating the benefits of the Form BR and the enhancements to the CRD system, including making the registration process more efficient and allowing regulators and firms to obtain reports showing branch offices within a firm and the registered individuals in each branch office.[38]

Two of the commenters were concerned about the effect of the adoption of the proposed ''branch office'' definition [39] on the instant proposal, indicating that the new definition would greatly increase the number of branch offices that had to be registered on Form BR.[40] One of these commenters indicated that NASD's proposed branch office definition would have a ''significantly disproportionate impact on broker-dealers affiliated with life insurers.'' [41] The same commenter also expressed concern that the NASD proposal ''does not evaluate the burdensome economic impact'' of the proposed 30-day time frame for amendments to the Form BR, and stated that, ''[t]he sheer number of offices and filings that would need updates on a very short time horizon is daunting * * *'' [42] NASD responded to comments regarding the proposed branch office definition by stating that ''the proposed Form BR is not linked to NASD's proposed rule change regarding the definition of branch office.'' [43] However, the Commission notes that, in fact, the Form BR is predicated upon a uniform branch office definition and views the two rule filings to operate in concert. Additionally, the NASD has delayed the effective date of the branch office definition until early 2006 to allow firms a smooth transition to the Form BR and associated filing protocols before making the new definition effective.[44]

Furthermore, some of the commenters voiced concerns about the specific sections of the form. One of the commenters requested that the fields requiring the branch telephone number and facsimile number be removed because ''they are unnecessarily burdensome to enter and maintain.'' [45] Another commenter indicated a need for multiple firm billing code fields to allow the entry of more than one billing code per branch, noting that ''different supervisors (those running different businesses in a single location) would likely possess different 'billing codes','' and that ''a scenario could exist wherein a single office being managed by a single individual will have more than one billing code.'' [46] The commenter suggested that, if necessary, this change be made as an enhancement after the Form BR is initially implemented so that NASD can maintain its planned rollout schedule. One of the commenters recommended that ''supervisor information be limited to one person who would be the primary supervisor * * *,'' [47] while another commenter applauded the NASD for allowing for multiple supervisors at a single office location.[48] NASD responded by indicating that it plans to maintain the current implementation schedule but that it would ask the Working Group ''to consider modifying the Form BR to permit a single branch office to report multiple billing codes.'' [49]

One commenter suggested that Section 3 be eliminated in its entirety ''since the information is beyond that needed to register a branch office and because business activities at a branch location, use of DBA names and websites are already subject to regulatory compliance.'' [50] Additionally, the commenter recommended that Section 4 be eliminated or changed to apply only to OSJs since ''requiring this information for all locations where a registered representative is located will cause an undue burden on firms to provide complete, accurate information and to monitor any type of change to such operations.'' [51] NASD responded to these comments by indicating that it believes that the information being elicited by these questions has significant regulatory value and that the questions should be retained.[52]

One commenter firmly disagreed with the requirement that the Form BR be signed, and noted that ''neither the current NYSE Branch Office Application nor the amendment of Schedule E of Form BD require signature. * * *'' [53] The commenter stated that ''[r]equiring a signature on Form BR is taking a step backwards and is tantamount to suggesting that the person submitting the filing is not accountable for the accuracy of the data contained in that filing.'' [54]

NASD responded that the Working Group ''believes that the integrity of the data to be reported on the proposed Form BR requires an attestation that the statements are 'current, true and complete.' '' [55] NASD further indicated that the signature requirement on Form BR is consistent with the signature requirements on the Forms U4 and U5.[56]

One commenter discussed the placement of a question regarding an individual's status as an independent contractor, which was added to the Form U4 and removed from the originally proposed Form BR in response to comments received in response to NASD's Notice to Members 04–55 published in August 2004.[57] The commenter urged that ''the independent contractor question be placed in a section of Form U4 that does not require

[36] *See* MML Letter, *supra* note 5. NASD indicated that this commenter is an insurance-affiliated broker-dealer. *See* NASD Response Letter, *supra* note 6.

[37] *See* ACLI Letter, *supra* notes 5 and 9.

[38] *See* NASD Response Letter, *supra* note 6.

[39] The Commission recently approved the NASD's and the NYSE's proposed definition of ''branch office.'' *See* Securities Exchange Act Release Nos. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104) and 52402 (September 9, 2005), 70 FR 54788 (September 16, 2005) (SR–NYSE–2002–34).

[40] *See* 1st Global Letter and ACLI Letter, *supra* note 5. One of these commenters also stated that it was ''premature'' to publish Form BR for comment given the uncertainty surrounding the definition of branch office. *See* ACLI Letter, *supra* note 5.

[41] *See* ACLI Letter, *supra* note 5. NASD indicated in its response letter that both of these commenters were concerned about the effect of the proposed Form BR on the insurance industry. The Commission notes that, according to its review, only the ACLI Letter specifically addressed the impact on the insurance industry.

[42] *Id.*

[43] *See* NASD Response Letter, *supra* note 6. NASD also indicated that it was addressing the impact of the proposed branch office definition in a separate rule filing, SR–NASD–2003–104. As noted above, NASD's proposed branch office definition has been approved by the Commission. *See supra* note 39.

[44] *See* Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104).

[45] *See* MML Letter, *supra* note 5.

[46] *See* ARM Letter, *supra* note 5.

[47] *See* MML Letter, *supra* note 5. This commenter further noted that, once the supervisor's CRD number is entered, the field for the supervisor's name could be populated from the supervisor's Form U4. *Id.*

[48] *See* ARM Letter, *supra* note 5.

[49] *See* NASD Response Letter, *supra* note 6.

[50] *See* MML Letter, *supra* note 5.

[51] *Id.*

[52] Telephone conversation between Shirley Weiss, Associate General Counsel, NASD, Elizabeth Badawy, Accountant, Division, Commission, and Kate Robbins, Attorney, Division, Commission, on September 22, 2005.

[53] *See* ARM Letter, *supra* note 5.

[54] *Id.*

[55] *See* NASD Response Letter, *supra* note 6.

[56] *Id.*

[57] *See* ARM Letter, *supra* note 5.

a registered representative signature so as to avoid triggering a [NASD] Rule 3080 notification,'' [58] and that NASD should ''set a 'no' default to the response to that question'' so that, when the independent contractor question is added to the Form U4, every registered person will not immediately have an incomplete Form U4.[59]

NASD responded by confirming that the independent contractor question will be located in a section of the Form U4 that does not require a registered person's signature if amended.[60] With regard to the request for a ''no'' default response to the independent contractor question, NASD indicated that it would not set a default response but that it would allow member firms to provide the answers to the independent contractor question as part of a ''batch'' data file that firms will be able to submit to assign registered persons to established branch offices.[61]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–030 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–NASD–2005–030. 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 the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–030 and should be submitted on or before October 28, 2005.

V. Discussion and Commission's Findings

After careful consideration of the proposed rule change, the comment letters, and NASD's responses to the comment letters, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[62] The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,[63] in general, and furthers the objectives of Section 15A(b)(6),[64] in particular, in that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 supports NASD, the NYSE, and state securities regulators' joint regulatory effort to develop a uniform branch office registration form that will enable firms to register branch offices electronically with NASD, the NYSE, other SROs and states. The Commission believes that utilizing a single form, Form BR, will make the branch office registration process more efficient by eliminating duplicative forms and questions and reconciling inconsistencies among existing forms, while retaining or adding questions that elicit information that will be of regulatory value to SROs and states, as well as the Commission. The conforming and technical changes to the Form U4 and the Form U5 will also ensure that the information elicited by such forms is of regulatory value to SROs and states. In this regard, the Commission believes that, by significantly streamlining the branch office registration process, such regulatory coordination and cooperation should result in an effective and efficient regulation that will serve the entire broker-dealer community.

The Commission also supports NASD's planned enhancements to the CRD system, which will coincide with the implementation of the Form BR, that will enable registered persons to submit via the Form U4 the name of the branch office(s) with which they are associated. From this information, firms and regulators will be able to generate reports showing, for example, the individuals who are currently associated with a branch, or were associated with a branch during a specific time period. The Commission believes that this is an important improvement to the CRD® database and will allow regulators to gather information and deploy examination resources more efficiently. The enhancements to the CRD system also will serve to reconcile inconsistencies in the CRD® database, thereby improving data integrity, via cross-checks between the Form BR and the corresponding sections of the Form U4.

Finally, the Commission believes it is reasonable for NASD to implement the proposed Form BR pursuant to the schedule set forth by NASD. The creation of ''conversion'' Forms BR for branch offices already in existence before the launch of the branch office functionality in CRD® should allow for a smooth transition to the new branch office registration system. In addition, the transition will be facilitated by NASD's allowing firms to make ''batch'' filings to assign registered persons to branch offices, thereby amending multiple registered persons' Forms U4 with one filing. Furthermore, the six-month period for firms to complete the Forms BR for such branch offices and amend the Form U4 for each registered person should give firms ample time to comply with their filing requirements.

[58] *Id.* NASD notes that ''NASD Rule 3080 requires certain disclosures regarding the predispute arbitration clause contained in the Form U4 to be made whenever an associated person is asked to sign a new or amended Form U4.'' *See* NASD Response Letter, *supra* note 6.

[59] *See* ARM Letter, *supra* note 5.

[60] *See* NASD Response Letter, *supra* note 6.

[61] *Id.*

[62] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[63] 15 U.S.C. 78*o*–3(b).

[64] 15 U.S.C. 78*o*–3(b)(6).

Accelerated Approval of Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[65] Amendment No. 2 clarified: (1) The effective date of the proposed rule change and the process for transitioning to Form BR; (2) the description of conforming changes to be made to Forms U4 and U5; and (3) the description of the reports that will be able to be generated in the CRD system. Amendment No. 2 also included other minor edits, including technical, non-substantive changes to the proposed Form BR, modifications to Sections 1 and 6 and related Specific Instructions on the Form U4, and modifications to Sections 1 and 6 and related Specific Instructions and other technical, non-substantive changes to the Form U5. The Commission believes that Amendment No. 2 provides for a clearer understanding of the implementation schedule of the proposed Form BR, the proposed changes to Forms U4 and U5, and the new functionality in the CRD system and notes that the technical and clarifying changes made to the Form BR and Forms U4 and U5 raise no new issues of regulatory concern.

Accordingly, the Commission believes that accelerated approval of Amendment No. 2 is appropriate.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b)(6) of the Act.[66]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[67] that the proposed rule change (SR–NASD–2005–030), as amended by Amendment No. 1, is hereby approved and that Amendment No. 2 thereto is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[68]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5534 Filed 10–6–05; 8:45 am]

BILLING CODE 8010–01–P

[65] 15 U.S.C. 78s(b)(2).

[66] 15 U.S.C. 78*o*–3(b)(6).

[67] 15 U.S.C. 78s(b)(2).

[68] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52550; File No. SR–NYSE–2005–64]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Add Rules Regarding Time Tracking Requirements of Specialists and Specialist Organizations to Its Minor Rule Violation Plan

October 3, 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 September 22, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 476A in order to include NYSE Rule 103.12, which relates to time tracking requirements of specialists and specialist organizations, in its Minor Rule Violation Plan. The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.nyse.com*), at the Exchange'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, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 12, 2005, the Exchange filed with the Commission a proposed rule change relating to NYSE Rule 103.12,[3] which requires specialists and specialist organizations to record and report the actual time individuals spend working as a specialist or clerk while on the trading floor of the Exchange. NYSE Rule 103.12 requires specialists and specialist member organizations to make and keep, in the regular course of business, records of the times that each of the member organization's specialists and clerks work in such capacities on the floor. The specialists and specialist member organizations must be able to provide such records to the Exchange within the time frame and in a format determined by the Exchange. In addition, NYSE Rule 103.12 requires specialists and clerks to log in to the Exchange's IDTrack system and register their presence with respect to specialty stocks in which they are working. The IDTrack system provides reports and information pertaining to specialist and clerk activity to the Exchange's Division of Market Surveillance and to specialist firms.

NYSE Rule 103.12 allows the Exchange to more accurately track the identity of specialists and their clerks and the times when each specialist and clerk act in such capacities while on the floor. This proposed rule change seeks to add NYSE Rule 103.12 to NYSE Rule 476A's Supplementary Material, List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A, as an enforcement tool.

NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, 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. NYSE Rule 476A's procedures for the imposition of fines are designed to provide meaningful sanctions for certain rule violations when the initiation of a formal disciplinary procedure 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 response than an admonition letter. The Exchange believes that

[3] *See* Securities Exchange Act Release No. 52251 (August 12, 2005), 70 FR 48790 (August 19, 2005) (SR–NYSE–2005–47).

specialists and their clerks may at times fail to adhere to the record keeping requirements of NYSE Rule 103.12 in a manner that may be appropriate to be addressed with formal discipline (as provided under NYSE Rule 476) or informal discipline (such as a fine as provided under NYSE Rule 476A).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it would promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received 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, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–64 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–2005–64. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–64 and should be submitted on or before October 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5531 Filed 10–6–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52543; File No. SR–NYSE–2005–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (''Form BR'')

September 30, 2005.

I. Introduction

On April 13, 2005, the New York Stock Exchange, Inc. (''NYSE'' 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 proposal to adopt the Uniform Branch Office Registration Form [3] (''Form BR'').[4] The proposed rule change was published for comment in the **Federal Register** on July 1, 2005.[5] The Commission received no comments regarding the proposal.[6] This order approves the proposed rule change.

II. Description of Proposed Rule Change

The NYSE proposes to adopt Form BR, developed by a working group composed of representatives from the Exchange, NASD, the North American Securities Administrators Association (''NASAA'') and various states. The proposed Form BR would enable Exchange members and member organizations (''NYSE Membership'') to submit branch office application information to the Exchange, NASD, other self-regulatory organizations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of the NYSE, the Commission staff corrected the title of the Form BR, which was inadvertently shown in the initial filing as ''Uniform Branch Office Form.'' Telephone conversation between Stephen Kasprzak, Senior Special Counsel, NYSE and Elizabeth Badawy, Accountant, Division of Market Regulation (''Division''), Commission, on September 28, 2005.

[4] The National Association of Securities Dealers, Inc. (''NASD'') also filed a proposed rule change proposing to establish the Form BR, which is substantially similar to the Exchange's proposal. The Commission is simultaneously approving NASD's proposed rule change. *See* Securities Exchange Act Release No. 52544 (September 30, 2005) (SR–NASD–2005–030) (''NASD Release'').

[5] *See* Securities Exchange Act Release No. 51923 (June 24, 2005), 70 FR 38229 (''Notice'').

[6] The Commission notes that it received six comment letters on the NASD's proposed rule change and the NASD addressed the comments. *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated August 17, 2005 (''NASD Response Letter''). *See* NASD Release, *supra* note 4, for a summary of the comments and the NASD Response Letter.

(''SROs''), and states, as applicable, by electronically filing a single Form BR through the Central Registration Depository (''CRD®'' or ''CRD system'').[7] The NYSE Membership would be able to use the proposed Form BR to submit information that is currently furnished through the NYSE Branch Office Application form, Schedule E of the Uniform Application for Broker-Dealer Registration (''Form BD''),[8] and certain state branch office forms.[9]

The Form BR is one component of a broader project to provide uniform branch office definitions and registration procedures.[10] Enhancements to the CRD system would provide what amounts to a relational ''link'' between the Form BR and the Uniform Application for Securities Industry Registration or Transfer (''Form U4'').[11]

Previously, branch application information was submitted through the Exchange's Electronic Filing Platform (''EFP'').[12] Once the proposed new Form BR becomes effective, branch office applications and amendments would no longer be accepted or processed through the EFP. Form BR information submitted through CRD® would be automatically transmitted to the NYSE branch office system, from which the Exchange would review branch applications per its current protocol. The NYSE branch office system would then transmit approval/rejection determinations directly to CRD®, where the NYSE Membership could view them.

III. Discussion and Commission's Findings

After careful consideration of the proposed rule change, 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.[13] Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 supports the NYSE, NASD, and state securities regulators' joint regulatory effort to develop a uniform branch office registration form that will enable firms to register branch offices electronically with the NYSE, NASD, other SROs, and states. The Commission believes that utilizing a single form, Form BR, will make the branch office registration process more efficient by eliminating duplicative forms and questions and reconciling inconsistencies among existing forms, while retaining or adding questions that elicit information that will be of regulatory value to SROs and states, as well as the Commission. In this regard, the Commission believes that, by significantly streamlining the branch office registration process, such regulatory coordination and cooperation should result in an effective and efficient regulation that will serve the entire broker-dealer community.

The Commission also supports the planned enhancements to the CRD system, which will coincide with the implementation of the Form BR, that will enable registered persons to submit via the Form U4 the name of the branch office(s) with which they are associated. From this information, firms and regulators will be able to generate reports showing, for example, the individuals who are currently associated with a branch, or were associated with a branch during a specific time period. The Commission believes that this is an important improvement to the CRD® database and will allow regulators to gather information and deploy examination resources more efficiently. The enhancements to the CRD system also will serve to reconcile inconsistencies in the CRD® database, thereby improving data integrity, via cross-checks between the Form BR and the corresponding sections of the Form U4.

IV. Conclusion

For the foregoing reasons, 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, and, in particular, with Section 6(b)(5) of the Act.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–2005–13) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5535 Filed 10–6–05; 8:45 am]

BILLING CODE 8010–01–P

[7] As discussed in the Notice, some significant features of the Form BR would include a section that solicits information exclusively from the NYSE Membership. *See* Notice, *supra* note 5.

[8] The Division, in response to a request from NASD, has granted no-action relief indicating that it will not recommend enforcement action to the Commission under Rules 15b1–1, 15b3–1, 15Ba2–2, and 15Ca2–1 under the Act for broker-dealers that file the Form BR, and do not complete Schedule E, or file amendments to Schedule E, of the Form BD, as of the date on which the transition to the Form BR begins and the CRD® no longer accepts Schedule E filings, which is currently anticipated to be October 15, 2005. *See* letter from Catherine McGuire, Chief Counsel, Division, Commission, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, NASD, dated September 30, 2005.

[9] The NYSE notes that states that currently require branch office registration or reporting have indicated that they would use the proposed Form BR for those purposes. Seven states that require branch office registration, Connecticut, Florida, Maine, Nevada, Texas, Vermont and West Virginia, have indicated that they plan to use the Form BR. Other jurisdictions that currently require ''notice filings'' for branch openings and closings, including Alabama, Alaska, Hawaii, Idaho, Indiana, Illinois, Kansas, Michigan, New Mexico, Ohio, Rhode Island, South Dakota, Tennessee and Wisconsin, have indicated that they also expect to use the Form BR. Telephone conversation between John Veator, Director, Regulatory User Liaison, NASD, Elizabeth Badawy, Accountant, Division, Commission and Kate Robbins, Attorney, Division, Commission, on September 20, 2005.

[10] The Commission recently approved the NYSE's and the NASD's proposed definition of ''branch office.'' *See* Securities Exchange Act Release Nos. 52402 (September 9, 2005), 70 FR 54788 (September 16, 2005) (SR–NYSE–2002–34) and 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104).

[11] For example, while firms would continue to report changes to an individual registered person's branch office assignment by filing an amended Form U4, firms would also be able to report a new office of employment address for multiple registered persons assigned to a particular branch office that has moved to a new location by filing an amended Form BR (rather than filing multiple Form U4 amendments for the registered persons affected).

[12] The EFP is an extranet built by the NYSE to support authenticated, encrypted, two-way communications between the NYSE and its membership. It is currently being used for applications such as branch office approvals and short interest reporting.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52542; File No. SR–PCX–2005–85]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 2 and 3 Thereto Relating to Exposure of Orders in the PCX Plus Crossing Mechanism

September 30, 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 19, 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, II, and III below, which Items have been prepared by the PCX. The PCX filed Amendment No. 1 to the proposed rule change on September 20, 2005 and withdrew Amendment No. 1 on September 22, 2005. The PCX filed Amendment No. 2 to the proposed rule change on September 23, 2005.[3] The PCX filed Amendment No. 3 to the proposed rule change on September 27, 2005.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to decrease the exposure period in its Crossing Mechanism from 30 seconds to 10 seconds. Minor changes are also proposed to correct typographical errors in existing rule text. The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 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

PCX rules provide that a PCX Broker may not facilitate orders or cross two orders, using the Crossing Mechanism of the PCX Plus System (''PCX Plus'' or ''System''), unless it enters into the System the terms of each order that is to be included as part of a Cross Order,[5] pursuant to PCX Rule 6.76(c)(2)(A). Both facilitation crosses and non-facilitation crosses are executed in the same manner in PCX Plus. Upon entry into PCX Plus, the System will evaluate the terms of the Cross Order and, after accepting the Cross Order, will execute the cross in accordance with PCX Rule 6.76(c)(2)(B). Among other conditions, Rule 6.76(c)(2)(B) requires a 30-second exposure period in which OTP Holders and OTP Firms may enter orders to trade against the side of the Cross Order that has been designated as the Exposed Order.[6] It is this portion of the Crossing Mechanism rule that the PCX proposes to change.

The Exchange proposes to shorten the duration of the exposure period contained in the rules governing the Crossing Mechanism, as set forth in PCX Rule 6.76(c)(2)(B)(i)(a) and PCX Rule 6.76(c)(2)(B)(ii)(b),[7] from 30 seconds to 10 seconds. This shortened exposure period is fully consistent with the electronic nature of the System. Market participants on the PCX have implemented systems that monitor any updates to the PCX market including any changes resulting from orders being entered into the Crossing Mechanism and can automatically respond based upon pre-set parameters. In this electronic environment, it is not necessary to provide an exposure time sufficiently long to permit a person to manually respond to an updated market in order to provide the opportunity for crowd interaction. Thus, an exposure period of 10 seconds will permit exposure of orders on the PCX in a manner consistent with the Exchange's electronic market.

By reducing the exposure period from 30 seconds to 10 seconds the PCX believes that OTP Holders and OTP Firms will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which PCX Plus was developed.

The PCX also proposes to change a phrase in the text in Rule 6.76(c)(2)(B)(i)(b) and Rule 6.76(c)(2)(B)(ii)(b) from ''OTP Holder or OTP Firm'' to ''OTP Holders and OTP Firms''. It has always been the intent of the PCX to have the pluralized version of the terms as part of the rules.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders in the PCX marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2, the PCX clarified its statement of the purpose of the proposed rule change, corrected certain terminology that was inadvertently used in the rule text set forth in the original proposal, and corrected typographical errors in the text of the current rule.

[4] In Amendment No. 3, the PCX corrected Exhibit 4 to Amendment No. 2.

[5] *See* PCX Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of PCX Rule 6.76(c) as ''two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the ''Cross Price'').''

[6] *See* PCX Rule 6.76(c)(1)(D), which defines ''Exposed Order'' as follows: ''the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order.''

[7] PCX Rules 6.76(c)(2)(B)(i) and 6.76(c)(2)(B)(ii) govern the execution of Cross Orders when the Cross Price is between the Best Bid and Offer (''BBO'') and when it is at the BBO, respectively.

[8] 15 U.S.C. 78f(b)(5).

Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–85 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–PCX–2005–85. 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 the filing also will be available for inspection and copying at the principal office of the PCX. 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–2005–85 and should be submitted on or before October 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5525 Filed 10–6–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Mother's or Father's Insurance Benefits—20 CFR 404.339–404.342, 20 CFR 404.601–404.603—0960–0003.* SSA collects the information on the SSA–5–F6 to entitle an individual to his/her mother's and father's insurance benefits. The respondents are individuals who apply for entitlement to their mothers' or fathers' benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

2. Missing and Discrepant Wage Reports Letter and Questionnaire—26 CFR 31.6051–2—0960–0432. Each year employers report the wage amounts they paid their employees to IRS for tax purposes, and, separately, to SSA for retirement and disability coverage purposes. These amounts should be the same, however, each year many employer wage reports received by SSA are less than those reported to IRS. Through Forms SSA–L93, 95, and 97, SSA attempts to reconcile the amounts to ensure employees receive full credit. The respondents are employers who reported less wage amounts to SSA than they did to IRS.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 359,999.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 180,000 hours.

3. *Information Collection Requirements for Title VIII of the Social Security Act—20 CFR 408.202(d), 408.210, 408.230(a), 408.232(a), 408.320, 408.305, 408.310, 408.315, 408.340, 408.345, 408.351(d) and (f), 408.355(a), 408.360(a), 408.404(c), 408.410, 408.412, 408.420(a) and (b), 408.430, 408.432, 408.435(a) and (b), 408.437(b), (c) and (d)—0960–0658.* Section 251 of the ''Foster Care Independence Act of 1999'' added Title VIII to the Social Security Act (Special

Benefits for Certain World War II Veterans). Title VIII allows, under certain circumstances, the payment of a monthly benefit by the Commissioner of Social Security to a qualified World War II veteran who resides outside the United States. The accompanying regulations set out the requirements an individual must meet in order to qualify for and become entitled to Special Veterans Benefits (SVB). The respondents are individuals who are applying for benefits under Title VIII of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 762.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 381 hours.

4. *Application for Supplemental Security Income—20 CFR 416.305–416.335—0960–0444.* The information collected on the SSA–8001–BK is needed and used to determine eligibility for Supplemental Security Income (SSI), and the amount of SSI benefits payable to the applicant. Respondents are applicants for SSI benefits.

Type of Request: Revision of an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Form	34,643	1	19	10,970
Electronic Form (MSSICS)	1,120,117	1	16	298,698
Total Annual Burden:	1,154,760			309,668

5. *Marital Relationship Questionnaire—20 CFR 416.1826—0960–0460.* Form SSA–4178 provides a nationally uniform vehicle for collection of information to determine for Supplemental Security Income (SSI) purposes whether unrelated individuals of the opposite sex who live together are holding themselves out to the public as husband and wife. The information is necessary to determine whether correct payment is being made to SSI couples and individuals. The respondents are applicants for, and recipients of, SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

6. *Public Information Campaign—0960–0544.* SSA sends public information materials (*e.g.:* public service announcements, news releases, educational tapes) to public broadcasting systems so these media sources can inform the general public about the Agency's various programs and activities. To track media usage of these materials, SSA conducts the Public Information Campaign, a bi-annual solicitation of feedback from the target public media sources via business reply cards. The respondents are public broadcasting systems who are sent information about various SSA programs to disseminate to the public.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8,000.

Frequency of Response: 2.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 267 hours.

7. *Application for a Social Security Card—20 CFR 422.103–.110—0960–0066.* Forms SS–5 (used in the United States) and SS–5–FS (used outside the United States) are used to apply for original and replacement Social Security cards. Changes are being made to these forms to reflect new statutory limits on the number of allowable replacement cards. The respondents are requestors of new or replacement Social Security cards.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 13,600,000.

Frequency of Response: 1.

Average Burden Per Response: 9 minutes.

Estimated Annual Burden: 2,040,000 hours.

8. *Private Printing and Modification of Prescribed Applications and Other Forms—20 CFR 422.527—0960–0663.* This regulation mandates that non-government persons or organizations who wish to reproduce, duplicate, or privately print any application or other form owned by SSA must receive written authorization from the Agency to do so. Moreover, these persons or organizations may not charge the public a fee for any SSA applications, forms, or publications unless authorized by SSA under the circumstances described in these regulations. The respondents are private persons or groups who wish to reproduce, duplicate, privately print, or charge a fee for an SSA application, form, or publication.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9.

Frequency of Response: 36.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 43 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Credit Card Payment Acknowledgement Form—0960–0648.* SSA will use the information collected on Form SSA–1414 to process payments from former employees and vendors who have outstanding debts owed to the agency. This form has been developed as a convenient method for respondents to satisfy such debts. The respondents are former employees and vendors who have debts still owed to the agency.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 500.

Frequency of Response: 12.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 500 hours.

Dated: October 3, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–20158 Filed 10–6–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 5202]

60-Day Notice of Proposed Information Collection: Form DS–6001, Request for an Advisory Opinion, OMB Control Number 1405–XXXX; Form DS–6002, Prior Notification (22 CFR 126.8), OMB Control Number 1405–XXXX; Form DS–6003, Request for Reconsideration of Unclassified Proviso(s), OMB Control Number 1405–XXXX; DS–6004, Request To Change End User, End Use and/or Destination of Hardware, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Request for an Advisory Opinion.
- OMB Control Number: None.
- Type of Request: New Collection.
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- Form Number: DS–6001.
- Respondents: Business organizations.
- Estimated Number of Respondents: 250.
- Estimated Number of Responses: 250.
- Average Hours Per Response: 1 hour.
- Total Estimated Burden: 250 hours.
- Frequency: On Occasion.
- Obligation to Respond: Mandatory.
- Title of Information Collection: Prior Notification (22 CFR 126.8).
- OMB Control Number: None.
- Type of Request: New Collection.
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- Form Number: DS–6002.
- Respondents: Business organizations.
- Estimated Number of Respondents: 15.
- Estimated Number of Responses: 15.
- Average Hours Per Response: 1 hour.
- Total Estimated Burden: 15 hours.
- Frequency: On Occasion.
- Obligation to Respond: Mandatory.
- Title of Information Collection: Request for Reconsideration of Unclassified Proviso(s).
- OMB Control Number: None.
- Type of Request: New Collection.
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- Form Number: DS–6003.
- Respondents: Business organizations.
- Estimated Number of Respondents: 100.
- Estimated Number of Responses: 200 (respondents may submit more than one response).
- Average Hours Per Response: 1 hour.
- Total Estimated Burden: 200 hours.
- Frequency: On Occasion.
- Obligation to Respond: Mandatory.
- Title of Information Collection: Request to Change End User, End Use and/or Destination of Hardware.
- OMB Control Number: None.
- Type of Request: New Collection.
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- Form Number: DS–6004.
- Respondents: Business organizations.
- Estimated Number of Respondents: 300.
- Estimated Number of Responses: 650 (respondents may submit more than one response).
- Average Hours Per Response: 1 hour.
- Total Estimated Burden: 650 hours.
- Frequency: On Occasion.
- Obligation to Respond: Mandatory.

DATES: The Department will accept comments from the public up to 60 days from Friday, October 7, 2005.

ADDRESSES: Comments and questions should be directed to Angelo Chang, Office of Defense Trade Controls Management, Bureau of Political Military Affairs, Department of State, who may be reached by the following methods:

- E-mail: *ChangAA@state.gov.*
- Mail: Angelo Chang, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State, SA–1, Room H1200, Washington, DC 20522–0112.
- Fax: 202–261–8199.
- Hand Delivery or Courier: Angelo Chang, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State, SA–1, 12th Floor, 2401 E Street, NW., Washington, DC 20037. You must include the DDS form number and information collection title in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Angelo Chang, Acting Director, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, SA–1, Room H1200, 2401 E Street, NW., Washington, DC 20037, who may be reached via e-mail at *ChangAA@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Procedure to submit an advisory opinion as to whether the Directorate of Defense Trade Controls would likely grant a license or other approval for an export transaction (Form DS–6001). Also, the DS–6001 may be used to satisfy the prior approval requirements of 22 CFR 126.8 for a proposal to sell or manufacture abroad significant military equipment to foreign persons. Prior notification in accordance with 22 CFR 126.8(a)(2) regarding the sale of significant military equipment is submitted using form SD–6002. In order to request a change in the provisos(s) placed on an export license, the DS–6003 is submitted. To request a change to the end user, end use and/or destination of hardware prior to any sale, transfer, transshipment or disposal, whether permanent or temporary, of classified or unclassified defense articles to any end user, end use or destination other than as stated on a license or other approval is submitted using form DS–6004.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: Mail, personal delivery, and/or electronically.

Dated: September 19, 2005.

Michael T. Dixon,

Acting Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 05–20227 Filed 10–6–05; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 5201]

Department of State Performance Review Board Members (at Large Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (At-Large):

Margaret A. Philbin, Executive Director, Bureau of Administration, Department of State;

William E. Todd, Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs, Department of State;

Mark A. Clodfelter, Assistant Legal Adviser, for International Claims and Investment Disputes, Office of Legal Adviser, Department of State;

Barry L. Wells, Deputy Director, Foreign Service Institute, Department of State;

Gretchen Welch, Director, Office of Policy, Planning & Resources, Office of the Under Secretary for Public Diplomacy and Public Affairs, Department of State; (Outside Member).

Dated: September 27, 2005.

W. Robert Pearson,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 05–20230 Filed 10–6–05; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Part 65, Certification: Airmen Other Than Flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. The respondents to this information collection will be FAR Part 135 and Part 121 operators. The FAA will use the information to ensure compliance and adherence to the regulations.

DATES: Please submit comments by November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Part 65, Certification: Airmen other than flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0648.

Forms(s): None.

Affected Public: A total of 36 airmen.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: 1 hour.

Estimated Annual Burden Hours: An estimated 4,679 hours annually.

Abstract: The respondents to this information collection will be FAR Part 135 and Part 121 operators. The FAA will use the information to ensure compliance and adherence to the regulations.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 30, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–20177 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Approval of an Approved Information Collection Activity, Financial Responsibility Requirements for Licensed Reentry Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. Information to be collected supports FAA in determining the amount of required liability insurance for a reentry operator after examining the risk associated with a reentry vehicle, its operational capabilities, and its designated reentry site.

DATES: Please submit comments by November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Financial Responsibility Requirements for Licensed Reentry Activities.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0649.

Form(s): None.

Affected Public: A total of 3 space launch operators.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: 300 hours.

Estimated Annual Burden Hours: An estimated 900 hours annually.

Abstract: Information to be collected supports FAA in determining the amount of required liability insurance for a reentry operator after examining the risk associated with a reentry vehicle, its operational capabilities, and its designated reentry site.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officers.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the

burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 30, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–20178 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Supplement to Notice of Interim Operating Authority Granted to Commercial Air Tour Operators Over National Parks and Tribal Lands Within or Abutting National Parks

AGENCY: Federal Aviation Administration (FAA).

ACTION: Supplemental notice.

SUMMARY: This document supplements the Notice of Interim Operating Authority (IOA) Granted to Commercial Air Tour Operators Over National Parks and Tribal Lands Within or Abutting National Parks, which was published in the **Federal Register** on Thursday, June 23, 2005, (70 FR 36456). The June 23rd notice informs the public and seeks comment on operators who have received IOA and the number of allocations for each operator on a per park basis. This supplemental notice informs the public when comments to the June 23rd notice are due and republishes the IOA by park instead of by operator.

DATES: This supplement is effective September 20, 2005.

FOR FURTHER INFORMATION CONTACT: Gene Kirkendall, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 385–4510; e-mail: *Gene.Kirkendall@Faa.gov.*

SUPPLEMENTARY INFORMATION:

Background:

The Notice of Interim Operating Authority was issued pursuant to a statutory mandate in the National Park Air Tour Management Act, section 803, and recodified in Title 14 CFR 136.11(b)(3). These sections state that Interim Operating Authority (IOA) must be published in the **Federal Register** to provide notice and opportunity for comment. A comment end date was inadvertently left out of the Notice. Additionally, the FAA received comments after publication requesting that the FAA republish the IOA by park instead of by operator.

Supplemental Notice: The listing of all operators who have received IOA is republished by park. All comments to Notice No. 70 FR 36456 must be submitted in writing by October 31, 2005. Comments should be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT**.

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
Acadia National Park	Bar Harbor Aviation		2000
	Columbia Air Services–BHB LLC		2585
Arches National Park	Adams, Bruce M	Southwest Safaris	57
	Aero-Copters of Arizona, Inc	Helivision, Canyon Airlines, Bryce Canyon Helicopters, Bryce Canyon Airlines.	10
	Air Grand Canyon Inc		8
	American Aviation, Inc	Frog Air, American Air Charter	137
	Arrow West Aviation	Redtail Aviation	57
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	4
	Makarion Air	Makarion Air	10
	Maverick Helicopters, Inc		15
	Papillon Airways Inc.	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	12
	Slickrock Air Guides, Inc		323
	Swanstrom, Paul N	Mountain Flying Service	50
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	2
Aztec Ruins National Monument	Adams, Bruce M	Southwest Safaris	83
	Makarion Air	Makarion Air	5
Badlands National Park and Pine Ridge Indian Reservation.	Badger Helicopters Inc		4099
Bandelier National Monument	Adams, Bruce M	Southwest Safaris	126
Big Bend National Park	Adams, Bruce M	Southwest Safaris	5
Big Cypress National Preserve	Gretzke, Robert C	Wings	1260
Big Cypress Seminole Tribal Lands	Gretzke, Robert C	Wings	200
Biscayne National Park	Gretzke, Robert C	Wings	200
Black Canyon of The Gunnison National Park.	Adams, Bruce M	Southwest Safaris	7
	Makarion Air	Makarion Air	1
Blackfeet Tribal Lands	Kruger, James W	Kruger Helicopter Service	750
	Minuteman Aviation Inc		717
	Montana By Air L L C		12
	Red Eagle Aviation, Inc		159
Bryce Canyon National Park	Adams, Bruce M	Southwest Safaris	23
	Aero-Copters of Arizona, Inc	Helivision, Canyon Airlines, Bryce Canyon Helicopters, Bryce Canyon Airlines	1481
	Air Grand Canyon Inc		15
	American Aviation, Inc	Frog Air, American Air Charter	138
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	211
	Heli USA Airways, INC	Heli USA	6
	King Airelines Inc		12

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
	Las Vegas Helicopters Inc		12
	Makarion Air	Makarion Air	40
	Maverick Helicopters, Inc		15
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters	12
	Scenic Airlines, Inc.		1094
	Steve Winters d/b/a M & S Aero	M & S Aero	326
	Sundance helicopters Inc	Sundance Helicopters, Helicopter Services, Helicop Tours	12
	Westwind Aviation, Inc	Westwind Air Service	130
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours	1
Canyon De Chelly National Monument	Adams, Bruce M	Southwest Safaris	147
	Air Grand Canyon Inc		9
	American Aviation, Inc	Frog Air, American Air Charter	14
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	5
	Makarion Air	Makarion Air	8
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	2
Canyonlands National Park	Adams, Bruce M	Southwest Safaris	57
	Aero-Copters of Arizona, Inc	Helivision, Canyon Airlines, Bryce Canyon Helicopters, Bryce Canyon Airlines.	10
	Air Grand Canyon Inc		10
	American Aviation, Inc	Frog Air, American Air Charter	137
	Arrow West Aviation	Redtail Aviation	404
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	20
	Makarion Air	Makarion Air	40
	Maverick Helicopters, Inc		15
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	12
	Slickrock Air Guides, Inc		323
	Swanstrom, Paul N	Mountain Flying Service	50
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	1
Cape Hatteras National Seashore	Burrus FlightSeeing Service		1500
	Dairy Air Inc	Outer Banks Airways	6500
	Platt, Phil	Pelican Airways	170
Capitol Reef National Park	Adams, Bruce M	Southwest Safaris	57
	Air Grand Canyon Inc		2
	American Aviation, Inc	Frog Air, American Air Charter	136
	Arrow West Aviation	Redtail Aviation	63
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	6
	Makarion Air	Makarion Air	25
	Maverick Helicopters, Inc		15
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	5
	Swanstrom, Paul N	Mountain Flying Service	50
Capulin Volcano National Monument	Adams, Bruce M	Southwest Safaris	13
Carlsbad Caverns National Park	Adams, Bruce M	Southwest Safaris	18
	Makarion Air	Makarion Air	1
Casa Grande Ruins National Monument	Adams, Bruce M	Southwest Safaris	6
	Makarion Air	Makarion Air	25
Cedar Breaks National Monument	Adams, Bruce M	Southwest Safaris	15
	Air Grand Canyon Inc		9
	American Aviation, Inc	Frog Air, American Air Charter	27
	King Airelines Inc		12
	Maverick Helicopters, Inc		15
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	1
Chaco Culture National Historic Park	Adams, Bruce M	Southwest Safaris	147
Channel Islands National Park	Makarion Air	Makarion Air	5
Chiricahua National Monument	Makarion Air	Makarion Air	1
Colonial National Historical Park	Jamestown Flight Center		147
Colorado National Monument	Adams, Bruce M	Southwest Safaris	57
Coronado National Memorial	Adams, Bruce M	Southwest Safaris	5
	Makarion Air	Makarion Air	5
Death Valley National Park	Courtney Aviation, Inc	Courtney Aviation	4
	Heli USA Airways, INC	Heli USA	6
	King Airelines Inc		12
	Las Vegas Helicopters Inc		12
	Makarion Air	Makarion Air	40
	Maverick Helicopters, Inc		15
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	12

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
	Sundance Helicopters Inc	Sundance Helicopters, Helicopter Services, Helicop Tours.	6
Devils Postpile National Monument	McClelland, John and Terri	S.F. Helicopter Tours	2900
Dinosaur National Monument	Adams, Bruce M	Southwest Safaris	9
	Makarion Air	Makarion Air	2
Dry Tortugas National Park	Gretzke, Robert C	Wings	100
El Malpais National Monument	Adams, Bruce M	Southwest Safaris	43
El Morro National Monument	Adams, Bruce M	Southwest Safaris	43
Everglades National Park	Gretzke, Robert C	Wings	674
Fort Bowie National Historic Site	Adams, Bruce M	Southwest Safaris	5
Fort Davis National Historic Site	Adams, Bruce M	Southwest Safaris	5
Fort Point National Historic Site	McClelland, John and Terri	S.F. Helicopter Tours	2900
Fort Union National Monument	Adams, Bruce M	Southwest Safaris	32
Gila Cliff Dwellings National Monument	Adams, Bruce M	Southwest Safaris	26
Glacier National Park	Kruger, James W	Kruger Helicopter Service	750
	Minuteman Aviation Inc		717
	Montana By Air L L C		12
	Osprey Aero		60
	Red Eagle Aviation, Inc		159
	Selway Aviation LLC		20
	Wilson Aviation, LLC		60
Glacier National Park and Blackfeet Tribal Land.	Homestead Helicopters, Inc		15
Glen Canyon National Recreation Area	Adams, Bruce M	Southwest Safaris	123
	Aero-Copters of Arizona, Inc	Helivision, Canyon Airlines, Bryce Canyon Helicopters, Bryce Canyon Airlines.	39
	Air Grand Canyon Inc		65
	American Aviation, Inc	Frog Air, American Air Charter	462
	Arrow West Aviation	Redtail Aviation	63
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	5429
	King Airelines Inc		12
	Makarion Air	Makarion Air	40
	Maverick Helicopters, Inc		15
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	48
	Scenic Airlines, Inc		3153
	Slickrock Air Guides, Inc		323
	Steve Winters d/b/a M & S Aero	M & S Aero	10
	Swanstrom, Paul N	Mountain Flying Service	50
	Westwind Aviation, Inc	Westwind Air Service	4270
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	12
Golden Gate National Recreation Area	Makarion Air	Makarion Air	40
	McClelland, John and Terri	S.F. Helicopter Tours	11600
Golden Spike National Historic Site	American Aviation, Inc	Frog Air, American Air Charter	11
Governors Island National Monument	Liberty Helicopters, Inc		29432
Grand Teton National Park	American Aviation, Inc	Frog Air, American Air Charter	8
	Maverick Helicopters, Inc		15
	Montana Aircraft, Inc	Wings of Montana, Montana Aircraft	6
	Spirit Mountain Aviation LLC		45
Great Basin National Park	Makarion Air	Makarion Air	25
Great Sand Dunes National Park & Preserve.	Adams, Bruce M	Southwest Safaris	16
	Makarion Air	Makarion Air	3
Great Smoky Mountain National Park and Cherokee Tribal Lands.	Great Smoky Mountain Helicopter, Inc	Smoky Mountain Helicopters, M Helicopters of TN, Delta Helicopters, Cherokee Helicopters.	120
Great Smoky Mountains National Park	Rambo Helicopter Charter, Inc	Scenic Helicopter Tours	1800
Guadalupe Mountains National Park	Adams, Bruce M	Southwest Safaris	18
Haleakala National Park	Alika Aviation, Inc	Alexair	2923
	Aris, Inc	Air Maui Helicopter Tours	3996
	Call Air, Inc	Eco Air Tours—Hawaii	104
	Hawaii Helicopters, Inc		5682
	Helicopter Consultants of Maui, Inc	Blue Hawaiian Helicopters	8348
	Maui Island Air, Inc	Volcano Air Tours, Maui Air	130
	Paragon Air, Inc		219
	Rainbow Pacific Helicopters, Ltd	Magnum Helicopters	45
	Schuman Aviation Company, Ltd	Makani Kai Helicopters	25
	Sunshine Helicopters, Inc		4853
Havasupai Tribal Lands	American Aviation, Inc	Frog Air, American Air Charter	14
	Maverick Helicopters, Inc		15
Hawaii Volcanoes National Park	Above It All, Inc	Sporty's Academy Hawaii, Hawaii Island Hoppers, Hawaii Airventures, Benchmark Flight Center.	3878

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
	Big Island Air, Inc		1643
	Call Air, Inc	Eco Air Tours—Hawaii	102
	Hawaii Helicopters, Inc		141
	Helicopter Consultants of Maui, Inc	Blue Hawaiian Helicopters	12413
	K & S Helicopters, Inc	Tropical Helicopters	1684
	Manuiwa Airways, Inc.	Volcano Helicopters, Volcano Heli-Tours	800
	Maui Island Air, Inc.	Volcano Air Tours, Maui Air	611
	Mokulele Flight Service, Inc		60
	Paragon Air, Inc.		1019
	Rainbow Pacific Helicopters, Ltd	Magnum Helicopters	45
	Safari Aviation, Inc.	Safari Helicopter Tours	3920
	Schuman Aviation Company, Ltd.	Makani Kai Helicopters	25
	Sunshine Helicopters, Inc		2100
Hohokam Pima National Monument	Adams, Bruce M	Southwest Safaris	5
Hopi Tribal Lands	American Aviation, Inc	Frog Air, American Air Charter	14
Hovenweep National Monument	Adams, Bruce M	Southwest Safaris	63
	Air Grand Canyon Inc		2
	American Aviation, Inc	Frog Air, American Air Charter	27
Hualapai Tribal Lands	American Aviation, Inc	Frog Air, American Air Charter	14
Hubbell Trading Post National Historic Site.	Adams, Bruce M	Southwest Safaris	27
John Muir National Historic Site	Makarion Air	Makarion Air	40
	McClelland, John and Terri	S.F. Helicopter Tours	2900
Joshua Tree National Park	Makarion Air	Makarion Air	25
Kalaupapa National Historic Park	Call Air, Inc.	Eco Air Tours—Hawaii	198
	Paragon Air, Inc.		730
	Rainbow Pacific Helicopters, Ltd	Magnum Helicopters	45
	Schuman Aviation Company, Ltd	Makani Kai Helicopters	25
	Sunshine Helicopters, Inc		1252
Kaloko-Honokohau National Historical Park[1].	Call Air, Inc.	Eco Air Tours—Hawaii	37
	Rainbow Pacific Helicopters, Ltd.	Magnum Helicopters	45
	Schuman Aviation Company, Ltd	Makani Kai Helicopters	25
Lake Chelan National Recreation Area	Lake Chelan Air Service Inc	Chelan Airways	350
	Wings of Wenatchee, Inc		15
Lake Mead and Parashant National Recreation Area and National Monument.	Adams, Bruce M	Southwest Safaris	38
	Air Grand Canyon Inc		24
	American Aviation, Inc	Frog Air, American Air Charter	3
	Aviation Ventures, Inc	Vision Aviation Management, LLC, Vision Air.	6756
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	257
	Heli USA Airways, Inc.	Heli USA	7463
	King Airelines Inc		4380
	Las Vegas Helicopters Inc		1376
	Maverick Helicopters, Inc		9603
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	11322
	Rogers Helicopters Inc	Sky Life, Rogers Aviation, ROAM, Hall Air Ambulance Service, Inc., Dam Helicopter Company, Inc.	9000
	Scenic Airlines, Inc.		14707
	Sundance Helicopters Inc	Sundance Helicopters, Helicopter Services, Helicop Tours.	865
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	5
	Laughlin Aviation LLC		3015
Lake Roosevelt National Recreation Area	Wings of Wenatchee, Inc		12
Lassen Volcanic National Park	English, Daniel B	Mt. Lassen Aviation	89
	Makarion Air	Makarion Air	5
Lava Beds National Monument	Makarion Air	Makarion Air	1
Mesa Verde National Park	Adams, Bruce M	Southwest Safaris	63
	Makarion Air	Makarion Air	10
Mojave National Preserve	Makarion Air	Makarion Air	3
	Maverick Helicopters, Inc		15
Montezuma Castle National Monument	Adams, Bruce M	Southwest Safaris	19
	Air Grand Canyon Inc		5
	Grand Canyon Airlines Inc	Grand Canyon Airlines	156
	Makarion Air	Makarion Air	10
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	5
Monument Valley Navajo Tribal Park	Makarion Air	Makarion Air	50
	Maverick Helicopters, Inc		15

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
	Scenic Airlines, Inc		1303
Mount Rainier National Park	Classic Helicopter Corporation		32
	Island Air, Inc		2
	Natures Designs, Inc	Vashon Island Air	74
	Pavco, Inc		60
	Rite Bros Aviation Inc		2
	Wings of Wenatchee, Inc		3
Mount Rushmore National Memorial	Black Hills Aerial Adventures, Inc		363
	Rushmore Helicopters, Inc		5200
Muir Woods National Monument	McClelland, John and Terri	S.F. Helicopter Tours	2900
Natural Bridges National Monument	Adams, Bruce M	Southwest Safaris	9
	Air Grand Canyon Inc		6
	American Aviation, Inc	Frog Air, American Air-Charter	28
	Arrow West Aviation	Redtail Aviation	67
	Makarion Air	Makarion Air	5
	Maverick Helicopters, Inc		15
	Swanstrom, Paul N.	Mountain Flying Service	50
Navajo National Monument	Adams, Bruce M	Southwest Safaris	57
	Air Grand Canyon Inc		11
	American Aviation, Inc	Frog Air, American Air Charter	14
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	185
	Makarion Air	Makarion Air	50
Navajo Tribal Lands	Aero-Copters of Arizona, Inc	Helivision, Canyon Airlines, Bryce Canyon Helicopters, Bryce Canyon Airlines.	38
	Amercian Aviation Inc	Frog Air, American Air Charter	16
	Slickrock Air Guides, Inc		323
	Swanstrom, Paul N.	Mountain Flying Service	50
	Westwind Aviation, Inc	Westwind Air Service	2664
North Cascades National Park	Island Air, Inc		10
	Lake Chelan Air Service Inc	Chelan Airways	50
	Rite Bros Aviation Inc		2
	Wings of Wenatchee, Inc		10
Olympic National Park	Island Air, Inc		10
	Natures Designs, Inc	Vashon Island Air	26
	Pavco, Inc		27
	Rite Bros Aviation Inc		76
Organ Pipe Cactus National Monument	Adams, Bruce M	Southwest Safaris	5
Pecos National Historic Park	Adams, Bruce M	Southwest Safaris	32
Petrified Forest National Park	Adams, Bruce M	Southwest Safaris	42
	Air Grand Canyon Inc		4
	American Aviation, Inc	Frog Air, American Air Charter	14
	Makarion Air	Makarion Air	10
Petroglyph National Monument	Adams, Bruce M	Southwest Safaris	45
Pipe Spring National Monument	Adams, Bruce M	Southwest Safaris	23
	Air Grand Canyon Inc		3
Point Reyes National Seashore	McClelland, John and Terri	S.F. Helicopter Tours	2900
Pu'uhonua O Hoanunau National Historical Park.[2]	Call Air, Inc	Eco Air Tours—Hawaii	37
	Rainbow Pacific Helicopters, Ltd	Magnum Helicopters	45
	Schuman Aviation Company, Ltd	Makani Kai Helicopters	25
Puukohola Heiau National Historic Site[3]	Call Air, Inc	Eco Air Tours—Hawaii	88
	Rainbow Pacific Helicopters, Ltd	Magnum Helicopters	45
	Schuman Aviation Company, Ltd	Makani Kai Helicopters	25
Rainbow Bridge National Monument	Adams, Bruce M	Southwest Safaris	52
	Air Grand Canyon Inc		40
	American Aviation, Inc	Frog Air, American Air Charter	138
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	4472
	King Airelines Inc		12
	Makarion Air	Makarion Air	50
	Maverick Helicopters, Inc		15
	Scenic Airlines, Inc		1303
	Westwind Aviation, Inc	Westwind Air Service	4140
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	3
Redwood National and State Parks	McClelland, John and Terri	S.F. Helicopter Tours	2900
Rio Grande Wild and Scenic River	Adams, Bruce M	Southwest Safaris	5
Rosie the Riveter WWII Home Front National Historical Park.	McClelland, John and Terri	S.F. Helicopter Tours	2900
Sagauro National Park	Adams, Bruce M	Southwest Safaris	5
	Air Grand Canyon Inc		13
	Makarion Air	Makarion Air	10
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	2
Salinas Pueblo Missions National Monument.	Adams, Bruce M	Southwest Safaris	17

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
	Makarion Air	Makarion Air	1
San Francisco Maritime National Historical Park.	Makarion Air	Makarion Air	40
	McClelland, John and Terri	S.F. Helicopter Tours	2900
San Juan Island National Historical Park	Island Air, Inc		20
Santa Monica Mountains National Recreation Area.	Makarion Air	Makarion Air	5
Sequoia & Kings Canyon National Parks	Courtney Aviation Inc	Courtney Aviation	10
	Makarion Air	Makarion Air	5
Statue of Liberty National Monument	Helicopter Flight Services, Inc		3500
	Liberty Helicopters, Inc		29432
	New York Helicopter Charter, Inc		2655
	North East Air and Sea Services LLC		125
	Ventura Air Services, Inc		125
Sunset Crater Volcano National Monument.	Adams, Bruce M	Southwest Safaris	37
	Air Grand Canyon Inc		26
	American Aviation, Inc	Frog Air, American Air Charter	14
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	17
	Makarion Air	Makarion Air	20
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	4
Timpanogos Cave National Monument	American Aviation, Inc	Frog Air, American Air Charter	254
Tonto National Monument	Makarion Air	Makarion Air	2
Tumacacori National Historic Park	Adams, Bruce M	Southwest Safaris	5
Tuzigoot National Monument	Adams, Bruce M	Southwest Safaris	19
	Air Grand Canyon Inc		38
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	5
U S S Arizona Memorial [4]	Call Air, Inc	Eco Air Tours—Hawaii	198
	Paragon Air, Inc		18
	Rainbow Pacific Helicopters, Ltd	Magnum Helicopters	1500
	Schuman Aviation Company, Ltd	Makani Kai Helicopters	2100
Voyageurs National Park	Van Air, Inc		60
Walnut Canyon National Monument	Adams, Bruce M	Southwest Safaris	37
	Air Grand Canyon Inc		11
	Makarion Air	Makarion Air	5
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	1
Wupatki National Monument	Adams, Bruce M	Southwest Safaris	42
	Air Grand Canyon Inc		4
	American Aviation, Inc	Frog Air, American Air Charter	14
Yellowstone National Park	American Aviation, Inc	Frog Air, American Air Charter	8
	Carisch Helicopters Inc		20
	Makarion Air	Makarion Air	3
	Montana Aircraft, Inc	Wings of Montana, Montana Aircraft	60
	Spirit Mountain Aviation LLC		45
Yellowstone National Park and adjacent tribal land.	Homestead Helicopters, Inc		15
Yosemite National Park	Courtney Aviation, Inc	Courtney Aviation	100
	Maverick Helicopters, Inc		15
Yucca House National Monument	Adams, Bruce M	Southwest Safaris	63
	Makarion Air	Makarion Air	1
Zion National Park	Adams, Bruce M	Southwest Safaris	15
	Aero-Copters of Arizona, Inc	Helivision, Canyon Airlines, Bryce Canyon Helicopters, Bryce Canyon Airlines.	26
	Air Grand Canyon Inc		25
	American Aviation, Inc	Frog Air, American Air Charter	29
	Grand Canyon Airlines, Inc	Grand Canyon Airlines	3
	Heli USA Airways, Inc	Heli USA	6
	King Airelines Inc		12
	Las Vegas Helicopters Inc		12
	Makarion Air	Makarion Air	40
	Maverick Helicopters, Inc		15
	Papillon Airways Inc	Papillon Grand Canyon Helicopters, Grand Canyon Helicopters.	12
	Scenic Airlines, Inc		547
	Steve Winters d/b/a M & S Aero	M & S Aero	25
	Sundance Helicopters Inc	Sundance Helicopters, Helicopter Services, Helicop Tours.	12

National park/abutting Tribal land	Operator name	DBA	IOA auth/yr
	Windrock Aviation Inc	Windrock Aviation, Windrock Airlines, Sky Eye Air Tours.	3

[1] Subsequent to the June 23, 2005 notice, each of the listed air tour operators formally withdrew their application for commercial air tour operating authority for this park unit. FAA has responded by removing this park from the operator's Interim Operating Authority. No commercial air tour operations are currently authorized over this park unit.

[2] Subsequent to the June 23, 2005 notice, each of the listed air tour operators formally withdrew their application for commercial air tour operating authority for this park unit. FAA has responded by removing this park from the operator's Interim Operating Authority. No commercial air tour operations are currently authorized over this park unit.

[3] See note 2 above.

[4] The National Parks Air Tour Management Act of 2000 and Title 14, Code of Federal Regulations, Part 136.3(d)(1)(i) excepts operations conducted solely for the purposes of takeoff or landing from the definition of a commercial air tour operation. Subsequent to the June 23, 2005 notice, each of the listed air tour operators formally withdrew their applications for commercial air tour operating authority for this park unit. The FAA has responded by removing the Memorial from each of the operator's Interim Operating Authority (IOA).

Dated: September 20, 2005.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 05–20185 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cancellation of Environmental Impact Statement for the Oklahoma Launch Site Operator License for the Clinton-Sherman Industrial Airpark (CSIA)

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

SUMMARY: On October 23, 2002, the FAA published a Notice of Intent to prepare an environmental impact statement (EIS) for the Oklahoma Space Industry Development Authority's (OSIDA's) proposal to operate a commercial launch site at the Clinton-Sherman Industrial Airpark (CSIA) in the **Federal Register** (67 FR 65169). The original proposed action included horizontal and vertical launches, significant construction activities, orbital launches, and vehicle manufacturing. The nature of these activities necessitated that the proposed action be addressed through the preparation of an EIS.

Subsequent changes to the proposed action have eliminated the need for vertical launch, construction of any kind, orbital launches, and vehicle manufacturing. The proposed action as currently stated involves the horizontal launch of suborbital Reusable Launch Vehicles from an existing runway at the CSIA. The horizontal launch activities are similar to the current Air Force activities at the CSIA and are not expected to produce significant impacts, indicating that an EA would be the most appropriate NEPA analysis for OSIDA's proposed activities.

Scoping meetings were held in Oklahoma in November 2002. Because the proposed action is a subset of the information originally presented during scoping, we do not propose to re-initiate scoping meetings. For the reasons stated above, the FAA is canceling the EIS and will prepare an Environmental Assessment to analyze the impacts of the proposed action.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Doug Graham, FAA Environmental Specialist, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031 or (202) 267–8568.

Date Issued: September 30, 2005.

Herbert Bachner,

Manager, Space Systems Development Division.

[FR Doc. 05–20180 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of the Availability of the Record for Decision of O'Hare Modernization, at Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of the Availability of the Record of Decision for O'Hare Modernization.

Location of Proposed Action: O'Hare International Airport, Chicago, Illinois, (Sections 4, 5, 6, 7, 8, 9, 16, 17, and 18, Township 41 North, Range 10 East, 3rd P.M.).

SUMMARY: The Federal Aviation Administration (FAA) announces the Record of Decision (ROD) for O'Hare Modernization, for Chicago O'Hare International Airport, Chicago, Illinois is available.

SUPPLEMENTARY INFORMATION: The City of Chicago (City), Department of Aviation, as owner and operator of Chicago O'Hare International Airport (O'Hare or the Airport), PO Box 66142, Chicago, IL, 60666, proposes to modernize O'Hare to address existing and future capacity and delay problems. The City initiated master planning and the process of seeking FAA approval to amend its airport layout plan to depict the O'Hare Modernization Program (OMP). The city is also seeking the other necessary FAA approvals to implement the OMP and associated capital improvements and procedures. The FAA prepared an Environmental Impact Statement (EIS) addressing specific improvements at and adjacent to Chicago O'Hare International Airport, Chicago, Illinois. The Draft EIS was issued on January 21, 2005 and the Final EIS was issued on July 22, 2005. The FAA also held three public hearings on February 22, 23, and 24, 2005. The FAA's EIS presents an evaluation of the City's proposed project and reasonable alternatives. Under the City's concept, O'Hare's existing seven-runway configuration would be replaced by an eight-runway configuration, in which six runways would be oriented generally in the east/west direction, the existing northeast/southwest-oriented Runways 4L/22R and 4R/22L would remain, and Runways 14L/32R and 14R/32L would be closed.

On September 29, 2005 the FAA approved the Record of Decision for O'Hare Modernization which approves:

A. The unconditional approval of the revised Airport Layout Plan (ALP) for the projects summarized in Chapter 3 of the Final EIS, which constitute the proposed development.

B. Eligibility for Federal grant-in-aid funds and/or PFC, including the following elements:

1. Land Acquisition.
2. Site Preparation.
3. Runway, Taxiway, and Runway Safety Area Construction.
4. Terminal and Other Landside Development.
5. Installation of Navigational Aids.
6. Environmental Mitigation.
7. Noise Mitigation Projects.

C. Determination and actions, through the aeronautical study process of any off-airport obstacles that might be obstructions to the navigable airspace under the standards and criteria of 14 CFR part 77 and evaluate the

appropriateness of proposals for on-airport development from an airspace utilization and safety perspective based on aeronautical studies conducted pursuant to the processes under the standards and criteria of 14 CFR part 157.

D. Development of air traffic control and airspace management procedures to establish and maintain safe and efficient handling and movement of air traffic into and out of the airport under 49 U.S.C. 40103, 40113, and 40120; development and approval of revision to Standard Instrument Approach Procedures (SIAP), Standard Instrument Departures (SID) and Standard Approach Routes (STAR) procedures for the reconfigured runways (14 CFR part 97).

E. Determinations that the proposed new airfield alignment, including runways and taxiways, conform to FAA design criteria. Approval of protocols for maintaining coordination among sponsor offices, construction personnel, and appropriate FAA program offices, ensuring safety during construction.

F. Determinations that air quality impacts associated with the proposed project conform to the State Implementation Plan under section 176(c)(1) of the Clean Air Act, as amended (42 U.S.C. 7506(c)(1), and 40 CFR part 93).

G. Review and subsequent approval of an amended Airport Certification Manual for ORD (per 14 CFR part 139).

H. Review and subsequent approval of amended air carrier operations specifications for service at ORD.

This Notice of Availability and the ROD are also available on the FAA's Web site at *http://www.agl.faa.gov/OMP/ROD.htm* under the titles *Notice of Availability of the Record of Decision of O'Hare Modernization* and *Record of Decision*, respectively.

The ROD is available at the following libraries:

Arlington Heights Memorial Library, 500 North Dunton Ave., Arlington Heights
Bellwood Public Library, 600 Bohland Ave., Bellwood
Bensenville Community Public Library, 200 S Church Rd., Bensenville
Berkeley Public Library, 1637 Taft Ave., Berkeley
Bloomingdale Public Library, 101 Fairfield Way, Bloomingdale
College of DuPage Library, 425 Fawell Blvd., Glen Ellyn
Des Plaines Public Library, 1501 Ellinwood Ave., Des Plaines
Eisenhower Public Library, 4652 N Olcott Ave., Harwood Heights
Elk Grove Village Public Library, 1001 Wellington Ave., Elk Grove
Elmhurst Public Library, 211 Prospect Ave., Elmhurst
Elmwood Park Public Library, 4 W Conti Pkwy., Elmwood Park
Franklin Park Public Library, 10311 Grand Ave., Franklin Park
Glendale Heights Library, 25 E. Fullerton Ave., Glendale Heights
Glenview Public Library, 1930 Glenview Rd., Glenview
Harold Washington Library, 400 S. State St., Chicago
Hoffman Estates Library, 1550 Hassell Rd., Hoffman Estates
Itasca Community Library, 500 W. Irving Park Rd., Itasca
Lombard Public Library, 110 W Maple St., Lombard
Maywood Public Library, 121 S. 5th Ave., Maywood
Melrose Park Public Library, 801 N. Broadway, Melrose Park
Morton Grove Public Library, 6140 Lincoln Ave., Morton Grove
Mount Prospect Public Library, 10 S Emerson St., Mount Prospect
Niles Public Library, 6960 W Oakton St., Niles
Northlake Public Library, 231 N. Wolf Rd., Northlake
Oak Park Public Library, 834 Lake St., Oak Park
Oakton Community College Library, 1616 E. Golf Rd., Des Plaines
Park Ridge Public Library, 20 S Prospect Ave., Park Ridge
River Forest Public Library, 735 Lathrop Ave., River Forest
River Grove Public Library, 8638 W. Grand Ave., River Grove
Schaumburg Township District Library, 130 S Roselle Rd., Schaumburg
Schiller Park Public Library, 4200 Old River Rd., Schiller Park
Villa Park Public Library, 305 S Ardmore Ave., Villa Park
Wood Dale Public Library, 520 N Wood Dale Rd., Wood Dale

Issued in Des Plaines, Illinois on September 29, 2005.

Barry Cooper,

Manager, Chicago Area Modernization Program Office, Great Lakes Region.

[FR Doc. 05–19861 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

DATES: The meeting will be held October 24–28, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** Specific working group sessions will be held October 24–27. The plenary agenda will include:

- October 28:
- Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
- Review Working Group Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
  - GPS/Wide Area Augmentation System (WAAS) (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - GPS/Antennas (WG–7)
  - GPS/GRAS (WG–8)
- Review of EUROCAE activities
- Closing Plenary Session (Assignment/ Review of Future Work, Other Business, Date and Place of Next Meeting

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–20280 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: The meeting will be held November 17, 2005, from 9 a.m.– 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc.—MacIntosh-NBAA & Hilton-ATA Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

- November 17:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of previous meeting summary.
- Update by FAA.
- Presentations by TSA/JPDO.
- Presentations by ICAO.
- Discussions on vendor presentations.
- Division of work into subgroups.
- Closing Plenary Session (Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: October 3, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–20281 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22653, Notice 1]

Mercedes-Benz, U.S.A. LLC; Receipt of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 108

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of receipt of application for a temporary exemption.

SUMMARY: In accordance with the procedures of 49 CFR 555.6(b), Mercedes-Benz, U.S.A. LLC (''MBUSA'') has applied for a Temporary Exemption from S.5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108. The basis of the application is to facilitate the development and field evaluation of new motor vehicle safety feature providing a level of safety at least equal to that of the standard. We are publishing this notice of receipt of the application in accordance with the requirements of 49 CFR 555.7(a), and have made no judgment on the merits of the application.

DATES: You should submit your comments not later than November 7, 2005.

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820; E-Mail: *George.Feygin@nhtsa.dot.gov).*

I. Background

MBUSA petitioned the agency on behalf of its parent corporation, DaimlerChrysler AG.[1] The petition seeks a temporary exemption from S5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108. In short, S5.5.10 specifies that with certain exceptions not applicable to this petition, all lamps, including stop lamps must be wired to be steady-burning.[2] In order to develop and evaluate an innovative brake signaling system in the United States, MBUSA seeks a temporary exemption from the ''steady-burning'' requirement as it applies to stop lamps. This system is currently available in Europe on the S-class, CL-class, and SL-class Mercedes vehicles.

MBUSA states that the system enhances the emergency braking signal by flashing three stop lamps required by FMVSS No. 108 during strong deceleration. In addition, after emergency braking, the system automatically activates the hazard warning lights of the stopped vehicle until it starts to move again or the lights are manually switched off. The petitioner states that this signaling system reduces the following drivers' reaction time by attracting their attention, and also enhances visibility of the stopped vehicle, thus helping to reduce the incidence and severity of rear end collisions.

NHTSA previously denied petitioner's request to permanently amend FMVSS No. 108 to allow flashing brake signaling systems. Among the reasons for the denial was the need for additional data on safety benefits of flashing brake lamps. The petitioner argues that granting this temporary exemption would allow them to provide the information NHTSA found lacking.

MBUSA requests a two-year exemption period. In accordance with the requirements of 49 CFR § 555.6(b)(5), MBUSA will not sell more than 2,500 exempted vehicles in any twelve-month period within the two-year exemption period. For addition details, please see the MBUSA petition at *http://dms.dot.gov/search/searchFormSimple.cfm,* Docket No. NHTSA–2005–22653. The following (Parts II–VI) summarizes MBUSA's petition in relevant part.

II. Description of the New Motor Vehicle Safety Feature

The petitioner states that its brake signaling system provides two innovative safety-enhancing features.

First, three stop lamps required by FMVSS No. 108 flash at a frequency of 5 Hz in the event of strong deceleration. This occurs if the velocity is >50 km/h (31 mph) and at least one of the following conditions is met:

1. Deceleration is >7 m/s^2; or

2. The brake assist function is active; or

3. The Electronic Stability Program (ESP) control unit detects a panic braking operation.

The petitioner states that the activation criteria ensures that the enhanced brake signals are only activated when truly needed. Thus, the brake lights will flash only in severe braking situations, and will flash at a relatively high frequency that allows for fast recognition. Further, using the panic brake signal from the ESP control unit as a trigger would activate the system only when the achievable

[1] For more information on MBUSA go to *http://www.mbusa.com.*

[2] *See* S5.5.10 of 49 CFR § 571.108. Turn signal lamps, hazard warning signal lamps, school bus warning lamps must be wired to flash. Headlamps and side marker lamps may be wired to flash for signaling purposes. Motorcycle headlamps may be wired to modulate.

deceleration is substantially smaller than the demanded one. Thus, the stop lamps would not flash in routine situations.

Second, after emergency braking, the system automatically activates the hazard warning lights of the stopped vehicle until it starts to move again, or the lights are manually switched off.

III. Potential Benefits of the New Motor Vehicle Safety Feature

The petitioner states that the brake signaling system provides important safety enhancements not found in a vehicle equipped with a traditional brake signaling system. First, the flashing system reduces the following driver's reaction time and encourages maximum deceleration of following vehicles. The petitioner expects especially strong benefits during adverse weather conditions and for inattentive drivers. Second, the activation of hazard warning lamps on the stopped vehicle also enhances vehicle recognition after it came to a complete stop. The petitioner believes that together, these features will help to reduce rear end collisions and improve safety.

The petitioner is aware of the agency's longstanding restriction on flashing stop lamps, in the interest of standardized, instantly recognizable lighting functions. However, MBUSA believes its system will be easily recognizable, and would not interfere with NHTSA's objectives.

IV. The Petitioner's Research and Testing

The petitioner states that the development of the innovative brake light system is based on careful research and testing. The activation criteria for the flashing brake lights were established with the help of a driver behavior study. The petitioner further states that field studies have demonstrated that the brake light system can significantly reduce driver reaction times.

MBUSA used a driver braking behavior study to understand how often rapid deceleration braking occurs in the United States. The study followed 96 subjects using 15 Mercedes-Benz vehicles equipped with a driver behavior and vehicle dynamics recorder. The study indicated that one emergency braking maneuver occurred for every 2291 miles driven. The study also suggested that, based on the criteria described in the previous section, only 23 out of 100,000 braking maneuvers would activate the flashing stop lamps. The petitioner concludes that the flashing brake light will occur rarely, which will help to avoid ''optical pollution'' and enhance the effectiveness of the brake light system.[3]

MBUSA sponsored additional field and driving simulator studies, which showed that ''appropriately designed flashing brake lights significantly reduce drivers'' reaction times and thus can reduce the incidence and severity of rear-end collisions.''[4] Specifically, the study compared reaction times in emergency braking situations among conventional brake lights, conventional brake lights combined with hazard warning lights, flashing brake lights with a flashing frequency of 4 Hz, and flashing brake lights with a flashing frequency of 7 Hz.

The petitioner states that the study showed that flashing brake lights reduce driver reaction time by an average of 0.2 seconds, which is a reduction sufficient to meaningfully reduce the number and/or severity of rear end collisions. MBUSA argues that even higher reduction in reaction time would occur under real-world driving conditions, where drivers are less focused on the driving task and subject to more sources of distraction. The study also showed positive effects from the flashing brake light signal under adverse weather conditions and in distraction situations. Finally, the test subjects expressed a preference for flashing brake lights when compared to other brake light symbols.

The petitioner states that the Japanese Ministry of Land, Infrastructure and Transportation conducted a study to evaluate the validity and operating conditions of two types of emergency brake light displays, one that flashes upon sudden braking, sand one that enlarges the lighting area of the brake lamps. The study found that flashing brake lamps reduced following drivers' response time in the drivers' peripheral fields of vision. The study also showed that shorter flashing intervals are more effective. Finally, the study indicated that an emergency brake light display that enlarges the lighting area is not as effective as a flashing brake lamp.[5]

V. How Will a Temporary Exemption Facilitate the Development and Field Evaluation of a New Motor Vehicle Safety Feature?

The petitioner states that it intends to monitor the exempted vehicles and study the effectiveness of the brake signaling system. First, MBUSA will gather information about rear-end collisions of vehicles equipped with the system. This information will be combined with the parallel results from the European fleet and, according to the petitioner, may prove to be valuable in evaluating the anticipated safety benefits of the new brake light system. Second, the test fleet may enable MBUSA to evaluate acceptance of the flashing stop lamps among the American public.

VI. Why Granting the Petition for Exemption Is in the Public Interest

As indicated above, the petitioner argues that granting the requested exemption from FMVSS 108 would enable them to continue developing and evaluating its innovative brake signaling system, thus contributing substantially to ongoing efforts to consider the effectiveness of enhanced lighting systems in reducing rear-end crashes. MBUSA believes that the system will help to significantly reduce following driver reaction times, thus reducing rear end collisions.

The petitioner also noted that rear end collisions are a significant traffic safety concern, particularly in dense traffic areas, and an important cause of rear end collisions is a following driver's failure to detect that a leading vehicle has performed an emergency braking action. MBUSA believes that an enhanced braking signal that alerts following drivers to urgent braking situations has the potential to significantly enhance safety.

VII. How You May Comment on This Petition

We invite you to submit comments on the application described above. You may submit comments [identified by DOT Docket Number NHTSA–2005–22653] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

[3] Driver behavior research is described in Attachment A of the petition.

[4] The study was conducted by Dr. Joerg Breuer and Thomas Unselt.

[5] This study is described in greater detail in Attachment D of the petition.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. 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 in order 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.

Privacy Act: 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.*

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Dated: October 4, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–20277 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Vehicle Theft Prevention Standard; Fuji Heavy Industries U.S.A., Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Fuji Heavy Industries U.S.A., Inc. (Fuji) for an exemption in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard,* for the Subaru B9 Tribeca vehicle line beginning with model year (MY) 2006. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated July 19, 2005, Fuji Heavy Industries U.S.A., Inc. (Fuji), requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Subaru B9 Tribeca vehicle line. The petition has been filed pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Fuji's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year.

In its petition, Fuji provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the vehicle line. The antitheft device is a passive transponder-based, electronic, immobilizer system. The device is automatically activated after 30 seconds if the ignition is simply moved to the ''off'' position or when the engine is shut off and the vehicle key is removed from the ignition. Fuji will install its antitheft device as standard equipment on its B9 Tribeca vehicle line beginning with MY 2006.

Fuji stated that the antitheft device controls engine ignition, fuel delivery and starter motor operation. This device prevents the engine from unauthorized operation such as ''hot-wiring''. The proposed device will also have an alarm feature that will monitor the doors and key identification. The visual and audio features (and ''panic'' mode) of the standard equipment antitheft device will attract attention to the efforts of an unauthorized person to enter or move the vehicle by sounding the vehicle's horn and illuminating its 4-way flashing hazard lamps.

The immobilization feature of the device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. Fuji stated that integration of the antitheft device immobilization with the overall vehicle Controller Area Network (CAN) electrical architecture and control modules makes it nearly impossible for the immobilization features to be disabled or bypassed without also disabling all other body and engine controls. The engine will not start or run unless the ID code registered in the ignition key coincides with the code registered in the immobilizer engine control unit (ECU) of the vehicle. When the engine ECU receives a signal that the ID code matches, it allows engine fuel delivery and ignition. If the codes are not received, even with the use of a correct mechanical key, the electronic immobilization features of the key/vehicle antitheft system interface will not be defeated.

In addressing the specific content requirements of 543.6, Fuji provided information on the reliability and durability of its device. To ensure reliability and durability of the device, Fuji conducted tests based on its own specified standards. Fuji also provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

Fuji stated its belief that NHTSA has seen a trend in the past that theft rates drop dramatically on vehicles when electronic immobilization has been added to the alarm system. Fuji has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Fuji, the agency believes that the antitheft device for the Subaru B9 Tribeca vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide five of the types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of an unauthorized person to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by

unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6 (a)(4) and (5), the agency finds that Fuji has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Fuji provided about its device. For the foregoing reasons, the agency hereby grants in full Fuji's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541.

If Fuji decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Fuji wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, §543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: October 3, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–20186 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Mazda

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Mazda Motor Corporation, (Mazda) for an exemption in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard,* for the Mazda CX–7 vehicle line beginning with model year (MY) 2007. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated June 21, 2005, Mazda Motor Corporation (Mazda), requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Mazda CX–7 vehicle line beginning with MY 2007. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year. In its petition, Mazda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. The anti-theft device is a transponder-based, electronic, immobilizer system. Mazda will install its antitheft device, as standard equipment on its CX–7 vehicle line beginning with MY 2007. Mazda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Mazda's antitheft device is activated when the driver/operator turns off the engine using the properly coded ignition key. When the ignition key is turned to the ''ON'' position, the transponder (located in the head of the key) transmits a code to an immobilizer control module which then communicates with powertrain's electronic control module. The vehicle's engine can only be started if the transponder code matches the code previously programmed into the immobilizer control module. If the code does not match, the engine will be disabled. Mazda stated that communications between the immobilizer system control function and the powertrains electronic control module are encrypted with 18×10^{18} different codes, and each transponder is hard coded with a unique code at time of manufacture. Mazda also stated that its immobilizer system incorporates a light-emitting diode (LED) that provides information as to when the system is ''set and ''unset''. When the ignition is initially turned to the ''ON'' position, a three-second continuous LED indicates the proper ''unset'' state of the device. When the ignition is turned to ''OFF'', a flashing LED indicates the ''set'' state of the system and provides a visual confirmation that the vehicle is protected by the immobilizer system. The integration of the setting/unsetting device (transponder) into the ignition key prevents any inadvertent activation of the system.

In addressing the specific content requirements of 543.6, Mazda provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Mazda conducted tests based on its own specified standards. Mazda also provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. The components of the immobilizer device are tested in climatic, mechanical and chemical environments, and, immunity to various electromagnetic radiation. Mazda stated that for reliability/durablility purposes, its key and key cylinders must also meet unique strength tests against attempts of mechanical overriding. The tests conducted were for thermal shock, high temperature exposure, low-temperature exposure, thermal cycle, humidity temperature cycling, functional, random vibration, dust, water, connector and lead/lock strength, chemical resistance, electromagnetic field, power line

variations, DC stresses, electrostatic discharge, transceiver/key strength and transceiver mounting strength. Mazda also stated that its proposed device is reliable and durable because it does not have any moving parts, nor does it require a separate battery in the key. Any attempt to slam-pull the ignition lock cylinder, for example, will have no effect on a thief's ability to start the vehicle. If the correct code is not transmitted to the electronic control module there is no way to mechanically override the system and start the vehicle. Furthermore, Mazda stated that drive-away thefts are virtually eliminated with the sophisticated design and operation of the electronic-engine immobilizer system which makes conventional theft methods (*i.e.*, hot-wiring or attacking the ignition-lock cylinder) ineffective.

Additionally, Mazda reported that in MY 1996, the proposed system was installed on certain U.S. Ford vehicles as standard equipment (*i.e.* on all Ford Mustang GT and Cobra models, Ford Taurus LX, SHO and Sable LS models). In MY 1997, the immobilizer system was installed on the Ford Mustang vehicle line as standard equipment. When comparing 1995 model year Mustang vehicle thefts (without immobilizer), with MY 1997 Mustang vehicle thefts (with immobilizer), data from the National Insurance Crime Bureau showed a 70% reduction in theft. (Actual NCIC reported thefts were 500 for MY 1995 Mustang, and 149 thefts for MY 1997 Mustang.)

Mazda's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with devices similar to that which Mazda proposes. In these instances, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of this comparison, Mazda has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Mazda, the agency believes that the antitheft device for the Mazda vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Mazda has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Mazda provided about its device. For the foregoing reasons, the agency hereby grants in full Mazda's petition for exemption for its vehicle line from the parts-marking requirements of 49 CFR part 541.

If Mazda decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Dated: October 3, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–20184 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34752]

Watco Companies, Inc.—Continuance in Control Exemption—Louisiana Southern Railroad, Inc.

Watco Companies, Inc. (Watco), has filed a verified notice of exemption to continue in control of the Louisiana Southern Railroad, Inc. (LSRR), upon LSRR's becoming a Class III rail carrier.[1]

The transaction was scheduled to be consummated on or shortly after September 25, 2005.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34751, *Louisiana Southern Railroad, Inc.—Lease and Operation Exemption—The Kansas City Southern Railway Company*. In that proceeding, LSRR seeks to acquire by lease from The Kansas City Southern Railway Company and operate approximately 165.8 miles of rail line extending between: (1) A point 1,600 feet south of LN&W milepost 62, near Gibsland, LA, and milepost B–192, near Pineville, LA; (2) milepost 148.8, at Winnfield, LA, and the end of the track, at Joyce, LA; (3) milepost 78.8, at Minden, LA, and milepost 83.5, at Sibley, LA; and (4) milepost 48.48, south of Springhill, LA, and milepost B–102, east of Hinkle, LA.

Watco, a Kansas corporation, is a noncarrier that currently controls 13 Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO); Palouse River & Coulee City Railroad, Inc. (PRCC); Timber Rock Railroad, Inc. (TIBR); Stillwater Central Railroad, Inc. (SLWC); Eastern Idaho Railroad, Inc. (EIRR); Kansas & Oklahoma Railroad, Inc. (K&O); Pennsylvania Southwestern Railroad, Inc. (PSWR); Great Northwest Railroad, Inc. (GNR); Kaw River Railroad, Inc. (KRR); Mission Mountain Railroad, Inc. (MMT); Appalachian & Ohio Railroad, Inc. (AO); Mississippi Southern Railroad, Inc. (MSRR); and Yellowstone Valley Railroad, Inc. (YVRR).

Applicant states that: (1) The rail lines operated by SKO, PRCC, TIBR, SLWC, EIRR, K&O, PSWR, GNR, KRR, MMT, AO, MSRR, and YVRR do not connect

[1] Watco owns 100% of the issued and outstanding stock of LSRR.

with the rail lines being leased by LSRR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by LSRR with any railroad in the Watco corporate family; and (3) neither LSRR nor any of the carriers controlled by Watco are Class I carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses and coordinate billing, maintenance, mechanical and personnel policies and practices of applicant's rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the 14 railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34752, 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 Karl Morell, Of Counsel, BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 3, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20244 Filed 10–6–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34762]

CSX Transportation, Inc.—Temporary Trackage Rights Exemption—Alabama Great Southern Railroad Company

Alabama Great Southern Railroad Company (AGS), a subsidiary of Norfolk Southern Railway Company (the two entities will be referenced collectively as NSR) has agreed to grant temporary overhead trackage rights to CSX Transportation, Inc. (CSXT) over NSR lines running between Birmingham, AL, and Shrewsbury, LA, a total distance of approximately 355.1 miles.[1] Specifically, NSR has agreed to grant temporary overhead trackage rights over: (1) AGS South District between Birmingham, AL, 27th Street, milepost 142.0, and Meridian, MS, 27th Avenue, milepost 295.4; (2) NSR's trackage rights over the connection between AGS and KCSR near 27th Avenue in Meridian, MS, at milepost 295.4 and the connection between KCSR and AGS NO & NE District at milepost NO–0.4; (3) NO & NE District between Meridian, MS, 27th Avenue, milepost NO–0.4, and New Orleans, LA, Oliver Junction, milepost 194.1, and (4) New Orleans terminal Back Belt Line between New Orleans, LA, Oliver Junction, milepost 7.9 NT, and East City Junction at milepost 3.8 NT and between East City Junction at milepost 3.5 A and Shrewsbury, LA, IC Connection, milepost 0.0 A.[2]

The exemption became effective on September 23, 2005, and will expire on January 1, 2006.[3] The purpose of the temporary trackage rights is to allow CSXT to resume continuous east-west overhead service between Jacksonville, FL, and New Orleans, LA after portions of CSXT's main line between Pascagoula, MS, and New Orleans became inoperable due to damage from Hurricane Katrina.

As a condition to this exemption, any employees affected by the acquisition of the temporary 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), and any employees 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. 34762, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert Ledoux, Assistant General Counsel, CSX Transportation, Inc., 500 Water Street J–150, Jacksonville, FL 32202, and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 29, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20019 Filed 10–6–05; 8:45 am]

BILLING CODE 4915–01–P

[1] An incidental portion of the rail line, consisting of four-tenths of a mile, is operated by NSR via a trackage rights agreement between AGS and The Kansas City Southern Railway Company (KCSR). KCSR has consented to the use of the KCSR segment for the purposes of this transaction.

[2] On September 23, 2005, CSXT filed a request for a protective order and submitted a redacted version of the temporary trackage rights agreement that had been filed with the Board on September 22, 2005. CSXT stated that the unredacted version of the agreement that had been filed on September 22, 2005, contained highly sensitive data and proprietary information. It therefore asked that the unredacted version of the agreement be placed under seal and that the redacted version be placed in the public record in this proceeding. By decision served on September 28, 2005, the Board granted these requests.

[3] By decision served September 23, 2005, the Board granted CSXT's request for waiver of 49 CFR 1180.4(g) and allowed the exemption to become effective on September 23, 2005.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34751]

Louisiana Southern Railroad, Inc.—Lease and Operation Exemption—The Kansas City Southern Railway Company

Louisiana Southern Railroad, Inc. (LSRR), a noncarrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to lease from The Kansas City Southern Railway Company (KCS)

[1] LSRR is controlled by Watco Companies, Inc., a noncarrier that also controls thirteen (13) Class III railroads operating in thirteen States.

and operate four rail lines totaling approximately 165.8 miles. The rail lines are located between: (1) A point 1,600 feet south of LN&W milepost 62, near Gibsland, LA, and milepost B–192, near Pineville, LA; (2) milepost 148.8, at Winnfield, LA, and the end of the track, at Joyce, LA; (3) milepost 78.8, at Minden, LA, and milepost 83.5, at Sibley, LA; and (4) milepost 48.48, south of Springhill, LA, and milepost B–102, east of Hinkle, LA.

This transaction is related to STB Finance Docket No. 34752, *Watco Companies, Inc.—Continuance in Control Exemption—Louisiana Southern Railroad, Inc.,* wherein Watco Companies, Inc., has concurrently filed a verified notice of exemption to continue in control of LSRR upon LSRR's becoming a Class III rail carrier.

LSRR certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or shortly after September 25, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34751, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 3, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20245 Filed 10–6–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 3, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 7, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0071.

Type of Review: Extension.

Title: Multiple Support Declaration.

Form: IRS form 2120.

Description: A taxpayer who pays more than 10%, but less than 50% of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Respondents: Individuals or households.

Estimated Total Burden Hours: 6,160 hours.

OMB Number: 1545–0108.

Type of Review: Extension.

Title: Annual Summary and Transmittal of U.S. Information Returns.

Form: IRS form 1096.

Description: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498 and W–2G) to the IRS Service Centers. Under IRC section 6041 and related sections, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize and categorize the transmitted forms.

Respondents: Business or other for profit, Not-for-profit institutions. Individuals or households, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government.

Estimated Total Burden Hours: 1,016,812 hours.

OMB Number: 1545–0127.

Type of Review: Extension.

Title: U.S. Income Tax Return for Homeowners Associations.

Form: IRS form 1120–H.

Description: Homeowners associations file Form 1120–H to report income, deductions and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions, and credits have been correctly computed. This form is also used for statistical purposes.

Respondents: Business or other for-profit, and Individuals or households.

Estimated Total Burden Hours: 3,638,877 hours.

OMB Number: 1545–0257.

Type of Review: Extension.

Title: Forms 8109 and 8109–B, Federal Tax Deposit Coupon, and Form 8109–C, FTD Address Change.

Form: IRS form 8109, 8109–B and 8109–C.

Description: Federal Tax Deposit Coupons are used to deposit certain types of taxes at authorized depositaries. Coupons are sent to the IRS Centers for crediting to taxpayers' accounts. Data is used by the IRS to make the credit and to verify tax deposits claimed on the returns. The FTD Address change is used to change the address on the FTD coupons. All taxpayers required to make deposits are affected.

Respondents: Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit, Farms, and Federal Government.

Estimated Total Burden Hours: 1,841,607 hours.

OMB Number: 1545–1002.

Type of Review: Extension.

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Form: IRS form 8621.

Description: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time of payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Respondents: Individuals or households, and Business or other for-profits.

Estimated Total Burden Hours: 63,020 hours.

OMB Number: 1545–1027.

Type of Review: Extension.

Title: U.S. Property and Casualty Insurance Company Income Tax Return.

Form: IRS form 1120–PC.

Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 467,192 hours.

OMB Number: 1545–1029.

Type of Review: Extension.

Title: Low Income Housing Credit Disposition Bond or Treasury Direct Account Application.

Form: IRS form 8693.

Description: Form 8693 is needed per IRC section 42(j)(6) to post bond or establish a Treasury Direct Account and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

Respondents: Business or other for-profit, and Individuals or households.

Estimated Total Burden Hours: 1,690 hours.

OMB Number: 1545–1275.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss Carryforwards (CO–45–91 Final).

Description: Section 1.382–9(d)(2)(iii) and (d)(4)(iv) allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies under section 382(1)(5). Section 19(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulations retroactively, or revoke a prior section 382(1)(6) election.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 200 hours.

OMB Number: 1545–1487.

Type of Review: Extension.

Title: REG–209827–96 and REG 111672–99 (Final) Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

Description: Section 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under section 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign person in exchange described in section 332 and 355 to furnish information regarding such transfers.

Respondents: Business or other for-profits.

Estimated Total Burden Hours: 2,471 hours.

OMB Number: 1545–1519.

Type of Review: Extension.

Title: Long Term Care and Accelerated Death Benefits.

Form: IRS form 1099–LTC.

Description: Under the terms of IRC sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Section 6050Q requires all such amounts to be reported.

Respondents: Individuals or households, Business or other for-profits and State, Local or Tribal Government.

Estimated Total Burden Hours: 18,181 hours.

OMB Number: 1545–1657.

Type of Review: Extension.

Title: Revenue Procedures 99–32—Conforming Adjustments Subsequent to Section 482 Allocation.

Description: This revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest bearing account receivable or payable in an amount corresponding to the amount allocated under section 482 from, or to a related person with respect to a controlled transaction.

Respondents: Business or other for-profits.

Estimated Total Burden Hours: 1,620 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20191 Filed 10–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Thursday and Friday, October 27 and 28, 2005, from 8 a.m. until 4:30 p.m. on both days, at The American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to review the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs.

On October 27, 2005, the agenda will focus on military service-related needs of returning combatants from the war on terrorism in Afghanistan and Iraq. Particular attention will be given to the unique post-deployment needs of National Guard and Reserve personnel. The day's activities will also cover the coordination of services between VA and the Department of Defense to ensure continuity of care and a seamless transition for returning war veterans. The Committee will receive a briefing on VA Compensation and Pension program activity as provided to veterans returning from Operation Enduring Freedom and Operation Iraqi Freedom.

On October 28, 2005, the Committee will be provided with an update of the current activities of the Readjustment Counseling Service Vet Center program to serve the veterans returning from Afghanistan and Iraq. The agenda will also include an update on VA mental health program activities with special attention to mental health services for returning war veterans. In addition, the Committee will conduct a planning session to formulate recommendations for submission to Congress in its next annual report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee in advance of the meeting to Mr. Charles M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs (15), 810 Vermont Avenue, NW., Washington, DC 20420. Those who plan to attend or have questions concerning the meeting may contact Mr. Flora at (202) 273–8969 or *charles.flora@hq.med.va.gov.*

Dated: September 30, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–20157 Filed 10–6–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of

Performance Review Board (PRB) members. This notice updates the VA Performance Review Board of the Department of Veterans Affairs that was published in the **Federal Register** on January 19, 2005 (Vol. 70, 12).

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Charlotte Moment, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8165.

VA Performance Review Board (PRB)

R. Allen Pittman, Assistant Secretary for Human Resources and Administration (Chairperson).
Claude M. Kicklighter, Chief of Staff.
Thomas G. Bowman, Deputy Chief of Staff (Alternate).
Ronald R. Aument, Deputy Under Secretary for Benefits, Veterans Benefits Administration.
Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate).
Michael J. Kussman, M.D., Deputy Under Secretary for Health, Veterans Health Administration.
Dennis M. Lewis, Acting Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration (Alternate).
John H. Thompson, Deputy General Counsel.
Rita Reed, Deputy Assistant Secretary for Budget.
Jon A. Wooditch, Deputy Inspector General.
Richard Wannemacher, Jr., Acting Under Secretary, National CemeteryAdministration.

Veterans Benefits Administration PRB

Ronald R. Aument, Deputy Under Secretary for Benefits, (Chairperson).
Geraldine V. Breakfield, Associate Deputy Under Secretary for Management.
Jack F. McCoy, Associate Deputy Under Secretary for Policy & Program Management.
Michael Walcoff, Associate Deputy Under Secretary for Field Operations.
James Bohmbach, Chief Financial Officer.
Diana M. Rubens, Director, Western Area Office.
Thomas Bowman, Deputy Chief of Staff, Office of the Secretary.

Veterans Health Administration PRB

Michael J. Kussman, MD, Chair, Deputy Under Secretary for Health.
Dennis M. Lewis, Vice-Chair, Acting Deputy Under Secretary for Health for Operations and Management.
Linda W. Belton, Network Director, VISN 11.
Everett A. Chasen, Chief Communications Officer.
Jeanette A. Chirico-Post, MD, Network Director, VISN 1.
William F. Feeley, Network Director, VISN 2.
Barbara B. Fleming, MD, PhD, Chief Quality and Performance Officer.
Arthur S. Hamerschlag, VHA Chief of Staff.
Robert M. Kolodner, MD, Associate Chief Information Officer.
Robert E. Lynch, MD, Network Director, VISN 16.
Jimmy A. Norris, Chief Financial Officer.
Robert A. Petzel, MD, Network Director, VISN 23.
Catherine J. Rick, RN, MSN, Chief Nursing Officer.
Patricia Vandenberg, Assistant Deputy Under Secretary for Health for Policy and Planning.
Linda F. Watson, Network Director, VISN 7.
Nevin M. Weaver, Director, Management Support Office (Ex Officio).
Robert L. Wiebe, MD, Network Director, VISN 21.
Mark E. Shelhorse, Acting Chief Consultant, Mental Health Strategic Health Care Group.
Dennis Duffy, Acting Assistant Secretary for Policy, Planning, and Preparedness.

Office of Inspector General PRB

Stephen J. Cossu, Assistant Inspector General for Investigations, Department of Labor.
Michael P. Stephens, Deputy Inspector General, Department of Housing and Urban Development, Office of Inspector General.
R. Joe Haban, Assistant Inspector General for Investigations, Department of Health and Human Services, Office of Inspector General.

Dated: September 30, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E5–5544 Filed 10–6–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
October 7, 2005

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145
Hazardous Materials Training Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145

[Docket No.: FAA–2003–15085; Amendment Nos. 119–10, 121–316, 135–101, 145–24]

RIN 2120–AG75

Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators. In addition, the FAA is requiring that certain repair stations provide documentation showing that persons handling hazmat for transportation have been trained, as required by the Department of Transportation's Hazardous Materials Regulations (HMRs). The FAA is updating its regulations because hazmat transportation and the aviation industry have changed significantly since the FAA promulgated its hazmat regulations over 25 years ago. The rule will set clear hazmat training standards and ensure uniform compliance with hazmat training requirements.

DATES: *Effective Date:* November 7, 2005. *SFAR Expiration Date:* February 7, 2007. *Compliance Date:* February 7, 2007.

FOR FURTHER INFORMATION CONTACT: Janet McLaughlin, Office of Hazardous Materials, ADG–1, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8434.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get 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) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Identify the amendment number or docket number of this rulemaking.

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** of April 11, 2000 (65 FR 19477–19478), or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact the local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Terms and Abbreviations Frequently Used in This Document

Note: For the purposes of this rulemaking the terms ''air carrier,'' ''operator,'' ''air operator,'' ''carrier,'' and ''airline'' are used synonymously to refer to part 121 or part 135 operators. The term ''hazardous material'' is used synonymously with ''dangerous goods.''

AC—Advisory Circular
ALPA—Air Line Pilots Association
ATA—Air Transport Association of America, Inc.
COMAT—Material owned or used by a certificate holder, commonly referred to as ''company material.'' Material is only considered COMAT in transportation if it is being transported on the operator's own aircraft.
Hazmat—Hazardous material
HMRs—Department of Transportation's Hazardous Materials Regulations found in 49 CFR parts 171 through 180
ICAO—International Civil Aviation Organization
ICAO TI—International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods By Air
IATA—International Air Transport Association
IATA DGR—International Air Transport Association Dangerous Goods Regulations
NATA—National Air Transportation Association
NPRM—Notice of Proposed Rulemaking
NTSB—National Transportation Safety Board
PHMSA—Pipeline and Hazardous Materials Safety Administration (formerly the Research and Special Programs Administration)
RSPA—Research and Special Programs Administration (now the Pipeline and Hazardous Materials Safety Administration)
SFAR—Special Federal Aviation Regulation
TRF—Transport-related function, *i.e.*, any function performed for the certificate holder relating to the acceptance, rejection, storage incidental to transport, handling, packaging of COMAT, loading, of items for transport on board an aircraft
TSA—Transportation Security Administration
UPS—United Parcel Service
USPS—United States Postal Service
Will-carry operator—An operator authorized in its operations specifications to carry hazmat
Will-not-carry operator—An operator prohibited in its operations specifications from carrying hazmat that meets the definition of a hazardous material under the HMRs

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I. The Proposed Rule

On May 8, 2003, the FAA published a notice of proposed rulemaking (NPRM) on hazardous material training requirements for certain air carriers, commercial operators, and repair stations (68 FR 24810). In that NPRM,

the FAA proposed to amend the manual and hazmat training regulations in parts 121 and 135 to incorporate most of the guidance that is currently contained in Advisory Circulars (ACs). In addition, the FAA proposed to add requirements for part 145 repair stations so that the FAA could increase its oversight of the hazmat training that repair stations are required to conduct under 49 CFR part 172.

The comment period for the NPRM originally was scheduled to close July 7, 2003, but was extended to September 5, 2003 in response to public requests. See notice of extension of comment period published in the **Federal Register** on July 7, 2003 (68 FR 40206; July 7, 2003). The FAA received approximately 70 comments on the NPRM, many of which raised concerns with some aspects of the proposal.

II. Background

As discussed in the preamble of the NPRM, hazmat transportation regulations have changed since regulations for hazmat training were first adopted over 25 years ago. The Department of Transportation (DOT) implemented the Hazardous Materials Regulations (HMRs), 49 CFR parts 171 through 180 (41 FR 15972; April 15, 1976), in part to address changes following deregulation of the airline industry in the 1970s. DOT regulations govern the domestic transportation of hazmat by all modes of transport. The international aviation community relies on the International Civil Aviation Organization (ICAO) to set the standards for the safe transport of dangerous goods by air. These standards are contained in the ''Technical Instructions for the Safe Transport of Dangerous Goods by Air'' (ICAO TI). The ICAO TI also establishes hazmat training standards for air operators.

In the past, the FAA has used ACs as a way of helping air carriers and operators comply with the hazmat training requirements in the DOT HMRs. Information contained in ACs is not mandatory; it is advisory. This rule will incorporate existing guidance documents into regulations that can be uniformly enforced.

The proposed rule identified persons working for, or on behalf of the part 121 or part 135 operator who would need to receive hazmat training by the nature of the job description they hold or supervise. As used in the NPRM, the term ''supervise'' was intended to mean more than just being a designated supervisor. It was meant to include individuals with any degree of direct oversight over a function addressed by the proposed rule. This final rule clarifies that the term ''supervise'' only applies to those persons who have direct supervision over the job functions performed.

Consistent with the NPRM, the final rule establishes a two-pronged training program—one for part 121 and part 135 operators electing to transport hazmat (will-carry certificate holders), and the other for part 121 and part 135 operators electing not to transport hazmat (will-not-carry certificate holders). Will-carry certificate holders will have to conduct in-depth training for persons directly supervising or performing any of the following job functions involving items for transport on aircraft—acceptance, rejection, handling, storage incidental to transport, packaging of company materials owned or used by the certificate holder (known as COMAT), and loading. (Henceforth this list will be referred to as a transport-related function (TRF).) Will-not-carry certificate holders will be required to conduct training sufficient to enable the persons directly supervising or performing a TRF to identify material marked or labeled as hazmat, or material that is not marked or labeled as hazmat but possesses indicators that it might contain hazmat. Some possible indicators of hazmat include a hazard label or caution statement on the package with no accompanying shipping documentation, a notation such as ''flammable paint,'' without proper shipping paper declarations or labels or markings.

The FAA also proposed to add requirements for part 145 repair stations that would increase oversight of compliance with DOT hazmat training regulations. The FAA proposed that, at the time of application for a part 145 certificate or rating, a repair station would have to certify to the FAA that all hazmat employees, as defined in 49 CFR 171.8, are trained under the HMRs, and that it is otherwise in compliance with the hazmat training requirements of the HMRs. This final rule modifies that proposal to require repair stations to submit a certification to the FAA that all hazmat employees are trained under the HMR prior to the FAA issuing a certificate, not at the time of application.

In addition, the FAA proposed to amend part 145 by adding a requirement that repair stations notify each of its workers of the will-carry or will-not-carry status of the part 121 or part 135 operators for which the repair station works. In the final rule the FAA adopts this requirement with some amendments. This notification would have to be done as soon as the repair station is informed of the part 121 or part 135 operator's status. This requirement is intended to be the companion requirement to the proposed notification requirement for part 121 and part 135 operators. In the final rule the FAA amends the proposed provision to require the repair station verify receipt of the notification and communicate this status to its employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 prior to performing work for, or on behalf of the part 121 or part 135 operator.

III. Statutory Authority

The FAA has broad statutory authority to regulate for aviation safety. Specifically, the FAA has authority under 49 U.S.C. 44701(a)(5) to prescribe ''regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.'' Also, 49 U.S.C. 44701(b)(1) states ''Prescribing Minimum Safety Standards.—The Administrator may prescribe minimum safety standards for—(1) an air carrier to whom a certificate is issued under section 44705 of this title; * * *.'' In addition, the FAA is required to carry out its duties in a way that ''best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation'' (49 U.S.C. 44701(c)).

IV. Overview of Changes in the Final Rule

In response to public comments, the FAA is making the following changes in the final rule (discussed in detail under ''VI. Section-by-Section Discussion of the Final Rule'')—

- Clarifying that the term ''transport-related function (TRF)'' is merely a shorthand reference used in the NPRM preamble and the final rule preamble to refer to the list of covered job functions contained in §§ 121.1001 (proposed as §§ 121.801) and 135.501. This term, as amended in the final rule preamble, is used to avoid repeating the list ''acceptance, rejection, storage incidental to transport, handling, packaging of COMAT (company material) and loading of items for transport on board an aircraft.'' The FAA did not intend for the term to extend beyond the list of covered job functions. The term transport-related function is not a separate regulatory term so it is not defined in the regulations.
- Removing the terms ''unloading'' and ''carriage'' from the list of covered job functions proposed in §§ 121.801

(adopted as § 121.1001) and 135.501. The term ''unloading'' is removed because it is not a job function that needs to be addressed through the FAA's hazmat training program, since the item is being removed from the aircraft and thus would not pose a danger to the aircraft. If an item is subsequently loaded onto an aircraft, a trained person would have to perform the loading function. Based on comments from industry, the FAA believes it could be confusing to include the term ''carriage'' in the list of covered job functions in § 121.1001 and § 135.501. The term ''carriage'' is removed. The FAA does not believe the removal of this term to be significant because all of the terms covered by carriage are already listed as covered functions.

- Closely aligning the training modules in Appendix O (proposed as Appendix N) of part 121 with the standards in the 2005 edition of the ICAO TI and the IATA DGR. This will allow for workers to be trained in accordance with the job function they perform for part 121 or part 135 operators. The final rule does not prescribe exactly how each worker is to be trained. To this end, the FAA is removing the training ''modules'' and specifying minimum aspects of training for different job functions. The part 121 and part 135 operators will still be responsible for assessing the breadth and depth of each worker's training needs based on his or her job functions.
- Modifying proposed §§ 121.801 (adopted as § 121.1001) and 135.501 that would have required hazmat training to apply to all persons involved in supervising a hazmat job function. In the final rule, the FAA is limiting hazmat training to ''direct'' supervisors. This amendment eliminates the need to train persons up the supervisory chain who are not actively engaged in job functions that require hazmat training.
- Amending the recurrent hazmat training requirement currently contained in 121.401 and 135.323 by relocating it to §§ 121.1001 and 135.501 and amending the annual retraining cycle to a 24-month cycle. This change is consistent with the International Civil Aviation Organization's Technical Instructions on the Safe Transport of Dangerous Goods (ICAO TI) and the International Aviation Transport Association's Dangerous Goods Recommendations (IATA DGR) and (JAROPS) requirements.
- Clarifying that computer-based training (CBT) and distance-learning techniques, such as interactive video training, are acceptable means for satisfying the training specified in Appendix O of part 121, provided there is an opportunity for trainees to interact with an instructor to answer all questions prior to certifying completion of the training. Interaction may be in person or via telecommunications connection (e-mail, telephone, etc).
- Amending the recordkeeping provisions of §§ 121.1007 (proposed as § 121.804) and 135.507 to permit hazmat training records to be maintained electronically and off-site as long as they can be transmitted to a worker's place of work upon request.
- Harmonizing the requirements for the content of hazmat training records with the Pipeline and Hazardous Materials Safety Administrations's (PHMSA's) HMR, the ICAO TI, and the IATA DGR requirements. The FAA is deleting the requirement that the training records contain a statement signed by a person designated by the Director of Training.
- Removing the specific references to ''aircraft dispatcher,'' ''flight instructor,'' and ''check airman'' in Tables 1 and 2 in Appendix O of part 121 (proposed as Appendix N). The type of hazmat training an employee receives is based on the job functions he or she performs for, or on behalf of the part 121 or part 135 operator, not his or her job description.
- Clarifying that part 145 repair station personnel are required to be trained to a part 121 or part 135 operator's hazmat program only when they are performing or directly supervising a job function listed in § 121.1001 or § 135.501, for or on behalf of that part 121 or part 135 operator, including the aircraft loading function. The repair stations that meet the definition of a ''hazmat employer'' (49 CFR 171.8) must meet existing training requirements under 49 CFR part 172 subpart H.
- Requiring that a part 145 certificate holder inform employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 of the will-carry or will-not-carry status of the part 119 certificate holders for which it performs work.
- Amending the final rule to require that the repair stations certify to the FAA that they comply with 49 CFR hazmat training requirements (if applicable) prior to the FAA's issuance of a part 145 certificate or rating. This requirement will replace the proposed requirement that a repair station provide this certification upon application for a certificate.

V. Discussion of Public Comments

V.1. General

Comments

Both Ameristar Air Cargo and Express.Net Airlines commented that the proposed dispatcher training should also apply to anyone who performs a similar function (*i.e.*, flight following or flight locating). Ameristar stated that, ''flight followers perform the function of operational control on behalf of the Director of Operations and should be required to have some training in regard to their duties associated with the transport of hazardous materials.''

FAA Response

The requirement for hazmat training is determined by the employee's job function as specified in §§ 121.1001 and 135.501, not the job description. If the person performing the job description of aircraft dispatcher, flight instructor or check airman also performs a job function identified in § 121.1001 or § 135.501, he or she must complete the applicable portion of the part 121 or part 135 operator's approved hazmat training program. Crewmembers have specific training requirements in Appendix O, regardless of the other functions they perform relating to cargo onboard the aircraft. A person performing any job function listed in § 121.1001 or § 135.501 must meet the same requirement whether specifically listed in the current § 121.401 or § 135.323. The reference to pilots, flight engineers, flight attendants and dispatchers in proposed Appendix N has been amended in the final rule. This appendix, adopted as Appendix O, identifies training associated with applicable job functions and is closely aligned with the 2005 edition of the ICAO TI and the International Air Transport Association Dangerous Goods Regulations (IATA DGR). Dispatcher training is currently referenced in §§ 121.401(a)(1) and 135.323(a)(1). In the final rule the FAA is amending these sections only to remove the reference to hazardous materials training. The hazmat training requirements are relocated in 14 CFR subpart Z of part 121 and subpart K of 135. However, the other training requirements referenced by §§ 121.401 and 135.323 remain unchanged. The requirement for each crewmember, aircraft dispatcher, flight instructor and check airman to be adequately trained to perform his or her duties other than hazmat job functions must be retained in § 121.401(a)(1) and § 135.323(a)(1) to maintain the requirements for flight and proficiency training identified in Appendixes E and

F. This requirement is not changed in this rulemaking.

Comments

The Air Transport Association of America, Inc. (ATA) stated that the FAA should address non-compliance such as that brought to light in the ValuJet accident, through appropriate enforcement. Other commenters noted that the NPRM imposes additional training requirements on carriers, when the FAA could far more effectively reduce undeclared and improperly declared hazmat by improving public education efforts towards shippers who offer hazmat for air transportation.

FAA Response

The FAA uses the enforcement process to address issues of noncompliance with FAA and DOT regulations and will continue to do so. Since 2000, FAA Hazardous Material Specialists have inspected over 8,000 shipping companies and conducted over 2,000 visits to shipper facilities, trade associations and various conferences to educate and inform shippers of their responsibilities under the HMRs. However, even with this public education campaign, the FAA has initiated 222 investigations for accepting hazardous materials improperly from January 2000 to December 2003. These investigations include both instances where hazmats were improperly labeled/marked or packaged, and instances where material was shipped undeclared and later found to be hazmat. Taking into account that noncompliance with the regulations continues despite the FAA's current training requirements and public education efforts, the FAA has adopted the revised training rules to improve the hazmat training program given to those individuals performing the job functions listed in §§ 121.1001 and 135.501. The FAA believes that a hazmat training requirement that includes clearly enforceable hazmat recognition training for both will-carry and will-not-carry certificate holders is a critical step towards reducing the number of improperly prepared or undeclared shipments. Recognition training for will-not-carry certificate holders is currently administered in accordance with advisory material; thus there are no regulatory standards. Enforceable hazmat training standards serve the dual purpose of establishing a mandatory hazmat training program with uniform requirements, and reducing the potential that ''discoverable'' hazmat shipments will move undetected. A ''discoverable'' hazmat shipment is a shipment that is likely to be flagged by a trained individual as a potential hazmat shipment, even though it is not properly prepared for shipment or is shipped undeclared. The FAA recognizes that not all improperly shipped hazmats or undeclared hazmats may be discoverable, even by a trained individual.

Additionally, the FAA notes that outreach to the aviation industry and public education has not been effective in eliminating the problem of improper shipments of oxygen generators. Since the Valujet tragedy in 1996, the FAA has investigated both operators and repair stations and has documented over 60 instances of improperly transported oxygen generators for which the FAA is collecting over $3 million in civil penalties. Oxygen generators are a key piece of equipment used in the aviation industry and are often shipped as COMAT without complying with DOT's hazmat regulations.

The FAA also has been actively engaged in enforcing the hazmat regulations. It has collected over $6 million in hazmat civil penalties for violations from U.S.-certificated air carriers from 2000 to 2003. One part 121 operator pled guilty in September 2003, to willfully not providing required hazmat information to its pilots. Another part 121 operator entered into a plea agreement with the U.S. Attorney for the Southern District of Florida in December 1999, which included agreed-to ''statement of facts'' describing hazmat infractions. One repair station was convicted of willfully not providing hazmat training in 1999.

Comment

ATA commented that the NPRM would not improve safety and is broader than necessary to address the primary safety objective cited—prevention of another ValuJet-type accident caused by inadequately trained contractors.

FAA Response

Valujet was a will-not-carry part 121 operator, thus the oxygen generators should never have been placed on board a Valujet aircraft for shipment as cargo. The FAA did not have any enforceable hazmat training requirements for part 121 will-not-carry certificate holders. This final rule corrects that deficiency. The commenter is correct that this rule addresses issues and concerns discovered through our oversight that are broader than the issues raised by the ValuJet accident.

Comment

United Parcel Service (UPS) challenged the FAA's statutory authority to promulgate requirements for training non-hazmat employees. UPS commented that the FAA has not articulated ''a reasonable basis for requiring a certificate holder to provide hazardous materials training to employees who do not perform or supervise any functions regulated under the HMR or who do not otherwise directly affect hazardous materials transportation safety.''

FAA Response

The FAA has broad statutory authority to regulate for aviation safety. Specifically, the FAA has authority under 49 U.S.C. 44701(a)(5) to prescribe ''regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.'' Also, 49 U.S.C. 44701(b)(1) states ''Prescribing Minimum Safety Standards.—The Administrator may prescribe minimum safety standards for—(1) an air carrier to whom a certificate is issued under section 44705 of this title; * * *.'' In addition, the FAA is required to carry out its duties in a way that ''best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation'' (49 U.S.C. 44701(c)).

Consistent with its statutory authority, the FAA has previously required hazmat training for non-hazmat employees working for part 119 certificate holders operating under part 135. (See 38 FR 14914; June 7, 1973.) The FAA believes that prior and current hazmat enforcement actions and accidents by will-not-carry operators transporting hazmat demonstrate the need for will-not-carry training. Additionally, the FAA notes that the industry's own International Air Transport Association's (IATA's) Dangerous Goods Regulations paragraph 1.5.0.1 states that the ICAO TI and IATA DGR include training for persons with various responsibilities in processing cargo (not necessarily involving dangerous goods). Thus, given our expertise and that the aviation industry's own representatives have determined such training is important, the FAA is including it in this change.

Comment

Several commenters addressed the need to regulate or certify the hazmat training companies providing training under this rule. Express.Net Airlines stated that ''regulation should mandate a skill level for instructors in the same manner the regulation mandates skill level for management personnel required for operations conducted under parts 121 and 135 from Part 119.65.'' Express.Net believed that the FAA

should have a program that sets forth the basic knowledge a person should possess before providing hazmat instruction. Express.Net noted that the European community requires operators that load, unload or transport dangerous goods to have a person in the position of Dangerous Goods Safety Advisor.

COSTHA commented that the NPRM should be amended to assess, monitor and certify professional schools that would be authorized to provide hazmat training. It urged the FAA to amend the NPRM to state that in lieu of developing an in-house training program, carriers (both will-carry and will-not-carry), repair stations and any other person affected by the regulations would be in compliance by completing a training program offered by a FAA-certified hazmat training company.

FAA Response

The comment suggesting that FAA establish standards for instructors or instructional schools is outside the scope of this rulemaking. Additionally, the comment suggesting a new required position for operators is also outside the scope of this rulemaking.

Comment

The overwhelming majority of the part 121 and part 135 operators requested flexibility in designing and determining curriculum, determining the depth of training required for the function the individual employee performs, the method of delivery, length of training and method of testing.

FAA Response

The FAA recognizes that part 121 and part 135 operators require flexibility to accomplish the required hazmat training. The FAA notes that it is the part 121 and part 135 operators' responsibility to ensure that the type, duration and delivery method of training is adequate and appropriate for each worker. The approved hazmat training program may be provided by company training programs, computer based programs, self-guided compact disk (CD) training programs, outside training firms or consultants, or any other type of organization offering training that meets the objective training requirements. Hazmat training may be provided by the operator or other public or private sources, including training classes that are offered by the IATA to the extent that the IATA training addresses the training specified in the FAA-approved hazmat training program. This FAA final rule will require that, regardless of the teaching method used, the operator must provide a method to respond to students' questions prior to certifying completion of the training. E-mail is an acceptable means of communicating and responding to questions.

Comment

UPS asked that the FAA confirm in any subsequent notice that operators only need to submit an outline of their proposed training programs rather than the actual training curriculum.

FAA Response

Section 121.401(a)(1) applies to all training as currently written, including hazmat. Once the final rule is fully effective, § 121.401(a)(1) will only apply to training other than hazmat training. New §§ 121.1003 (proposed as § 121.802) and 135.503 will contain the hazmat training requirement. As part of the hazmat training requirement, part 121 and part 135 operators are required to obtain FAA approval of the hazmat training program. The current practice of submitting an outline sufficient to provide an overview of the training program will suffice for purposes of approval, unless it is necessary to see the full hazmat training program to understand the curriculum.

Comment

The Air Line Pilots Association (ALPA) urged the FAA to clarify a concept called ''will-not-accept'' that is different than ''will-not-carry.'' ALPA believed that the two concepts are different because ''will-not-carry'' means no hazmat is allowed on the aircraft, while ''will-not-accept'' would allow carriers to carry their own hazmat as COMAT from point to point on their aircraft, but they would not be able to accept hazmat shipments from outside entities. ALPA believed that clarifying the three levels of classification (will-not-carry, will-not-accept, and will-carry) would be useful in allowing a carrier to develop a training program that would meet the needs of its operation.

FAA Response

The FAA only proposed will-carry and will-not-carry hazmat training. The part 119 certificate holder's operations specifications will either include an authorization permitting the certificate holder to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). There are no other options. Officially, the FAA has never endorsed a concept called ''will-not-accept'' that would allow carriers classified as will-not-carry certificate holders to carry hazmat as COMAT. If the COMAT is a hazardous material, it may be carried only by a will-carry certificate holder. A will-carry certificate holder may choose to limit its acceptance and transport of hazardous materials to COMAT only; however, the company makes this decision. The certificate holder is considered a ''will-carry'' operator, and the will-carry training program applies.

Comment

ATA noted that the procedures for handling dangerous goods, once the Transportation Security Administration (TSA) finds them, are currently under active discussion between the TSA and the carriers. The commenter went on to say that it is unclear what role carrier employees will have in handling such goods, or whether that responsibility will be handled completely or partially by a third-party contractor. ATA urged the FAA to reconsider the need for any additional training for carrier personnel who check-in passengers and luggage, and ensure that the rule takes into account ongoing developments in the TSA's role.

FAA Response

In drafting the final rule the FAA was cognizant of Pipeline and Hazardous Materials Safety Administration (PHMSA) (formerly Research and Special Programs Administration (RSPA)) and TSA activities in the area of hazmat transport by aircraft. On February 28, 2003, RSPA (now PHMSA) issued a ''Formal interpretation of regulations'' (68 FR 9735) clarifying that hazmat regulations apply to carry-on and checked baggage. Additionally, the RSPA interpretation specifically identified the point at which the carry-on baggage has been offered by the passenger for transportation and the point at which checked baggage has been accepted by the airlines for transportation. Carry-on baggage (including items on his/her person) is considered offered for transportation when the passenger tenders the baggage to screening personnel at an airport security screening checkpoint or otherwise attempts to proceed through the checkpoint with the hazardous material on his or her person. A passenger offers carry-on baggage for transportation, and represents it as fit for moving by aircraft, when the baggage is placed on the X-ray machine conveyer belt, handed to the baggage screening personnel, or placed in a bin or tray for examination by screening personnel, or when the passenger physically passes through the security checkpoint with the baggage (including items on his or her person). Carry-on

baggage is accepted by an air carrier when the airline accepts the boarding pass of the passenger while boarding the flight. The passenger is responsible for ensuring compliance for carry-on baggage with the HMR from the point of offer and at all times until transportation is complete.

Checked baggage is offered to the carrier at the point the passenger presents the baggage for acceptance by the carrier. This can occur at curbside check-in, at the ticket counter at the airport, or when the passenger presents the bag to screening personnel for explosive detection screening as a prerequisite to presentation to the carrier. When the baggage is tendered at curbside check-in or the ticket counter to the air carrier, the baggage is considered to have been accepted when the air carrier issues a baggage claim ticket for the checked baggage.

Given the various points at which baggage is considered offered for transport, and the varied types of workers that might accept baggage, it is critical that certificate holder's workers receive the proper hazmat training so that baggage can be properly screened. At the time of this writing, TSA checked baggage screeners are instructed to point out possible unauthorized hazmat items discovered in baggage to airline representatives so the airline representatives can determine if the items can be transported under the hazmat regulations. The certificate holder must report any unauthorized hazmat discovered in checked baggage to the FAA under PHMSA's rules at 49 CFR 175.31. In order for a worker to be capable of performing this job function, he or she must have completed hazmat training.

Comments

The National Transportation Safety Board (NTSB) commented that in May 1996, it issued Safety Recommendation A–96–26, which called for the FAA to require air carriers to revise as necessary their practices and training for accepting passenger baggage and freight shipments, and for identifying undeclared or unauthorized hazardous materials that are offered for transport. The NTSB voiced concern that the proposed training requirements would apply only to passenger air carriers. The NTSB urged the FAA to apply the training requirements to cargo carriers and cargo-only operations too.

FAA Response

The FAA has contacted the NTSB and informed them that the proposed training requirements would apply to both passenger and cargo air carriers. The final rule does not change this fact.

Comments

Integrated cargo carriers like UPS and FedEx Express were concerned that the proposals were drafted so broadly that, literally interpreted, they could require training of drivers in the carriers' ground operations. These carriers were concerned because their ground operations have not been covered under the FAA's training requirements in the past, although they are subject to PHMSA's hazmat training requirements. UPS and FedEx note that ground operations may well be outside the jurisdiction of the FAA. The commenter added that if the FAA intended the proposals to extend to those drivers, the costs of the additional training time would be enormous, with no commensurate safety benefit. Moreover, such coverage could conflict with the jurisdiction of other Federal agencies, and it would be problematic if FAA approval were required for a small portion of an otherwise extensive training process used to qualify drivers for their duties on-road.

FAA Response

Fed Ex and UPS are part 121 operators and both accept many types of hazmat for air transportation as well as transportation by rail and motor vehicle. The key to determining whom to train is to delineate which party is responsible for accepting a package for air transportation. This fact is consistent with current regulations. If a part 121 or part 135 operator's truck drivers are accepting property for air transportation, they must be trained in accordance with this rule. However, if another employee performs that job function for the part 121 or part 135 operator, then the truck driver would not have to be trained in accordance with this rule. For instance, a truck driver who is required to perform the function of acceptance of a package for air transport would have to be trained for performing that function. This is the same requirement as for a person at the sort facility performing the same function. In this case, if the truck driver is not responsible for performing the acceptance of a package for air shipment, and the certificate holder was relying on the truck driver to accept the package for only motor vehicle transport, then the truck driver does not need to be trained in the certificate holder's program. It is the function being performed or directly supervised that mandates the training requirement, not the job designation.

Comment

The Regional Airline Association (RAA) noted that after the Valujet accident the FAA invested heavily in the Air Transportation Oversight System (ATOS), which is an FAA oversight process that assesses an airline's safety attributes beyond strict regulatory compliance. RAA stated that ATOS was intended to raise the level of safety in the industry without additional regulations. RAA then questioned whether this proposal and the Part 60 proposal to codify extensive advisory material are a step back from the FAA's earlier commitment to the ATOS concept. RAA asked whether all of the FAA's advisory and field policy materials will be codified.

FAA Response

The FAA codifies voluntary standards when it believes it is in the best interest of safety to do so. In this case, hazardous materials are of significant concern in air transportation because of the potentially devastating consequences in the event of an accident due to an improperly transported hazmat.

V.2. Transition Period

Comments

AmAv, Inc., ATA, and UPS voiced concern that 15 months may not be enough time to develop the training program and have it approved by the FAA. In particular these commenters were concerned about what to do if the Principal Operations Inspector (POI) is not able to complete a review and approval of the program within the specified time frame. AmAv, Inc. also noted that having the POI approve the program would be a substantial increase in workload and some Flight Standards District Offices (FSDOs) are already overburdened and understaffed. UPS said that a certificate holder's current training program should remain in effect pending the FAA's approval of the revised training program.

FAA Response

The commenters raised several concerns that demonstrated some misunderstanding about the proposed rule. First, the POI will not be approving Hazardous Material Programs that include hazmat training. POIs will continue to approve the general operator's training program covered by § 121.401 or § 121.135. With regard to hazmat training, the POI will ''receive'' the training program information from part 121 and part 135 operators and submit it for review to the appropriate Regional Hazardous Material Branch

Manager in the FAA's Regional Security and Hazardous Materials Offices. This is consistent with current practice. The Hazardous Materials Branch Manager currently reviews the carrier's hazmat training program and will continue to be responsible for approving it and relaying that information back to the POI.

Second, part 121 and part 135 operators do not have to be concerned about having to implement the hazmat training program before it is approved by the FAA. Certificate holders are permitted to continue using their existing FAA approved training programs during the 15-month transition period. As provided in SFAR 99, ''during the transition period, these certificate holders can continue to comply with the current requirements or comply with the new requirements.'' The FAA believes that the 15-month transition period is a sufficient time period.

Third, incorporating the changes into the existing hazmat training program should not be difficult. The FAA chose 15 months as a transition period because it believes that the time period is sufficient to allow certificate holders to include any changes necessary due to this final rule into their existing mandatory 12-month annual recurrent training. Once this rule goes into effect, the recurrent training requirement is amended from annually to every 24 months. Since the hazmat training provision had been incorporated into the certificate holder's overall training provisions in §§ 121.401 and 135.323, the recurrent training requirement for hazmat had been aligned with the certificate holder's other recurrent training requirements for flight and proficiency training. The final rule amendment aligns the FAA's hazmat recurrent training provision with long-standing international recommendations and current industry practice for hazmat recurrent training. Thus, hazmat training and flight and proficiency training are now on different cycles. The movement from annual recurrent hazmat training to recurrent hazmat training every 24 months also aligns FAA requirements with the cycle for regulatory updates and changes followed by ICAO, IATA and the United Nations Subcommittee on the Transport of Dangerous Goods. The requirement to provide recurrent training every 24 months should provide the certificate holder with a streamlined process for revising and updating hazmat training programs.

Finally, the FAA does not believe that the changes necessitated by this rule will be as dramatic as the part 121 and part 135 operators foretell. Prior to publication of the NPRM, the FAA surveyed will-carry and will-not-carry operators with FAA-approved hazmat training programs to determine if the content of their training programs would be in compliance with the proposals in the NPRM. The FAA also randomly reviewed FAA-approved hazmat training programs currently in operations manuals of both will-carry and will-not-carry operators. These programs also were all found either to be completely adequate in content as compared to the proposed rule or would require only minor amendments.

Thus, the FAA anticipates that given the changes in the final rule certificate holders will not require significant changes to the current hazmat training program curriculum. In fact, most part 121 and part 135 operators adhere to the ICAO TI and the IATA DGR training requirements as an industry standard, and this final rule is closely aligned with the ICAO TI and IATA DGR training requirements that will be effective January 1, 2005. Therefore, certificate holders adhering to the ICAO TI and IATA DGR requirements will have programs that currently meet both the industry standards and the FAA's regulatory standards. IATA (International Air Transport Association) represents over 270 airlines operating under the flags of almost as many nations comprising 95% of the international scheduled air traffic. IATA's resolution 618 requires all member airlines to adhere to the following requirements.

In scheduled and/or unscheduled operations, no dangerous goods are permitted to be accepted and carried unless they comply fully with the international standards and recommended practices of Annex 18 to the Convention on International Civil Aviation—''The Safe Transport of Dangerous Goods by Air'' and its associated Technical Instructions as reflected in the ''IATA Dangerous Goods Regulations.''

Through IATA, airlines individual networks function as a worldwide system. Due to this business practice, even smaller non-member airlines that interline with IATA carriers must meet all of the member requirements or their cargo cannot be interlined in the cargo system.

V.3. Clarification of Supervisory Training Requirements

Comments

UPS, Continental, and ATA were concerned that the proposed requirement to train the supervisors of employees who perform a hazmat function was too broad. UPS stated that the NPRM would require training for ''every employee of a certificate holder with any supervisory responsibilities whatsoever,'' even a ''certificate holder's chief executive officer, even though that person may not perform a single function directly affecting hazardous materials safety.'' UPS also commented that the FAA has not articulated a ''reasonable basis for requiring a certificate holder to provide hazardous materials training to employees who do not perform or supervise any functions regulated under the HMR or who do not otherwise directly affect hazardous materials transportation safety.''

ATA stated that the ''definition of supervisor would sweep in hundreds of supervisory personnel whose responsibilities rarely if ever bring them in contact with hazmat.'' ATA added that covered supervisors would include ''all levels of carrier management at an airport, as well as the corporate management and officers to whom they report * * *. Such broad applicability to supervisors without regard to their responsibilities regarding hazmat is unnecessary to ensure safety and an unreasonable burden on the carriers.''

FAA Response

The FAA agrees that the definition of the term ''supervisor'' as used in the NPRM was too broad. In the final rule, the FAA is adding the term ''direct'' to qualify the term ''supervisor'' in every place where it is used in the new hazmat training regulations. This change is necessary to clarify that only the ''direct'' supervisor of a worker performing any of the job functions in § 121.1001 (proposed as § 121.801) or § 135.501 for, or on behalf of the certificate holder is required to complete the part 121 or part 135 operator's FAA-approved training program. This amendment should address the issues raised in the comments.

V.4. Constructive Knowledge

Comments

A number of commenters (Northwest Airlines, UPS, Southwest, United Airlines, Delta Airlines, and ATA) voiced concerns with the proposed requirement to train people to identify material as hazmat that is not properly labeled and marked as a hazmat. These commenters asked the FAA to provide a trigger list that would help them train their employees in this regard. UPS commented that the ''development of clear and well-conceived indicia of constructive knowledge is essential to

enabling air carriers to implement effective training with respect to undeclared hazardous materials.'' UPS was concerned that the proposed rule would leave certificate holders guessing at what indicators the FAA will deem sufficient to place a carrier on notice that a package may contain hazardous materials. United Airlines noted that the FAA needed to coordinate with the DOT's Office of Intermodalism, which is in the process of developing a definition of the term ''constructive knowledge.'' ATA commented that training revisions should not be completed until DOT guidance on determining the presence of undeclared hazmat is publicly available and preferably commented upon.

FAA Response

Many commenters raised the issue of what constitutes ''constructive knowledge'' of the presence of hazardous materials in a shipment, in the context of enabling the trained person to recognize items that contain, or may contain, hazardous materials regulated under the HMRs. In a 1998 interpretation published in the **Federal Register** (63 FR 30411–30412; June 4, 1998), RSPA (now PHMSA) used the term ''constructive knowledge'' to express the ''knowingly'' standard in 49 U.S.C. 5123(a)(1)(B) that a person ''acts knowingly'' when ''a reasonable person acting in the circumstances and exercising reasonable care'''' would have ''actual knowledge of the facts giving rise to the violation.'' RSPA also stated, ''all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials.'' In addition, RSPA stated, ''Information concerning the contents of suspicious packages must be pursued to determine whether hazardous materials have been improperly offered. A carrier's employee who accepts packages for transport must be trained to recognize a 'suspicious package' * * *.'' *Id.*

In 2001, Fed Ex asked DOT to develop further guidance on what constitutes ''constructive knowledge'' that a carrier is deemed to have of the presence of hazardous materials when the carrier accepts a shipment for transportation. DOT held a public meeting on June 19, 2002, and is considering the numerous oral and written comments in this proceeding (Docket No. OST–01–10380).

In the context of this final rule, the FAA is not specifying detailed hazmat training content. Should DOT or PHMSA issue a further interpretation on ''constructive knowledge,'' certificate holders would be authorized to adjust their training content accordingly. Hazmat training program content will always have to be adjusted as hazmat regulatory changes become effective. These adjustments are the responsibility of the certificate holder.

The practice that an operator's staff be adequately trained to assist them to identify and detect undeclared dangerous goods has been an industry standard in the IATA DGR for over 10 years. The IATA DGR information is intended to prevent undeclared dangerous goods in cargo from being loaded on an aircraft and prevent passengers from taking on board those dangerous goods that they are not permitted to have in their baggage.

V.5. Applicability/Transport-Related Function (TRF)

Comments

ATA, Northwest, UPS, United, and the National Air Transportation Association (NATA) were concerned that the application of the term ''transport-related function'' would end up requiring them to train all or a substantial number of the employees in their operations. UPS recommended that the FAA issue guidelines so that a carrier can determine when an employee could ''reasonably be foreseen'' as performing or supervising a transport related function.

FAA Response

The FAA recognizes the concerns voiced by the commenters. The term ''transport-related function'' is a shorthand reference used in the preamble of the NPRM and final rule to refer to the specific listed job functions in §§ 121.1001 (proposed as §§ 121.801) and 135.501. It is not intended to extend beyond those listed job functions.

In the final rule the FAA is also removing the terms ''unloading'' and ''carriage'' from the list of specific covered job functions. This decision is consistent with movement to closely align the regulations with the 2005 edition of the ICAO TI and the IATA DGR. Training conducted by an operator to satisfy industry training practices and standards (*e.g.* IATA) that meet or exceed the requirements of new part 121 Appendix O would be sufficient for compliance with the final rule requirements. The FAA does not believe that removing these terms from the list of covered functions adversely impacts safety. First, the term ''unloading'' covers a job function that actually removes the item from the aircraft where it does not pose a danger. Second, the FAA's research indicates that the personnel loading the aircraft typically are the same as the personnel unloading the aircraft. Since loading is a covered job function, these persons would be trained in accordance with the rule. Finally, if the unloaded cargo is subsequently loaded onto another aircraft, then the person doing the subsequent loading would need to be trained.

With regard to the removal of the term ''carriage,'' the FAA does not believe there is a safety issue since the term essentially incorporates all of the listed job functions and is not a stand-alone term. Consequently, the FAA finds that a specific listing of the term is unnecessary.

V.6. New Hire/New Job Function

Comment

Atlas Air stated that under the current regulations, when a carrier hires an employee/contractor who used to work for another all-cargo carrier and he or she provides a valid Dangerous Goods certification from that carrier, the carrier simply enters the employee's name in the training records under his or her valid certificate and schedules the employee for recurrent training when the base month comes up. Atlas Air urged the FAA to clarify that this practice can continue since limiting the practice would constitute an unnecessary financial burden.

FAA Response

The FAA recognizes that part 121 and part 135 operators will have many similarities in their hazmat training programs. However, each carrier has its own policies and procedures regarding the handling and transport of hazmat. Thus, a new employee that will perform a job function listed in § 121.1001 or § 135.501 does not have to be fully trained in all aspects of the hazmat regulations if he or she has been trained by another certificate holder with the same will-carry or will-not-carry status within the 24-month period. However, he or she must receive training on the certificate holder's policies and procedures prior to performing his or her job. It is the responsibility of every part 121 and part 135 operator to train each employee in the procedures and policies the certificate holder has implemented to comply with the HMR and these regulations.

Comments

Ameristar noted that the NPRM did not address how to handle a person who is not trained at a departure or destination point that helps load an

aircraft under the supervision of a flight crewmember. An entire initial training program is not practical for a person that may be loading only one piece of freight (*i.e.*, a seat belt pretensioner, Class 9 (UN3268)) using a forklift on a one-time basis for an operator. Ameristar also noted that there were no provisions for contract employees in the NPRM.

FAA Response

Currently, the regulations require that the workers (contractor or direct airline employee) performing a hazmat job function (including unloading) be trained. There are no exceptions under current FAA training regulations. In this final rule, the FAA is adopting a new exception that would allow a person (either a new hire or someone who is performing a new job function) to perform a job function involving storage incidental to transport or loading of items on an aircraft for transport, provided the person is under the direct visual supervision of another properly trained employee authorized to directly supervise him or her. The exception is only valid for 30 days, and is contingent on the certificate holder complying with the recordkeeping requirements in §§ 121.1007(b) and 135.907(b) (proposed as § 121.804(b)) or § 135.504(b), as applicable. After that time period, the individual must receive the required training.

V.7. Persons Working for More Than One Certificate Holder

Comments

Several carriers were concerned about the application of the training requirement for employees or contractors who work for more than one certificate holder. Atlas Air stated that proposed § 121.803(a) would prevent Atlas, Polar, and similarly situated carriers from relying on another certificate holder's training program to satisfy the training obligation.

Additionally, Atlas Air commented that the second exception in proposed § 121.803(c), limiting the retraining required of persons working for other certificate holders in certain circumstances, would permit certification only from another certificate holder with the same will-carry status. Atlas believed this would put it at a distinct disadvantage around the world by prohibiting the acceptance of foreign carriers' certifications, which represent a large segment of Atlas' business.

UPS stated that proposed § 121.803(c)(1) would require a certificate holder to receive written verification that a repair station employee was properly trained from an ''authorized, knowledgeable person representing the other certificate holder.'' The commenter said that the FAA provided no standards or guidelines for how a certificate holder can determine whether a person is ''knowledgeable.''

United commented that the process for verifying that a contractor has provided its employees with the proper hazmat training is ''far too cumbersome and leaves each certificate holder with little option but to provide such service personnel with the full scope of hazmat training.'' Aircraft Electronics Association and Aviation Suppliers Association believed that contractors may be unwilling to provide the training certifications required by proposed §§ 121.803(c) and 135.503(c) for fear of legal liability or because they do not want to assume training costs that their competitors are not assuming. Moreover, the commenter stated, several of the exceptions are based on the worker having received prior training by a certificate holder having the same operations specifications authorization for the carriage of hazmat.

FAA Response

The FAA believes that the exception provided for in §§ 121.1005(c) and 135.505(c) (proposed as §§ 121.803(c) and 135.503(c)) will actually minimize the training burden on part 121 and part 135 operators. After reviewing the concerns voiced by the commenters, it appears that many of the commenters may have misunderstood what type of training is required. The core of each part 121 and part 135 operator's training program is substantially the same. However, a worker who has been trained by one certificate holder but used by a second should be aware of that certificate holder's policies and procedures for handling hazmat. For instance, a worker initially performing work for a certificate holder with an operations specification prohibiting the acceptance of radioactive material may not have received in-depth training in the transport of radioactive materials. However, if that worker performs a job function listed in § 121.1001 or § 135.501 for or on behalf of an additional certificate holder that does accept radioactive material, the worker must be trained on the regulations pertaining to such materials. Therefore, a part 121 or part 135 operator using a person trained under another part 121 or part 135 operator's approved training program (both with the same will-carry or will-not-carry status) only has to train that person in the way it complies with the regulations.

Only operations conducted in accordance with parts 121, and 135, and part 145 certificate holders are covered by this rulemaking. Thus, the part 121 or part 135 certificate holders must ensure that a worker is trained when using a worker in a foreign location. Since this final rule is closely aligned with the 2005 edition of the ICAO TI and the IATA DGR requirements, there should be minimal differences in training. If the actual operations are in a foreign location, then the foreign location requirements in §§ 121.1005 and 135.505 (proposed as §§ 121.803 and 135.503) may be applicable.

The FAA agrees that the term ''authorized, knowledgeable person'' cannot be confirmed. Therefore, in the final rule the FAA is removing the proposed terminology and replacing it with the phrase ''person designated by the certificate holder to hold the records.''

Comment

MidWest Airlines agreed that if a contractor is a will-not-carry airline for hazardous materials and provides services for a will-carry airline, the contractor needs to receive hazardous materials training from that airline. However, MidWest stated that it did not ''understand the need for training to be provided when the status of the airline and contractor is reversed.''

FAA Response

A worker of a part 121 or part 135 operator with a status of will-carry operator receives hazmat training appropriate for the job function being performed. If the worker also performs or directly supervises job functions for a will-not-carry certificate holder, the employee will only have to be trained in the policies and procedures for the will-not-carry certificate holder. For instance, the worker needs to know what the policies are for a will-not-carry certificate holder if the worker identifies cargo as potential hazmat. These policies and procedures would include information such as who does the worker notify and where does the material get placed until the appropriate person investigates, etc. Only the policies and procedures specific to the will-not-carry certificate holder will need to be provided.

V.8. Recurrent Training

Comments

Several commenters raised concerns with the FAA's proposal to require annual recurrent training. Atlas Air

requested that the FAA make the recurrent training requirement every two years, consistent with ICAO and United Nations (UN) recommendations. Ameristar Air Cargo commented that the base-month concept in the proposed rule is inconsistent with 14 CFR 121.401(b). This requires an industry to have two standards. Ameristar believed that the requirements of 14 CFR 121.433a currently allow the grace-month provision.

NATA urged the FAA to keep its recurrent training requirements consistent with PHMSA's recurrent training requirements under the HMRs.

FAA Response

In response to comments on this issue, the FAA is closely aligning the final rule with the 2005 edition of the ICAO TI and the IATA DGR including modifying the proposal by requiring recurrent training every 24 months instead of annually. The change in recurrent training from every twelve months to every 24 months should not adversely impact safety since recurrent training is designed to update workers on amendments in the regulations. These amendments tend to occur on a 24-month schedule, keeping aligned with ICAO and IATA amendments. Under 49 CFR 175.20 ''Compliance and Training'' for air carriers, the FAA's 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333 are incorporated by reference. Under PHMSA's ''hazmat employee'' concept, recurrent training is required every three years. Currently, the FAA requires that recurrent hazmat training be completed by part 121 and part 135 operators annually along with the flight and proficiency training. The FAA's recurrent training requirements were in place before PHMSA's and were not superceded by PHMSA's retraining requirements. There are other differences between PHMSA's and the FAA's training requirements. For instance, the FAA requires the hazmat training program to be reviewed and approved by the agency.

The FAA also is clarifying that recurrent hazmat training can be taken in the calendar month before or the calendar month after it is actually due without changing the anniversary date for retraining purposes. A person can be retrained earlier than one calendar month prior to the training anniversary date; however, the anniversary date will change to the completion date of the retraining. The FAA believes that these exceptions provide the part 121 and part 135 operators with maximum flexibility in scheduling retraining while ensuring that there is not an extensive time period between the retraining dates.

V.9. Notice to Repair Stations

Comments

Several commenters opposed the FAA's proposal to require a certificate holder to communicate and verify awareness of its hazardous materials policies and procedures to a repair station. UPS noted that ''all repair stations likely 'use' or 'handle' materials classified as hazardous materials in the course of their operations.'' Thus, proposed § 121.803(e) quite possibly could require ''notice and awareness'' for every repair station utilized by a certificate holder.

NATA was concerned that the requirement to verify that the repair station is ''aware of'' its status and policies and procedures is ''another regulatory trap.'' In this instance, the commenter stated, the FAA is establishing a mandate without giving a clear means of compliance. Southwest believed that while the requirement to provide written notification to each repair station performing work on the certificate holder's behalf is obtainable and objective, ''the requirement to ensure that the repair station is ''aware of' the certificate holder's policies and procedures is a subjective requirement that cannot be verified by the carrier.''

ATA stated that ''carriers can and do take the objective steps of informing repair stations whether they carry hazmat and advising them of carrier procedures for HMR compliance.''

FAA Response

The FAA agrees that the term ''aware of'' is somewhat subjective. The FAA's intent in proposing this standard was to ensure that critical information was effectively communicated between two parties.

The will or will-not-carry status of a certificate holder is critical information that must not get drowned out by other information. That is why the FAA proposed that part 121 and part 135 operators ensure that each repair station be aware of the part 121 and part 135 operator's will or will-not-carry status. In the final rule, the FAA is replacing the requirement for the repair station to be ''aware of'' the operator's will-or will-not-carry status with a requirement for the repair station to acknowledge receipt of the notification. This change is reflected in §§ 121.1005(e), 135.505(e), and 145.206(a).

There are many ways to get a written verification. One way of complying with this requirement would be to have the responsible person from the part 121 or part 135 operators write a letter to the repair station stating its status and policies and procedures and then have the authorized repair station supervisor or manager sign and return a copy of the letter. However, to allow for flexibility, the FAA is not mandating this method; it is simply one method of compliance. The FAA's purpose in adopting this requirement is to ensure that the repair station receive the required notification from the part 121 or part 135 operator. This notification then triggers the requirement for the part 145 repair station to notify its covered employees of the part 121 or part 135 operator's' status. Based on ATA's comments, it appears that part 121 or part 135 operators already are taking some level of care to ensure that repair stations know which certificate holders carry hazmat. The only additional step may be the written verification.

V.10. Foreign Locations

Comment

NATA and ATA opposed the exception for certificate holders operating at foreign locations in proposed § 121.803(f) (adopted as § 121.1005(f)). NATA believed that this exception should be standard operating procedures regardless of whether local labor laws require the certificate holder to use persons working in that country to load and unload aircraft, given the logistical problems of training and recordkeeping for part 135 operators.

ATA commented that workers in foreign locations already receive function-specific hazmat training and follow the ICAO Technical Instructions. Current FAA rules require ''supervision'' by a trained person of loading, offloading, and handling of dangerous goods by persons who have not had the FAA-approved training. The commenter stated, ''ATA believed that the proposal would unreasonably narrow the exception for untrained employees working under supervision by restricting the exception to loading and unloading.'' Thus, ATA argued that any other handling of hazmat would have to be done by someone who has had the extensive training, regardless of supervision. For loading and unloading, the trained person would have to provide ''direct visual supervision.'' The commenter added that, in situations where there is more than one flight being worked, particularly at hubs, this is unworkable. There is no compromise of safety in continuing to allow the trained person to supervise by giving appropriate direction and follow-up, enabling him or her to handle more than one issue at once.

FAA Response

The FAA believes that the loading with untrained workers should not be standard operating procedures at foreign locations regardless of local labor laws. This is consistent with current FAA hazmat training regulations. Since the FAA is now closely aligning the final rule with the 2005 edition of the ICAO TI and IATA DGR requirements, general training should be more standardized. In the final rule, the FAA is also removing the term ''unloading'' from the list of specific covered job functions listed in §§ 121.1001 and 135.501. Thus, part 121 and part 135 operators should find it easier to obtain trained workers to use in completing these hazmat job functions. Under the exception adopted in the final rule, loading with untrained workers can be performed only if the labor laws of the foreign country require that the certificate holder uses persons who work in that country, and the worker performs the loading function under the direct visual supervision of a trained worker. The existing rule does not require visual supervision of the untrained worker. However, in the NPRM the FAA proposed such a requirement, and this requirement is adopted in the final rule. The certificate holder can use a non-supervisory person trained to load the aircraft, provided they are authorized to directly supervise the untrained worker in the performance of this function. The FAA has determined that requiring a trained supervisor to visually observe the performance of the untrained person's duties is an important step towards eliminating the possibility of undeclared discoverable hazmat or improperly shipped hazmat from being loaded onto the aircraft.

The current exception also includes the term ''handling;'' however, the proposal removed that term because it was confusing to regulated entities. The FAA has understood the term ''handling,'' as used in the current CFR, to refer to the handling that would be required during the loading of the aircraft. The industry's application, however, has been inconsistent. Although the FAA is eliminating this term, the FAA still recognizes that those people who load must handle the cargo. The removal of the term ''handling,'' however, eliminates any confusion over the breadth of the exception.

V.11. Recordkeeping Requirements

V.11.A. Location

Comments

A number of commenters raised concerns with the proposed amendments to the recordkeeping requirements. The proposed rule would have required the certificate holder to maintain signed records of each training course for the last three years. ATA Airlines noted that this is not in keeping with current practices that allow paper records to be discarded after 90 days if they are entered into an automated record keeping system. ATA encouraged the FAA to accept a centralized, computerized corporate record that is accessible by field locations. Many of the carriers stated that they have electronic files and databases and oppose a manual file system as a step backwards.

The proposed rule also would have required that the records be maintained at the location where the person performs or supervises the hazmat function. Many commenters opposed this proposed requirement. ALPA stated that records should be maintained ''at the company headquarters or at a facility that is charged with keeping such records.'' Columbia Helicopters noted that because many certificate holders affected by the NPRM operate from multiple sites, frequently rotating aircrew and maintenance personnel ''moving records is an unnecessary burden and greatly increases the likelihood of loss or administrative error.'' All commenters agreed that allowing computer records that can be accessed from various locations is the best option.

The proposed rule also would require the certificate holder to maintain records on its independent contractors and subcontractors. UPS believed that the certificate holder should not have to maintain records for its contractors and subcontractors. It stated that such a requirement may blur the relationship and ''give rise to a presumption that personnel employed by the contractor are employees of the certificate holder.''

FAA Response

The FAA agrees with the commenters that the worker training records should not be required to be kept as a written record. In the final rule, the FAA is clarifying that the part 121 and part 135 operators have the responsibility to determine the method of recordkeeping (electronic, manual, etc). This allows the certificate holder to manage its recordkeeping program in a manner appropriate to its business. The worker training records may be maintained by any method (including electronic). The records may be maintained in a central location provided that they can be made available upon request at the location of the employee. Contractors performing or directly supervising a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operator will be required to comply with the training requirements of 14 CFR. A certificate holder is responsible for ensuring that its workers are properly trained. A contractor performing or directly supervising a job function listed in §§ 121.1001 or 135.501 for, or on behalf of the part 121 or part 135 operator represents the same responsibility to the certificate holder as a direct employee. Therefore, since the part 121 or part 135 operator is responsible for maintaining the records for all direct employees performing or directly supervising a function listed in §§ 121.1001 or 135.501 for, or on behalf of the part 121 or part 135 operator, it should also be responsible for maintaining the records of contractors performing or directly supervising the same job functions.

V.11.B. Content

Comment

A number of carriers commented on the signature requirement in the proposed recordkeeping rule. Proposed §§ 121.804(c)(3) and 135.504(c)(3) (adopted as §§ 121.1007 and 135.507) would have required training records to be signed by a person designated by the Director of Training. ASTAR Air Cargo pointed out that § 121.401(c) states: ''When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check airman must be identified with that entry. However, the signature of the certifying instructor, supervisor, or check airman is not required for computerized entries.'' ASTAR along with ATA Airlines, Southwest, Chautauqua Airlines, Ameristar, FedEx, AMR Corporation, and the Air Transport Association all supported eliminating the signature requirement. Ameristar, Fed Ex, ATA and AMR Corporation also pointed out that there is no Director of Training, so requiring that individual's signature implies a requirement that is not possible.

ASTAR also believed that the description of the training course required by proposed §§ 121.804(c)(4) and 135.504(c)(4) (adopted as §§ 121.1007 and 135.507) is redundant and not required since a full description of the training program is contained in the FAA-approved Training Manual.

FAA Response

The FAA agrees with the commenters' suggestions, and in the final rule, the FAA is eliminating the requirement for the signature. The FAA also did not

intend to require that certificate holders employ a Director of Training. The FAA is instead requiring that the individual who is providing the hazmat training be identified on the training record. The contents of the training records will be the same as 49 CFR 172.704(d), ICAO TI 1;4.2.4, and IATA DGR 1;1.5.4.1. The FAA is harmonizing the contents to eliminate duplication of recordkeeping. The same records required under this rulemaking can be used for compliance with all hazmat regulations having the same requirements (49 CFR 172.704(d), ICAO TI 1;4.2.4, and IATA DGR 1;1.5.4.1).

V.12. Curriculum—Proposed Appendix N (Adopted as Appendix O)

Comments

Many commenters stated that the training curriculum set forth in proposed Appendix N (adopted as Appendix O) goes beyond the knowledge needed to fulfill the given job function. ATA and Southwest Airlines called the training ''excessive.'' ATA went on to argue that ''excessive training inundates employees with needless information and requirements that are extraneous to their specific responsibilities and—at best—distracts from the central purpose of job specific training, diluting the effect of training on material relevant to their function. At worst, it confuses employees about their assigned roles and responsibilities.''

United and Midwest Airlines urged the FAA to abandon the idea of a one-size-fits-all training program and allow the certificate holder to tailor the training subject matter to the employee's job functions. Chautauqua Airlines stated that its current program has been approved by the FAA, but would not be acceptable under the proposed rule since the programs are not divided into specific modules. Chautauqua argued that to prepare a hazmat program that follows the prescribed curriculum ''would require significant efforts by various business unit training organizations internal to CHQ, costing both time and money.''

AMR Corporation explains that a flight attendant will greet a customer and/or help a customer with luggage after the customer has interfaced with at least one of its agents trained in dangerous goods acceptance, and after passing through TSA-controlled checkpoint where security screeners are tasked with looking for threatening objects. Flight attendants are trained in the safety of the passenger. They are trained to handle a situation in flight where a substance may be leaking or found to be inappropriate in the cabin. Training in documentation checks and acceptance guidelines would not increase the awareness or effectiveness of these employees in identifying hidden dangerous goods.

Furthermore, AMR Corporation noted that its dispatchers do not supervise the loading, nor do they perform other load planning functions. The commenter added that a dispatcher may be tasked with contacting Air Traffic Control, Airport Rescue and Fire Fighting, or the Federal Aviation Administration; however, dangerous goods acceptance training would not improve his or her ability to assist the flight crew.

NATA stated that persons required to be trained on Module 6 but not 5, should not be required to be trained on Module 8. In order to do their jobs properly, NATA said that these persons do not need to know the ''use of hazardous materials tables, proper shipping names, hazard class definitions, UN/ID numbers, or packing groups'' as described in Module 8. ATA believed that the FAA could greatly alleviate the unnecessary burden by aligning them with the ICAO Technical Instructions. The ICAO TI allows the carrier to tailor the training content for each employee group, making it commensurate with job duties of the specific employees in question.

ASTAR Air Cargo made a similar request and urged the FAA to include the statement ''Each Hazmat employee must be provided only that function specific training concerning each of the areas of training which are specifically applicable to the operation the employee performs.'' ASTAR pointed out that this suggested language is nearly identical to that of CFR title 49 and would allow operators to tailor the training as necessary.

ATA Airlines, Delta, and UPS believed that proposed Table 1, which defined training requirements based on Job Function defined by Categories of Personnel, is confusing and will require interpretation. ATA also stated that there is no differentiation between levels of knowledge required based on actual involvement in the dangerous materials transport process. UPS wanted the rule to clarify that the level of training should be commensurate with the employee's responsibilities. UPS urged the FAA to place proposed Appendix N into an advisory circular so that certificate holders would have greater flexibility in structuring their own training programs.

As stated in the comments submitted by ATA, ''ATA's will-not-carry members also have FAA-approved training programs that provide for HMR instruction. Indeed, even though they do not transport hazmat, they provide recognition training to acceptance employees to enable them to recognize and refuse hazmat if it is offered to their carrier.'' Furthermore ATA stated that carriers provide ''persons engaged in passenger and baggage check-in services (e.g., skycaps, ticket counter agents, flight attendants, etc.) with recognition training and function-specific training on relevant hazmat topics.'' ATA also stated ''the FAA could greatly alleviate the unnecessary burden on carriers by specifically authorizing them, as the ICAO Technical Instructions provide, to tailor training content for each employee group, making it commensurate with job duties of the specific employees in question. The ICAO Technical Instructions are a reasonable starting point for that assessment. This allows carriers to plan in accordance with their own business structures.''

Express.Net Airlines was concerned that no standard exists for the length of time necessary to conduct training and points to the FAA's publication ''FAA National Operations and Training Manual for the Acceptance and Transport of Dangerous Goods in Air Transportation.'' In that document, the FAA recommends an 8-hour initial training program and a 2-hour recurrent training program for operators that elect to carry hazmat.

ALPA believed that the proposed modules listed for pilot crewmembers are adequate provided that the training is ''specifically tailored for the duties and responsibilities of the flight crew member.'' ALPA requested that the FAA add a note to Tables 1 and 2 stating that ''Awareness-level training of components within a module may be appropriate if the person (employee) does not actually perform those functions.''

Atlas Air asked the FAA to clarify whether all-cargo carriers and passenger carriers would be required to follow the same curriculum.

Jet Arizona, Aviation Services Unlimited, and Southwest Airlines commented on recognition training for will-not-carry operators. Jet Arizona believed that will-not-carry certificate holders should only be required to train to the level required for their crews to recognize hazmat for the purposes of preventing it from being loaded on that company's aircraft. It believed that additional training creates an unnecessary burden that the FAA has not justified adequately with data. Aviation Services Unlimited also commented that to require operators to change their already-successful

programs only unnecessarily increases the burden.

Ameristar Air Cargo suggested that in Module 13 the FAA delete the words ''Policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air.'' The commenter said that this element leaves too much interpretation to the FAA inspector approving a hazardous materials program. The commenter suggested the following language: ''Applicable policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air.''

Express.Net Airlines noted that Table 1 of proposed Appendix N was incomplete because Module 10 'Notice to Pilot-in-Command' training would not have been required for category 3 workers; ''persons who handle, store, and load or unload packages, passenger baggage or cargo'' on the aircraft.

Menlo Worldwide Forwarding recommended that an additional exception be included in the rule to allow the establishment of a stand-alone training and supervision program administered by an integrated freight forwarder that contracts multiple certificate holders to transport dangerous goods and is subject to review and approval of the FAA. The commenter added that air carriers would incorporate the training regimen into their approved programs by referring to the integrated freight forwarder's training program and services in their Operations Manuals.

Direct Flight stated that simply because requirements may be suitable for a part 135 scheduled commuter airline does not mean those requirements are appropriate for a small on-demand carrier simply because the way each operates is very different. Continental believed that the NPRM inappropriately combined part 121 and part 135 duties together. Continental stated that ''there are many specific duties for Part 135 carriers that do not apply to a Part 121 carrier. For example, there are many Part 135 carriers that will have their flight crews assigned to tasks that are not performed by the flight crew of Part 121 carriers (i.e., loading baggage and cargo into the airplane).''

FAA Response

Many commenters disagreed with the proposal to mandate curriculum for a part 121 or part 135 operator's hazmat training program. The FAA agrees, and in the final rule the FAA is closely aligning the training requirements in 14 CFR parts 121 and 135 with those in the 2005 edition of the ICAO TI and the IATA DGR. The certificate holders believed that the ICAO TI standards are the best common reference point to facilitate the uniform, seamless handling of hazmat in international air transportation. By accepting the operator's comments indicating that only part 121 and part 135 operators themselves can develop specific detailed hazmat training curricula, the FAA believes that the need to provide model hazardous material training programs has been reduced. The direction taken by the ICAO Dangerous Goods Panel in 2002 (published in the 2005–2006 edition of the ICAO TI and IATA DGR) was a departure from the traditional ''categories of staff'' to a task-oriented (function-specific) approach, which is the same approach the FAA is adopting. Additionally, in the final rule, the FAA closely aligns the required training for persons performing or directly supervising job functions listed in § 121.1001 or § 135.501 for, or on behalf of a will-not-carry certificate holder with the requirements for handling only non-dangerous goods in the 2005 edition of the ICAO TI. The training standards will apply to both all-cargo and passenger carriers.

The part 121 or part 135 operators will also be required to provide training on any operator specific policies and procedures not specifically mentioned in new Appendix O. The FAA believes that each certificate holder currently trains all employees in their individual policies and procedures, so this should not be an additional burden. This allows part 121 or part 135 operators to train in accordance with their own business structures. If a certificate holder's training program differs from the ICAO TI format, it should discuss this with the FAA during the approval process.

Therefore, in the final rule the FAA is clarifying that the part 121 or part 135 operator has the responsibility to determine which employees meet the job function requirement to train, the level of training required, the delivery method of administering the training, including a test to verify comprehension, and the method of recordkeeping (electronic, certificate, etc). The FAA is not specifying requirements for these processes. The FAA believes these amendments will allow the certificate holder to manage their FAA approved hazmat training programs as appropriate. The final rule will not contain the training modules. Instead, Table 1—Operators That Transport Hazardous Materials—Will-Carry Certificate Holders, and Table 2—Operators That Do Not Transport Hazardous Materials—Will-Not-Carry Certificate Holders, will provide the minimum aspects to be covered in the part 121 and part 135 operator's hazmat training program for each job function performed. These minimum requirements will apply to persons performing or directly supervising the job function.

Given the changes that the FAA is making to the final rule, the FAA anticipates that most part 121 or part 135 operators should not have to substantially change their training programs if their current FAA-approved hazmat training program contains the minimum requirements required by 2005 edition of the ICAO TI and IATA DGR. Standards for will-not-carry training will require that both part 121 and part 135 will-not-carry certificate holders conduct recognition training to assist persons directly supervising or performing a job function covered in Appendix O, Table 2, identifying possible undeclared, as well as declared, hazmat.

The specific job function specified in Appendix O will determine the training required. In-depth training is intended to give detailed knowledge of the requirements pertaining to the specific job function that the person performs. General-awareness training is intended to provide a general overview of the regulatory scheme.

V.13. Training Method

Comments

Atlas Air, Northwest Airlines, AMR Corporation, Express.Net Airlines and ALPA were concerned that the proposed requirement would eliminate computer-based training. In addition, the proposed rule would require an interactive instructor to be available to address any questions or concerns. ALPA believed that recent changes in computer-based training have made that possible. The Dangerous Goods Council urged the FAA to allow an electronic instructor to be used who could be immediately available by instant message, e-mail or phone.

FAA Response

Part 121 or part 135 operators have the responsibility for ensuring that the specific level and duration of hazmat training is adequate and appropriate for each worker. While the responsibility for providing the hazmat training remains with the certificate holder, the FAA has the responsibility for approving the hazmat training program. Hazmat training may be provided by company training programs, computer-based programs, self-guided CD training programs, outside training firms or consultants, educational institutions, or

any other type of organization offering training. Electronic instruction is permitted and an on-site instructor is not required. Hazmat training may be provided by the part 121 or part 135 operator or other public or private sources, including training classes that are offered by the IATA to the extent that the IATA training satisfies the FAA-approved hazmat training program. The part 121 or part 135 operator must ensure that the hazmat training program provides a method to respond to students' questions prior to certifying completion of the training and that all persons are tested to verify understanding of the regulations and requirements.

V.14. Single-Pilot Operations

Comments

Several commenters were concerned that the FAA did not adequately address the issue of the single-pilot operation in the proposed rule. NATA provided an example of a part 135 on-demand carrier using Cessna Caravans (which require only one pilot) in a cargo configuration to regularly transport newspapers for delivery. On occasion, the newspaper employee delivering or picking up the newspapers may assist the pilot in the loading or unloading of these papers. NATA believed that proposed § 135.503(a) would require the certificate holder to provide hazmat training of this helpful person. NATA saw no justification for this restrictive requirement. The pilot instead could be trained as a supervisor and then permit the newspaper employee to assist in performance of the transport-related function under direct supervision similar to the requirements of the foreign locations exception (see proposed § 135.503(f)). NATA believed that, given the nature of part 135 on-demand operations, which use any and all airports on short notice, the principle of direct supervision is reasonable as a general rule rather than the exception.

Direct Flight Inc. also urged the FAA to— (1) clarify the notation ''would remain subject to the hazmat training requirements in § 135.333,'' since the proposal removes § 135.333; and (2) drop that portion of the NPRM which applies to small, will-not-carry, on-demand part 135 operators and instead retain the language contained in § 135.333(c).

FAA Response

In the final rule, the FAA is deleting the language ''would remain subject to the hazmat training requirements in § 135.333,'' since that language is only applicable to the current hazmat training requirements. Hazmat training requirements are being relocated in subpart K.

The part 135 operator has the responsibility for ensuring that the level of training is adequate and appropriate for each employee. In the situation described by NATA, the FAA agrees that the pilot could be trained in accordance with the FAA's hazmat regulations and supervise the loading function pursuant to § 135.505. The on-demand operator or an operator using one person for loading has the responsibility for determining the adequacy of training. This is consistent with current requirements under § 135.333(d). In fact, the requirements under § 135.333(d) have been expanded because under the final rule, single-pilot operators can use the new-hire exception. Single-pilot operators also will only be required to conduct recurrent training every 24 months once the FAA harmonizes the recurrent training with international and industry standards.

V.15. Repair Stations (Part 145)—General

Comment

One commenter noted that it does not appear that the repair stations have any transitional period. ATA noted that carriers already notify repair stations of their will-carry or will-not-carry status and their procedures for HMR compliance.

FAA Response

The final rule does not contain a transitional period to allow part 145 repair stations to train their workers because part 145 repair station workers are already required to be trained if they are hazmat employees, as defined in 49 CFR 171.8. Repair stations that perform or directly supervise a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operator would need to be trained in accordance with the FAA's requirements as well. This is the same requirement for any contractor or subcontractor performing or directly supervising a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operator. For instance, part 145 repair stations performing work for, or on behalf of will-not-carry certificate holders who perform loading functions for the part 121 or part 135 operators will need to be hazmat trained during the 15-month transition period. Additionally, most part 121 and part 135 operators have indicated that they currently notify the repair stations of their status (will-carry or will-not-carry). Consequently, the notification requirement adopted by the FAA in the final rule should not pose an additional burden. In the final rule, the FAA is simply making notification mandatory and enforceable.

The requirement to certify to the FAA that all hazmat employees have been trained as required by 49 CFR 172.704(d) is satisfied by providing copies of the records required by 49 CFR 172.704(d), or by submitting a letter from an authorized representative of the repair station indicating that all hazmat employees are trained in accordance with 49 CFR. The only additional hazmat training requirement would be for the repair station employees who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or part 135 operators, such as loading the certificate holder's aircraft for transport. The FAA believes that only a very small percentage, if any, of part 145 repair station employees actually load the part 121 or part 135 operator's aircraft for transport unless the repair station also is certified under part 121 or part 135 which would impose the requirements of part 121 or part 135 of 14 CFR currently.

Comment

ALPA agreed with the FAA's decision to include part 145 Aircraft Repair Stations in the NPRM. The commenter said that a significant potential exists that materials or components being shipped to, shipped from, or returned to service could contain hazardous materials. Northwest Airlines, AMR Corporation, Midwest Airlines, and NATA were concerned that the training program for repair stations would be burdensome because repair stations would have to be trained and current in every carrier's hazmat program. AMR Corporation noted that repair stations will simply pass the cost of training down to the certificate holder. AMR Corporation stated that ''if the FAA established repair stations as ''shippers'' and regulated the shipping community, the FAA could go further in promoting safety in this area.

NATA did not object, in concept, to the FAA's desire to reference 49 CFR 172 within the part 145 regulations. NATA was concerned with the increased training burdens on the certificate holder. NATA contended that it is redundant for a repair station employee, already trained under their employer's program, to then be trained by the certificate holder if performing a TRF. NATA also believed that the real problem in the industry is lack of education.

The NTSB supported the repair station proposal and believed that it will enhance the likelihood that repair stations will provide appropriate hazardous materials training for their employees. Safety recommendation A–97–73 called for the FAA to require air carriers to ensure that maintenance facility personnel, including mechanics and shipping, receiving, and stores personnel, at air carrier-operated or subcontracted facilities are provided initial and recurrent training in hazardous materials handling. The NTSB also supported the notification requirement.

Chromally Gas Turbine Corporation stated that the proposed requirement would require training and documentation for everyone in a ''repair station who even handles hazardous waste and/or labels hazardous waste containers which will never be involved in air transport.''

The Aircraft Electronics Association (AEA) believed that hazmat training, where needed, can be incorporated into training programs already required under 14 CFR 145.163. AEA also requested that the FAA adopt a narrowly tailored exemption for repair stations that hold only radio and/or instrument ratings (plus an associated airframe rating) for purposes of avionics installations. AEA stated that most repair stations holding these ratings do not handle hazmat, and those that do already are required to have appropriate training programs by the hazmat training requirements of title 49.

Boeing urged the FAA to adopt a new § 145.5(c) that would allow the repair station to receive acknowledgement from the air carrier that its training program is adequate. Boeing believed that such a provision would be adequate if a certificate holder verifies the adequacy of the repair station's controls over the processes, procedures, and training of persons performing transport-related functions for a repair station. The option to require specific training, if deemed necessary, provides flexibility to both the certificate holders and repair stations while maintaining adequate controls to ensure the proper handling and shipping of hazardous materials, and the continued safety of aircraft and personnel.

FAA Response

In the final rule, the FAA is removing the words ''and use in repair operations aircraft components, consumable materials on behalf of the operator regulated under 49 CFR parts 171 through 180'' from § 145.165. By making this amendment, the FAA seeks to clarify that the repair stations intended to be covered under this proposal are the part 145 repair stations that perform work for, or on the part 121 or part 135 operator's behalf and are regulated by 49 CFR parts 171 through 180. This, by definition in 49 CFR, would include only the repair stations that offer or accept hazardous material for transportation. The remainder of the requirement is retained. All part 145 repair stations that are regulated under 49 CFR currently are required to have hazmat training in place.

The FAA is not adopting the recommendation suggested by Boeing that carriers approve a repair station's training program. Repair stations may perform duties as hazmat shippers, and when they do, they are regulated under 49 CFR. However, if they perform or directly supervise a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operators, such as loading of the certificate holder's aircraft, they are required to be trained under the FAA's hazmat training requirements.

V.16. Application for Part 145 Certificate

Comments

Ameristar Air Cargo believed that employees should not have to be trained by the time the application is filed, but instead should be required to be trained prior to the repair station being issued a certificate. Ameristar also believed that proposed § 145.5 is very clear in regards to required training, making the proposed language of § 145.11(a)(5) redundant.

FAA Response

The FAA agrees with Ameristar that the repair station employees should have to be trained prior to FAA issuing a part 145 certificate or change in rating, not at the time of application. The final rule requires that the repair station certify that all hazmat employees have been trained as required by 49 CFR part 172 subpart H prior to issuing the repair station certificate or rating. For a change in rating, a repair station is not required to submit another certification if previously provided.

V.17. Notification of Hazardous Materials Authorizations

Comments

Ameristar and AEA believed that the requirement to notify all workers is very broad in scope. AEA believed that the proposed requirement would needlessly encompass personnel such as administrative employees who may have no involvement with the work being performed for the part 121 or part 135 carriers. This notification requirement should be limited to—(1) repair station employees who actually perform maintenance services on parts, components, or appliances belonging to part 121 or part 135 carriers; (2) personnel responsible for receiving and shipping those items; and (3) the supervisory personnel overseeing these two categories of workers.

AEA also believed that the reference to ''each certificate holder'' is vague and should be limited to ''each certificate holder for which the repair station provides maintenance services.''

FAA Response

The FAA believes that the notification requirement is essential and a very minimal requirement for hazardous material communication information. The FAA has determined that it is essential for a repair station to know whether its customers are will-carry or will-not-carry operators. In the final rule, the FAA is clarifying that the notification requirement applies only to the repair station employees, its contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180. This will eliminate the possibility of the notification process applying to personnel such as administrative or others who do not come into contact with any aircraft components.

Comment

Both Northwest Airlines (NWA) and Aircraft Electronics Association questioned the need for the certificate holder to train repair station employees as referenced in proposed § 121.803(a). NWA stated that this requirement could easily double or triple the amount of training that it would be required to administer. Aircraft Electronics believed that this requirement conflicts with the existing training requirements in 49 CFR, which imposes the requirement on the hazmat employer.

FAA Response

In the final rule, § 145.165(b) states that repair station workers must not perform or directly supervise any job function listed in § 121.1001 or § 135.501 for or on behalf of the part 121 or part 135 operator unless that person has completed training under the part 121 or part 135 operator's hazmat training program. When performing or directly supervising any job function listed in § 121.1005 or § 135.501 for or on behalf of a part 121 or part 135 operator, a repair station worker is not any different than any other contractor or subcontractor performing or directly

supervising a covered job function including loading the certificate holder's aircraft. Any contractor loading the aircraft for transportation must be trained under the FAA's Approved Hazardous Materials Training Program for that part 121 or part 135 operator. There is not a requirement for the part 121 or part 135 operators to train all repair station employees, only those who perform a covered function for or on behalf of the certificate holder. For instance, a repair station worker that loads COMAT onto an aircraft, or otherwise prepares the cargo for air shipment, for or on behalf of the certificate holder, must be trained in the certificate holder's hazmat training program.

Training conducted to comply with 14 CFR may meet the requirements in 49 CFR depending on the content of the training program.

VI. Section-by-Section Discussion of Final Rule

Part 119—Special Federal Aviation Regulation (SFAR) No. 99

The NPRM proposed to establish an SFAR that would contain all current part 121 and part 135 hazmat training regulations that would be replaced by the proposed changes. The SFAR is adopted without changes. The SFAR will expire 15 months after the effective date of the rule.

As proposed, all existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 are moved into Special Federal Aviation Regulation (SFAR) No. 99. This is designed to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements. The remaining parts of these regulations that are not hazmat-related will remain in their respective sections. New §§ 121.1003 and 135.503 (proposed as §§ 121.802 and 135.502) will require hazmat training for part 119 certificate holders conducting operations in accordance with part 121 and/or part 135 of 14 CFR.

The SFAR will exist for 15 months after the effective date of the final rule, during which time certificate holders certificated on or before November 7, 2005 will be responsible for bringing their hazmat training programs into full compliance with the new regulations. During the 15-month transition period, current part 121 and part 135 operators may continue to comply with the current requirements or elect to comply with the new requirements. As of February 7, 2007, all part 121 and part 135 operators are required to comply with the new training requirements.

Section 119.49 Contents of Operations Specifications

The FAA proposed to redesignate the current language of § 119.49(a)(13) as (a)(14) and add a new (a)(13) to provide that a certificate holder's operations specifications must include either an authorization permitting the part 121 or part 135 operator to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). The FAA did not receive any comments on this section. The references to paragraph (b) and (c) were inadvertently left out of the NPRM. The NPRM preamble discussed amending § 119.49 to show that all part 121 and 135 operators' operations specifications will be required to show the appropriate authorization.

Sections 121.135 and 135.23 Manual Contents

The FAA proposed that the current manual requirements in 14 CFR 121.135(b)(23) and 135.23 (p) be amended to require that both will-carry and will-not-carry certificate holders include procedures and information to assist each person directly supervising or performing a job function listed in § 121.1001 or § 135.501 for, or on behalf of a part 121 or part 135 operator in recognizing hazmat. The FAA is adopting the proposed provisions with some modifications, which are discussed below. The FAA believes that the proposed changes are necessary to clarify who is covered by the requirements and to more clearly specify the types of procedures and policies that must be provided. Some procedures are common to both will-carry and will-not-carry certificate holders. Other procedures vary, depending upon whether the carrier is a will-carry or will-not-carry certificate holder.

A. *Both will-carry and will-not-carry certificate holders:* In the final rule, the FAA is maintaining current manual requirements for both will-carry and will-not-carry certificate holders, with some amendments. The final rule requires that manuals for both will-carry and will-not-carry certificate holders contain procedures for rejecting packages not properly prepared and offered for shipment under 49 CFR parts 171 through 180, or that appear to contain hazmat. This is a change from the current requirements and was proposed because the current language only refers to identifying or recognizing packages marked and labeled as hazmat. The FAA wants certificate holder personnel to be better trained so that they are more likely to stop either packages improperly offered for shipment as hazmat, or packages that contain undeclared hazmat shipments which provide indicia of hazmat to a trained individual (discoverable hazmat shipment).

Thus in the final rule, the FAA is requiring part 121 and part 135 operators to have procedures for rejecting materials that appear to be improperly prepared or possible undeclared hazmat. The FAA has found that in many cases packages not marked and labeled as hazmat still display indicators that would lead a trained person to suspect the presence of hazmat. For example, terms such as ''chemicals,'' ''lighters,'' ''paint,'' or ''solvents'' on packages or accompanying documents not prepared as a hazmat indicate the possible presence of an undeclared hazmat. Additionally, trigger lists (such as the ones found in the ICAO TI Part 7, Chapter 6, or in IATA DGR Part 2 Chapter 2) may be used to alert personnel to the possible presence of hazmat in items not properly identified as hazmat.

In the final rule, the FAA adopts the requirement for both will-carry and will-not-carry certificate holders to communicate to crewmembers and persons, including contractors and subcontractors performing or directly supervising job functions listed in §§ 121.1001 and 135.501 for, on behalf of, the part 121 or part 135 operator of the operator's procedures for notifying DOT of hazmat incidents and discrepancies. (See §§ 121.135(b)(23)(ii)(B) and 135.23(p)(2)(ii)). Again, this is a change from the current requirements, which require a certificate holder to include this information in its manual only if the certificate holder has will-carry status.

The manual also must communicate the terms under which a certificate holder, including a will-not-carry certificate holder, may carry hazmat in accordance with the passenger and crew exceptions listed in 49 CFR 175.10. Currently, training for these hazmat exceptions are included in the will-carry and will-not-carry training programs based on long-standing advisory circular guidance. This amendment will make the training enforceable.

In the final rule, the FAA also requires part 121 and part 135 operators to indicate in their manuals whether they are will-carry or will-not-carry operators, as specified in the operations

specifications. (See §§ 121.135(b)(23)(ii)(C) and 135.23(p)(2)(iii)). This information currently does not have to be in the certificate holder's manual.

B. *Will-carry certificate holders only:* A part 121 or part 135 operator authorized as a will-carry operator will be required to provide to crewmembers and persons, including contractors and subcontractors performing or directly supervising job functions listed in §§ 121.1001 and 135.501 for, or on behalf of, the part 121 or part 135 operator with additional procedures and information regarding the transport of hazmat in its manual. The covered persons include any other person who directly supervises or performs a job function listed in § 121.1001 or § 135.501 for, or on behalf of a part 121 or part 135 operator under any other arrangement.

Additionally, part 121 or part 135 operators electing will-carry status are required to provide procedures and information to ensure that—

- The packages containing hazmat are properly offered, accepted, handled, stored, packaged and loaded on the aircraft in compliance with 49 CFR;
- Requirements for notice to the pilot in command (49 CFR 175.33) are met; and
- Aircraft replacement parts shipped as COMAT, consumable materials, and any other item regulated under the HMRs, are properly handled, packaged, and carried on board the aircraft.

C. *Will not carry operators:* There are no manual requirements specific only to will-not-carry certificate holders. The manual requirements are shared with the will-carry certificate holders.

Transfer of Hazmat Provisions to SFAR No. 99

All existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 are moved into Special Federal Aviation Regulation (SFAR) No. 99 to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements. New §§ 121.1003 and 135.503 (proposed as §§ 121.802 and 135.502) will require hazmat training for part 119 certificate holders conducting operations in accordance with part 121 and/or part 135. Section 121.401 is shown in the regulatory text only to show how the section reads once the hazmat training requirements are removed. The SFAR will expire on February 7, 2007.

Part 121—Subpart Z and Part 135 Subpart K—Hazardous Materials Training Program

The FAA notes that the numbering of new sections in part 121 has changed due to the adoption of new rules since the NPRM was published. In the final rule, therefore, the new subpart and sections are renumbered accordingly. In addition, the FAA is skipping numbers in between sections to allow room for the addition of new sections in the future. Therefore, regulations proposed as subpart Y §§ 121.801 through 121.804 are renumbered as subpart Z §§ 121.1001 through 121.1007 in the final rule. The FAA is renumbering sections in part 135 subpart K for the same reason. Sections in subpart K that were proposed as §§ 135.501 through 135.504 are renumbered as §§ 135.501 through 135.507 in the final rule.

Hazmat training rules in part 121, subpart Z, and part 135, subpart K, require all air carriers and commercial operators to train each crewmember and person who directly supervises or performs a job function listed in § 121.1001 or § 135.501. The FAA believes that adequate training of each person involved in a job function listed in § 121.1001 or § 135.501 will greatly enhance safety in air transportation and help avoid life-threatening incidents. Also, due to the frequency of undeclared shipments, the FAA believes that a broader training program, which includes hazmat recognition training, must be mandated for all part 121 and part 135 operators. However, as discussed below, the FAA is removing the term ''curriculum'' and the modules previously included in proposed Appendix N (adopted as Appendix O) of part 121 in this final rule.

1. *Applicability and definitions (§§ 121.1001 and 135.501)*—The final rule includes new subparts that prescribe requirements for certificate holders to train crewmembers and persons directly supervising or performing a job function listed in § 121.1001 or § 135.501, whether the part 121 or part 135 operator is a will-carry or will-not-carry operator. The will-carry or will-not-carry status is relevant only to the content of the training, not to the requirement to train. The FAA is removing the term ''curriculum'' because the FAA has decided against mandating a curriculum. Instead, it will be the certificate holder's responsibility to determine which workers require certain training based on the job functions they perform. The certificate holder will need to determine the level, content and duration of training.

The current requirements in §§ 121.433a and 135.333 apply only to persons handling or carrying hazardous material, even though the approved hazmat training programs contained in the certificate holder's manuals indicate the training is currently applied on a broader basis. The hazmat training requirements contained in the final rule apply to a broader group of individuals than covered in the current regulations.

1.A. *Paragraph (a):* Paragraph (a) identifies who is required to receive hazmat training. The training requirements cover crewmembers and persons who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for, or on behalf of a certificate holder in the transport of an item on board an aircraft. Part of the training includes teaching individuals how to recognize materials that may be hazmat but are improperly prepared for shipment. The NPRM included a list of specific job positions and the type of training they needed. The final rule establishes training based on the job function performed by the employee. Currently, §§ 121.433a and 135.333 forbid operators from using a person to perform, and forbids a person from performing, ''any assigned duties and responsibilities for the handling or carriage of dangerous articles and magnetized materials governed by Title 49 CFR'' unless the person has been trained. The NPRM proposed applicability provisions in §§ 121.801 (adopted as § 121.1001) and 135.501 that were broad enough to cover not only those persons performing a job function listed in § 121.1001 or § 135.501, but also those persons supervising the performance of that job function. This ensured that the certificate holder identified and trained each person who could reasonably be foreseen as supervising or performing a TRF, whether or not it was part of his or her day-to-day job duties (function-specific training). In the final rule, the FAA is clarifying that the training requirement does not apply to every supervisor, but rather to the ''direct'' supervisor who oversees the performance of a job function listed in § 121.1001 or § 135.501.

In this final rule, the FAA also clarifies the portion of the NPRM preamble that discussed when an individual's job function would necessitate training. The NPRM language that generated confusion is as follows: ''Whether a person were officially assigned to perform a job function would be irrelevant [to the need to train]. This would ensure that the certificate holder identifies and trains each person who could

reasonably be foreseen as performing or supervising a TRF, whether or not it is part of his or her job description.''

It was not the FAA's intent to require a part 121 or part 135 operator's entire work force to receive hazmat training. As an example, a person can be reasonably foreseen as performing or directly supervising a job function listed in § 121.1001 or § 135.501 when he or she may be asked to fill in for a sick or absent worker or supervisor. The certificate holder has the responsibility to determine which employees meet the ''function specific'' or ''assigned'' requirements to mandate training. The training requirements attach to the actual job function performed or directly supervised.

The FAA has also removed the job functions of ''unloading'' and ''carriage'' from the list of covered job functions in the final rule. This amendment brings the job functions covered in the training rule closely aligned with the 2005 edition of the ICAO TI and the IATA DGR hazmat training requirements. The FAA does not believe that removing these terms from the list of covered functions adversely impacts safety. First, the term ''unloading'' covers a job function that actually removes the item from the aircraft where it does not pose a danger. Second, FAA's research indicates that the personnel loading the aircraft are the same as the personnel unloading the aircraft. Since loading is a covered job function, these persons would be trained in accordance with the rule. Finally, if the unloaded cargo is subsequently loaded onto another aircraft, then the person would need to be trained. With regard to removing ''carriage,'' the FAA does not believe there is a safety issue since the term essentially incorporates all of the listed job functions and is not a stand-alone term.

1.B. *Paragraph (b):* Sections 121.1001 (b) (proposed as § 121.801(b)) and 135.501(b) set forth relevant definitions. Paragraph (b)(1) defines ''Company material (COMAT)'' as material owned or used by the certificate holder.'' COMAT is a term of art used in the aviation industry. The FAA is using the term to ensure that persons are trained to understand that COMAT classified as hazardous material must be marked, labeled, and identified as hazmat, and that there is no exception for the transport of hazardous material as COMAT for will-not-carry certificate holders. In the final rule the FAA is not changing this definition.

Paragraph (b)(2) defines ''initial hazardous material training.'' The definition of ''initial hazardous material training'' is consistent with the initial training requirement in 49 CFR part 172 subpart H, although 49 CFR does not specifically define initial hazmat training. In the final rule the FAA is not changing this definition.

Paragraph (b)(3) defines ''recurrent hazardous material training.'' The definition of ''recurrent hazardous materials training'' is also consistent with the way the term is used in 49 CFR part 172 subpart H, although under PHMSA's rules, this term is not defined. The NPRM proposed retaining an annual training requirement. However, the FAA is amending this proposal in the final rule to mandate recurrent hazardous material training every 24 months, consistent with the ICAO TI and the IATA DGR.

2. *General Requirement to Train (§§ 121.1003 and 135.503) (proposed as §§ 121.802 and 135.502))*—In the NPRM, the FAA proposed mandating a ''curriculum'' for both will-carry and will-not-carry certificate holders to improve the knowledge base of persons supervising or performing a TRF. The term ''curriculum,'' as used in the NPRM was widely misunderstood. Upon further consideration, the FAA realizes that the term ''content'' would have been a better description of the requirement. Actual curriculum (content) would vary depending upon the certificate holder's hazmat acceptance policy and the worker's job function. Standards for will-not-carry operators require that both part 121 and part 135 operators conduct training to assist those persons directly supervising or performing a job function listed in § 121.1001 or § 135.501 to identify possible undeclared, as well as declared, hazmat.

The training for will-carry operators covers two phases of training specified by the HMRs—general awareness training and function-specific training. The type of hazmat training necessary depends upon the job function performed or directly supervised. It is the responsibility of the certificate holder to ensure that the level of training is adequate and appropriate for each worker's job function. The specific level and duration of training is determined by the certificate holder, not the FAA.

2.A. *Paragraph (a)*—Sections 121.1003(a) and 135.503(a) (proposed as §§ 121.802(a) and 135.502(a)) require all hazmat training programs to include, at a minimum, the requirements of Appendix O of part 121. The training programs will ensure that each crewmember and person directly supervising or performing a job function listed in § 121.1001 or § 135.501 is trained to comply with the applicable requirements of 49 CFR parts 171 through 180, and that persons are trained to look for certain indicia that may indicate an undeclared (discoverable hazmat) or improperly prepared hazmat item. The FAA is closely aligning the job functions and the associated minimum aspects of training with the 2005 edition of the ICAO TI and the IATA DGR standards.

2.B. *Paragraph (b)*—Under paragraph (b), a certificate holder must develop an organized training program that will build upon a person's knowledge of hazmat regulations, keep up with current requirements, and focus on any problem areas. This requirement is consistent with current regulatory provisions. With certain exceptions, each crewmember and person performing or directly supervising a job function listed in § 121.1001 or § 135.501 will be required to receive initial hazardous materials training prior to performing or directly supervising that job function.

2.C. *Paragraph (c)*—Under paragraph (c) the certificate holder must obtain FAA approval of the hazmat training program prior to implementing the program. This requirement is consistent with the current training requirements in §§ 121.401 and 135.323.

3. *Training Requirement (§§ 121.1005(a) and 135.505(a)) (proposed as §§ 121.803 (a) and 135.503 (a))*—Sections 121.1005(a) and 135.505(a) provide that no certificate holder can use any crewmember and person to directly supervise or perform a job function listed in § 121.1001 or § 135.501, unless that person has satisfactorily completed the certificated holder's FAA-approved initial or recurrent hazardous materials training program within the past 24 months. A person is satisfactorily trained when that person understands the relevant training material and is capable of performing his or her job in compliance with both 49 CFR parts 171 through 180 and part 121, subpart Z, or part 135, subpart K, as applicable.

A person who has not received this training cannot be used to directly supervise or perform a job function listed in § 121.1001 or § 135.501, unless the conditions of an exception were satisfied.

4. *New Hire/New Job Functions—(§§ 121.1005(b) and 135.505(b)) (proposed as §§ 121.803(b) and 135.50(b))*—The FAA proposed two exceptions to the training requirements contained in §§ 121.1005(a) and 135.505(a). These exceptions apply to persons who are new hires or who are changing job functions and have not received the required initial or recurrent

hazmat training for the new job function. The new hire/new job function exception applies only to persons performing a job function involving storage incidental to transport, or loading of items on the part 121 or part 135 operator's aircraft for transport. This exception could not be used for persons performing or directly supervising any other job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or part 135 operator. The new hire/new job function exception can be applied for a period of not more than 30 days from either the date of hire or, for a change of job function, the date the person began performing the new job function.

To use this exception, the person would have to be under the direct visual supervision of another properly trained employee authorized to directly supervise him or her by the part 121 or part 135 operator. The direct supervisor must have successfully completed the certificate holder's approved initial or recurrent hazardous materials training program. In addition, the certificate holder must comply with the recordkeeping requirements in § 121.1007(b) or § 135.507(b) (proposed as §§ 121.804(b) and 135.804(b)), as applicable. The direct supervisor must observe the untrained person's performance to ensure that the job function is performed in compliance with both the FAA's regulations and the DOT's HMRs. Use of a video camera will not satisfy the direct visual supervision requirement. The requirement for the supervisor-to-worker ratio to be approved by the principal operations inspector or the principal security inspector is being removed. The FAA has determined that the requirement for the supervisor to visually observe the untrained person's performance provides sufficient oversight.

The new hire/new job function exception is similar to the exception in 49 CFR 172.704(c)(1) for multi-modal training in that it applies to new hires or persons changing job functions. However, unlike the exception in 49 CFR, this exception is only valid for 30 days from the date of employment or a change in job function. This is more limited than the new hire/new job function exception now in 49 CFR, which applies for 90 days after employment or a change in job function.

5. *Persons Working for More Than One Certificate Holder (§§ 121.1005(c) and 135.505(c)) (proposed as §§ 121.803(c) and 135.503(c))*—The second exception is in §§ 121.1005(c) and 135.505(c) and applies to workers who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for, or on behalf of more than one part 121 or part 135 operator. Under this exception, a part 121 or part 135 operator using a person to directly supervise or perform a job function listed in § 121.1001 or § 135.501 need only train that person in its own policies and procedures and any additional information not covered by the other part 121 or part 135 operator's training program, in accordance with its own hazardous materials training program. In the final rule, the FAA is changing the term ''authorized, knowledgeable person'' to ''person designated to hold the records representing the other certificate holder.'' This change is necessary because there are no standards a certificate holder can apply to determine who is an ''authorized, knowledgeable person.'' However, a certificate holder should have an individual responsible for maintaining records.

The certificate holder can use this exception only if both of the following conditions are met:

(1) The certificate holder using this exception receives written verification from the person designated to hold the records representing the other certificate holder for whom the person works that the person has satisfactorily completed that certificate holder's required initial or recurrent approved hazardous material training for that specific job function in the last 24 months.

(2) The certificate holder who trained the person has the same will-carry or will-not-carry status listed in its operations specifications as the certificate holder using the exception. This also applies to an employee who previously worked for a will-not-carry certificate holder providing any policy differences are communicated to the employee.

The NPRM contained an example for a repair station that was misunderstood. The only repair station workers required to be trained in the part 121 or part 135 operator's FAA-approved training program are the repair station workers performing or directly supervising a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator including loading the certificate holder's aircraft for transport. The requirement to train the repair station workers who perform or directly supervise a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator is not any different than training any other contractor performing or directly supervising a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator. The FAA is providing the following example to help clarify the application of this exception.

Example B: Employees loading (a job function listed in § 121.1001 or § 135.501) a part 121 or part 135 operator's aircraft for transport perform work, including the job function of loading the aircraft, for 10 will-carry certificate holders. Persons performing any job function involving loading of a part 121 or a part 135 operator's aircraft will have to be trained according to Appendix O (proposed as Appendix N) of part 121 under the part 121 or part 135 operator's FAA-approved hazmat training program. Then the repair station employees will receive training in the policies, procedures, and any differences for each of the remaining nine part 121 or part 135 operator's training programs. The substantive requirements such as marking, labeling, documentation, etc. in the hazmat training programs are standardized by PHMSA's HMRs, and vary little among will-carry certificate holders. The person required to be trained under the FAA-approved training program would have to receive this training every 24 months.

However, if a worker performed loading for part 121 or part 135 will-not-carry certificate holders, the repair station could not use the exception to also perform loading or any other job function listed in § 121.1001 or § 135.501 for, or on behalf of, a will-carry certificate holder, without the worker being trained. The worker will have to complete the hazmat training required under the will-carry certificate holder's approved hazmat training program.

The FAA believes that this exception will help to minimize the training burden. Given that the core of each certificate holder's hazmat training program will be substantially the same; the only differences will be a certificate holder's policies and procedures for implementing the regulations.

6. *Recurrent Training (§§ 121.1005(d) and 135.505(d)) (proposed as §§ 121.803(d) and 135.503(d))*—The definition of the term ''recurrent hazardous materials training'' is similar to the definition of ''recurrent training'' used in part 121, subpart O, for flight and proficiency training. The FAA is mandating that the recurrent hazmat training be completed within 24 months while recurrent flight and proficiency training remains on an annual schedule. Thus, all persons affected by this rule are required to receive hazardous materials training every 24 months. However, a person may receive recurrent hazardous material training earlier than it is due or before the end of the month after it is due. These timing provisions are similar to those requirements currently contained in § 121.433a(a). Therefore, if recurrent hazmat training is due in January, but completed in February, it will be

considered as having been accomplished in January, and recurrent training would be due again before the end of 24 months following January. The training is not considered out-of-date until 31 days after the 24-month anniversary of the last training. Section 121.1005(d) states: ''A person who satisfactorily completes recurrent hazmat training in the calendar month before or the calendar month after the month in which the training is due is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes the new anniversary date.''

7. *Notice to Repair Stations (§§ 121.1005(e) and 135.505(e)) (proposed as §§ 121.803(e) and 135.503(e))*—Based on the NTSB's report on Valujet Flight 592 and the FAA's experience with repair stations, the FAA has concluded that there should be better communication between repair stations and the part 121 and part 135 operators regarding the will-carry or will-not-carry status of the certificate holder. The NPRM proposed to ensure this communication in, §§ 121.1005(e) and 135.505(e) which required certificate holders to provide written notification of their will-carry or will-not-carry status and policies and procedures to each repair station that performed work on their behalf and that uses or replaces consumable materials, aircraft parts, or other items regulated by 49 CFR parts 171 through 180. The repair stations covered by this requirement were viewed broadly by many commenters because the language used in the NPRM was unclear. The FAA is therefore clarifying that the repair stations intended to be covered under this rule are the repair stations that perform work for, or on behalf of a part 121 or part 135 operators and are regulated by 49 CFR parts 171 through 180.

The proposed rule also contained language that would have required the certificate holder to make sure the repair station was aware of the will-carry or will-not-carry status of the certificate holder. The FAA is removing this language in the final rule and replacing it with a requirement for the part 145 certificate holder to acknowledge receipt of the notification.

8. *Foreign Locations (§§ 121.1005(f) and 135.505(f)) (proposed as §§ 121.803(f) and 135.503(f))*—The current exception in § 121.433a for operators operating at a foreign location in §§ 121.1005(f) and 135.505(f) is maintained in the final rule. Under the final rule, part 121 or part 135 operators operating in foreign locations where they are required to use persons working in that country to load aircraft can use persons even if they have not received the required hazmat training, but only if they are under the direct visual supervision of someone who has received the required initial or recurrent training. The current exception in § 121.433a applies to those persons loading and unloading an item onto an aircraft. The job function of unloading has been removed from this exception as it has been removed from the list of covered job functions that require hazmat training under this final rule. The current exception also includes the term ''handling;'' however, the FAA is not including handling in the final rule because it may be confusing. The use of the term ''handling'' in the current CFR refers to the handling that would be required during the loading of the aircraft. Although the FAA is not including this term in the final rule, the FAA still recognizes that those people who load must handle the cargo. The removal of the term ''handling'' is necessary, however, to eliminate any confusion over the breadth of the exception.

9. *Recordkeeping Requirements (§§ 121.1007 and 135.507) (proposed §§ 121.804 and 121.504).*

9.A. *Paragraph (a)*—Sections 121.1007(a) and 135.507(a) require each certificate holder to maintain training records of all initial and recurrent hazmat training received within the preceding 3 years for all job functions of persons listed in Appendix O (proposed as Appendix N) of part 121 who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for 90 days after they stop directly supervising or performing the covered job function. This length of time is identical to that required by 49 CFR 172.704(d). The certificate holder is responsible for maintaining records for direct employees, contractors, subcontractors, and any other person directly supervising or performing a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator. Records may be maintained electronically.

9.B. *Paragraph (b)*—Paragraph (b) requires the certificate holder make the records available to the FAA upon request at the location where the trained person performs or directly supervises the covered job function. Records must be available at the location at which a person works and may be provided by electronic means. This modification aligns the provision with 49 CFR, the ICAO TI, and the IATA DGR. The records are required to be maintained for 90 days after the person stops directly supervising or performing a job function listed in § 121.1001 or § 135.501.

9.C. *Paragraph (c)*—Under proposed §§ 121.804(c) and 135.504(c) the required information to be maintained was more specific than that required by 49 CFR 172.704(d). The FAA proposed that the records would have to contain references to the individual's job function performed or supervised; dates of each training course successfully completed within the preceding three years; a statement signed and dated by a person designated by the director of training; and a description of each training course successfully completed. In §§ 121.1007(c) and 135.507(c) of the final rule, the FAA is aligning the required contents for each record with the ICAO TI, the IATA DGR, and 49 CFR. Under the final rule, the records must contain the individual's name; most recent training completion date; a description, copy, or reference to training materials used to meet the training requirement; name and address of organization providing the training; and a copy of the certification issued when an individual was trained (showing that a test was satisfactorily completed).

Both the ''format'' of the record verifying completion of training and ''who'' records the verification would be left to the operator. The recordkeeping enables the FAA to monitor compliance with the hazmat training requirements. However, to alleviate duplication of recordkeeping, the FAA is changing the final rule so that the required contents are aligned with 49 CFR 172.704(d), ICAO TI 1;4.2.4 and IATA DGR 1;1.5.4.1.

9.D. *Paragraph (d)*—Sections 121.1007(d) and 135.507(d) contain a recordkeeping requirement for a certificate holder using the new hire/new job function exception. This requirement is necessary to monitor compliance with the new exception. Under the requirements of §§ 121.1007(b) and 135.507(b), a certificate holder must maintain a record that includes:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job functions;

(4) The name of the supervisor of the job function; and

(5) The date the person is to receive and complete hazmat training in

accordance with Appendix O of part 121.

Part 121—Appendix O (Proposed as Appendix N)—Hazardous Materials Training Requirements for Certificate Holders

The FAA notes that the lettering of the appendices in part 121 has changed due to other rulemaking activity since the NPRM was published. In the final rule, therefore, proposed Appendix N is being adopted as Appendix O.

Many commenters disagreed with the proposal to mandate curriculum for the certificate holder's hazmat training program. The FAA agrees and is closely aligning the final rule with the training requirements in the 2005 edition of the ICAO TI and the IATA DGR. The certificate holders indicated that the ICAO TI standards are the best common reference point to facilitate the uniform, seamless handling of hazmat in international air transport. By modifying the final rule to allow certificate holders to develop their own training curriculum, the FAA believes that the need to provide model hazardous material training programs has been diminished.

Consequently, the FAA is removing the training modules from Appendix O. Table 1 ''Operators That Transport Hazardous Materials (Will-Carry Certificate Holders)'' and Table 2 ''Operators That Do Not Transport Hazardous Materials (Will-Not-Carry Certificate Holders)'' in Appendix O will provide the minimum aspects to be covered in the certificate holder's hazmat training program. These minimum requirements will apply to persons performing or directly supervising a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or part 135 operator. If a certificate holder's FAA-approved hazmat training program currently contains the minimum requirements, no changes will be required.

Will-not-carry certificate holders (both part 121 and part 135) will be required to conduct recognition training to assist persons directly supervising or performing a job function covered in Appendix O Table 2 in identifying discoverable undeclared hazmat offered for shipment.

Will-carry certificate holders (both part 121 and part 135) are required to cover the three phases of training specified by the HMRs—General awareness, function-specific, and safety training. The specific job function performed or directly supervised and the certificate holder's policies and procedures will determine the level of training required under Appendix O. General awareness training is intended to give general information and guidance about the overall hazmat regulations. Function-specific training is intended to give an in-depth and detailed understanding of the regulations regarding a specific job function that the employee will perform.

The change adopted in the final rule reflects changes to the 2005 edition of the ICAO TI and the IATA DGR. The FAA proposed a category of staff approach consistent with the ICAO TI and the IATA DGR at the time the NPRM was drafted. However, the 2005 edition of the ICAO TI adopts a task-oriented approach, and this is the approach the FAA is now adopting. The 2005 edition of the ICAO TI recommended that dangerous goods training programs, approved by the competent authorities, be established and maintained by or on behalf of persons with various responsibilities in processing cargo (not necessarily involving dangerous goods). The ICAO Dangerous Goods Panel determined that persons handling only non-dangerous goods should undertake dangerous goods training. Subsequent to the 2005 ICAO TI amendments being announced, IATA adopted the same training requirement to be included in the 2005–2006 IATA DGR. The IATA DGR reflects the industry standard practices or operational considerations, including training for those employees and operators handling only non-dangerous goods.

In Appendix O of part 121, the FAA is using a matrix similar to the matrix in the ICAO TI Table 1–4 and the IATA DGR Table 1.5A. The matrix has seven categories of personnel and 14 aspects of hazmat training. Since the categories and matrices are function-based, the required components in the training programs will be the same or similar to requirements for compliance with ICAO, IATA, and 49 CFR. The aspects of training in Appendix O are designated subject matter relating to dangerous goods transport with which the various persons performing specific functions must be familiar. These are comparable to the ''area of training'' listed in the tables of proposed Appendix N of the NPRM. The detailed curriculum, previously proposed in Modules 1 through 13 in the NPRM, are removed in the final rule to allow the certificate holder to use the functions being performed to determine the training commensurate with the personnel's responsibilities taking into account the requirements in Appendix O. Therefore, in the final rule, the FAA is clarifying that the certificate holder has the responsibility to determine the level of training required, the method of training, duration, type of testing necessary, and the method of recordkeeping. Thus, in the final rule, the FAA is amending the proposed requirement to test all persons through a method that verifies comprehension of each subject area. The certificate holder must certify that a test has been completed satisfactorily.

Under the final rule, part 121 and part 135 operators will still need to provide any operator-specific policies and procedures not specifically mentioned in Appendix O. The FAA believes each certificate holder currently trains all workers in its individual policies and procedures, so this will not be an additional requirement. If a certificate holder's training program differs from the required format, that fact can be discussed with the FAA during the approval process.

The following examples are designed to clarify the application of hazmat training.

Example C: A will-carry certificate holder that accepts all hazmat allowed by regulation will develop a training program to include all applicable topics or aspects identified in the table in Appendix O. The training must provide both an in-depth appreciation of the whole subject and, policies and procedures specific to the job function being performed. Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in Appendix O.

Example D: A will-carry certificate holder that accepts hazmat, but has a prohibition on carrying radioactive material will develop a training program to include all applicable topics or aspects identified in Table 1 in Appendix O. This training must provide an in-depth appreciation of hazmat as a whole and will contain an awareness of radioactive material and knowledge of the policy of the certificate holder's prohibition against the transport of radioactive material for transportation. Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in Appendix O.

Example E: A certificate holder's worker (applies to both will-carry and will-not-carry certificate holders) accepts small parcel cargo at the ticket counter. In addition to general awareness training on the general philosophy and limitations of hazmat, the person is required to have training applicable to passenger handling and cargo acceptance. Depending on the responsibilities of the person and whether or not hazardous materials are accepted at that counter, the aspects of training to be covered may vary from those shown in Appendix O.

Example F: A will-not-carry certificate holder that does not accept hazmat develops a training program that includes all required aspects or topics in Table 2 of Appendix O. This training must provide general information and guidance to workers to give a general appreciation of the requirements.

Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in Appendix O.

Example G: When a part 121 or part 135 operator, its subsidiary or agent offers a consignment of hazmat for air transport, the certificate holder, subsidiary, or agent is a shipper and must comply with shipper's responsibilities and training. This is applicable even if the consignment is to be transported on its own or another certificate holder's aircraft.

Part 135—Hazardous Materials Training Program (§§ 135.501 Through 135.507) (Proposed as §§ 135.501 Through 135.504)

The FAA notes that the numbering of sections in part 135 has changed due to the adoption of new rules since the NPRM was published. In the final rule, therefore, sections in subpart K are renumbered accordingly. In addition, the FAA is skipping numbers in between sections to allow room for the addition of new sections in the future. Therefore, sections in subpart K that were proposed as §§ 135.501 through 135.504 are renumbered as §§ 135.501 through 135.507 in the final rule.

Currently, part 135 contains exceptions for certificate holders who use only one pilot in their operations. Specifically, these certificate holders are excepted from the manual requirements in § 135.21. These certificate holders, however, will remain subject to the hazmat training requirements in subpart K.

All part 135 operators, including single-pilot certificate holders, must meet the hazmat training requirements in Appendix O of part 121. Additionally, those persons loading aircraft for these certificate holders must have hazmat training that meets the requirements of Appendix O of part 121, including being informed of the certificate holder's restrictions and limitations regarding the transport of hazmat or meet the exception in § 135.505(b).

The certificate holders with only one pilot do not have an approved hazmat training program. These certificate holders must be able to demonstrate compliance with this hazmat training rule and will have to continue to maintain records of training. In addition, certificate holders conducting operations that transport hazmat with one pilot remain subject to DOT's hazardous material training and recordkeeping requirements in 49 CFR part 172 subpart H.

Part 145—Repair Stations

Section 145.53 Issue of Certificate (Proposed as § 145.11 (a)(5))

Section 145.57 Amendment to or Transfer of a Certificate

The FAA notes that the numbering of sections in part 145 has changed due to the adoption of new rules since the NPRM was published. Therefore, proposed § 145.11 (a)(5) is incorporated into § 145.53 in the final rule.

The FAA continues to be concerned about hazmat training provided to persons performing work at repair stations used by part 121 or part 135 operators. Repair stations workers that perform work on behalf of part 121 or part 135 operators that are ''hazmat employers'' as defined by 49 CFR 171.8, currently must establish a hazmat training program under 49 CFR part 172 subpart H. Historically, the FAA has verified compliance with hazmat training requirements only after an enforcement proceeding was initiated. The FAA believes this regulation adopts a pro-active approach. If the hazmat training requirements are not complied with, the FAA will not issue the repair station's certificate or rating.

As revised in this final rule, § 145.53 (proposed as § 145.11(a)(5)) requires part 145 certificate holders located within the United States to certify in writing that all hazmat employees (see 49 CFR 171.8) for the repair station, its contractors, or subcontractors are trained as required in 49 CFR part 172 subpart H. Part 145 certificate holders located outside the United States must certify in writing that all employees for the repair station, its contractors, or subcontractors performing a job function involving the transport of dangerous goods (hazardous material) are trained as outlined in the most current edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air.

This certification must be submitted prior to the FAA's issuing a part 145 certificate or rating. The certification also must be provided by the holder of a repair station certificate when applying for a change to its certificate. This includes a change to the location of the repair station, or a request to add or amend a rating. Requiring a repair station to provide this certification imposes minimal additional documentation as part of the application for certification or rating process, but ensures that the applicant is aware of its training responsibility under the HMRs.

Section 145.165 Hazardous Materials Training (Proposed as § 145.5)

The FAA notes that the numbering of sections in part 145 has changed due to the adoption of new rules since the NPRM was published. Therefore, proposed § 145.5 is adopted as § 145.165 in the final rule.

Section § 145.165 paragraph (a) (proposed as § 145.5(a)) provides a cross reference to the hazardous materials training requirement in 49 CFR. By including this cross reference in part 145, the FAA is notifying all repair stations that they must carefully review the hazardous properties of the items with which they work to determine whether they are regulated by 49 CFR parts 171 through 180. If so, the repair station must establish and implement a hazardous materials training program as currently required by 49 CFR part 172 subpart H.

In the final rule, the FAA is removing the language ''uses or replaces aircraft components, uses or handles consumable hazardous materials or other items regulated by 49 CFR parts 171 through 180'' to clarify that the repair stations intended to be covered under this final rule are the repair stations that perform work for, or on behalf of a part 121 or part 135 operator and are regulated by 49 CFR parts 171 through 180. A repair station may use or handle hazardous materials without placing those items in transportation. Thus only the repair stations that perform functions regulated under 49 CFR parts 171–180 would be covered by this requirement.

Many required items on aircraft are regulated hazmat when shipped as cargo. Examples include oxygen generators used to provide oxygen to passengers in the event of an emergency, and fuel control units for jet engines. Since the crash of Valujet Flight 592, the FAA repeatedly has investigated incidents where oxygen generators and fuel control units were transported as cargo that were offered and accepted for air transportation improperly.

While this regulation is designed to help improve compliance and prevent these types of mistakes, the FAA is also clarifying the interplay of requirements between FAA and DOT hazmat training regulations. If a repair station is performing the functions of a shipper and preparing an item classified as a hazardous material (including materials shipped as COMAT) for shipment by air, DOT's hazmat training regulations in 49 CFR part 172 H currently apply. If a person does not perform a job function listed in § 121.1001 or

§ 135.501 on behalf of the part 121 or part 135 operator, then that person does not have to be trained under the FAA's training regulations. However, if a repair station worker performs a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator then that person must be trained in accordance with both DOT's hazmat training regulations and FAA's hazmat training regulations.

The FAA believes the only job function currently or previously performed by repair stations that are not also affiliated with part 121 and part 135 operators is the loading of the certificate holder's aircraft for transport. Since any person currently loading the part 121 or part 135 operator's aircraft would have to be trained under the FAA's hazmat training requirements, the repair station employee also would have to complete the required FAA hazmat training. Section 145.165(b) prohibits repair station workers from directly supervising or performing a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator unless those persons have been trained in accordance with the part 121 or part 135 operator's FAA-approved hazardous material training program applicable to that job function.

Section 145.206 Notification of Hazardous Materials Authorizations (Proposed as § 145.27)

The FAA notes that the numbering of sections in part 145 has changed due to the adoption of new rules since the NPRM was published. In the final rule, therefore, proposed § 145.27 is renumbered § 145.206 in the final rule. In addition, the section is divided into paragraphs (a) and (b), as discussed below.

Section 145.206 (proposed as § 145.27) requires each repair station to notify repair station employees, its contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 of the will-carry or will-not-carry status of the part 121 or part 135 operators for which the repair station does work.

In the final rule, the FAA is adding a requirement (as paragraph (a)) that the repair stations must inform the part 121 or part 135 operator that it has received the required notification. This receipt notification replaces the proposed requirement for the part 121 and part 135 operators to make sure that the repair station is aware of its status.

The language proposed in § 145.27 is adopted as paragraph (b) in the final rule, with modification. In the final rule, the FAA is changing the words ''notify all workers'' to ''notify its employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180.'' This language clarifies that all workers do not require notification.

VII. Regulatory Analysis and Notices

VII.1. Paperwork Reduction Act

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this rule to the OMB for its review. OMB approved the collection of this information and assigned OMB control number 2120–0705.

This rule was proposed in the **Federal Register** of May 8, 2003. At that time, the FAA requested public comments on the proposed information collection requirements. These comments, and the FAA's responses, are discussed under ''V.11. Recordkeeping Requirements.'' The following is a summary of the full ''Supporting Statement'' of information collection requirements submitted to OMB for review. The numbers in the ''Supporting Statement'' are derived from the full Economic Evaluation, which is in the docket for this rulemaking.

• The estimated first-year hour and cost burdens to part 121 operators and part 135 operators to revise their hazardous materials manuals are as follows:

Large part 121 operators: 408 hours/$27,299
Small part 121 operators: 856 hours/$36,988
Large part 135 operators: 24 hours/$1,037
Small part 135 operators: 12,624 hours/$365,970
Total: 13,912 hours/$431,294

• The estimated annual manual revision hour and cost burdens for years 1–10 are as follows:

Large part 121 operators: 40.8 hours/$2,730
Small part 121 operators: 85.6 hours/$3,699
Large part 135 operators: 2.4 hours/$104
Small part 135 operators: 1,262.4 hours/$36,597
Total: 1,391.2 hours/$43,130

• The estimated first-year hour and cost burden for part 121 operators and part 135 operators to restructure their databases are as follows:

Large part 121 operators: 72 hours × 36 firms/$114,860
Small part 121 operators: 32 hours × 87 firms/$81,153
Large part 135 operators: 72 hours × 3 firms/$6,819
Small part 135 operators: 8 hours × 2,536 firms/$588,149
Total: 25,880 hours/$790,981

• The estimated annual hour and cost burden for years 1–10 for part 121 and part 135 operators to restructure their databases are as follows:

Large part 121 operators: 259.2 hours/$11,486
Small part 121 operators: 278.4 hours/$8,115
Large part 135 operators: 21.6 hours/$682
Small part 135 operators: 2,028.8 hours/$58,815
Total: 2,588 hours/$79,098

• The estimated annual hour and cost burden to part 121 operators and part 135 operators to update their training records is as follows:

Part 121 operators: 1,052 hours/$20,071
Part 135 operators: 2,617 hours/$1,939
Total: 3,669 hours/$22,010

• The estimated first-year hour and cost burden to part 121 operators and part 135 operators to notify 145 repair stations of their will-carry or will-not-carry statuses are as follows:

Part 121 operators: 4,386.8 hours/$75,853
Part 135 operators: 2,792.9 hours/$38,314
Total: 7,179.7 hours/$114,167

• The estimated hour and cost burden for years 1–10 to part 121 operators and part 135 operators to notify 145 repair stations of their will-carry or will-not-carry statuses are as follows:

Part 121 operators: 797.6 hours/$15,170
Part 135 operators: 507.8 hours/$7,663
Total: 1,305.4 hours/$22,833

• The total estimated annual hour and cost burdens to part 145 operators to comply with §§ 145.53 and 145.206 are as follows:

440 hours/$87,560

• All estimated annual burdens to part 121 operators, part 135 operators, and part 145 repair stations are as follows:

Part 121 operators: 1,461.6 hours/$41,200
Part 135 operators: 3,823 hours/$103,861
Part 145 repair stations: 440 hours/$87,560
Total: 5,724.6 hours/$232,621

• Additional annual costs to part 121 and part 135 operators that are not

already following the procedures required by the final rule for the collection of information are as follows:

Large will-not-carry part 121 operators: $120,528
Small will-not-carry part 121 operators: $6,912
Large will-not-carry part 135 operators: $6,048
Small will-carry part 135 operators: $8,100
Small will-not-carry part 135 operators: $78,192
Total: $219,780

VII.2. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has determined that differences would affect U.S. aircraft operators only, and therefore it is not necessary for the FAA to file any differences with ICAO. Foreign carriers operating in the United States will not be affected by the rule.

VII.3. Economic Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 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 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) 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).

In conducting these analyses, FAA has determined this rule:

(1) Has benefits that justify its costs; is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; and is ''significant'' as defined in DOT's Regulatory Policies and Procedures;

(2) Will not have a significant economic impact on a substantial number of small entities;

(3) Will not impact international trade; and

(4) Does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

These analyses, available in the public docket for this rulemaking, are summarized below.

Cost Assumptions

- Discount rate: 7%.
- Because there will be a 15-month transition from the effective date of the rule, the time horizon for this cost section is from 2006 through 2015.
- Monetary Values expressed in 2003 dollars.
- To calculate recurrent training costs, the FAA assumes a 24-month cycle instead of the annual cycle used in the proposed rule. The 24-month cycle is consistent with ICAO/IATA recommendations.
- Because hazmat training records are already kept electronically, updating these records with recurrent training information every two years is estimated to take approximately five additional minutes per employee in the final rule instead of the 10 minutes per employee estimated in the proposed rule.
- The FAA assumes the cost of the IATA/FIATA International Cargo Agents training course to be $216, which includes training materials, an examination fee, and a shipping fee.
- The FAA assumes that training will be conducted based on a self-taught, independent study method (as all IATA/FIATA International Cargo Agents training courses are conducted) or based on computer-based training (CBT).
- The FAA assumes that many of these operators will maintain computer-based records.
- 5% of employees of deficient part 121 carriers [1] will receive hazardous materials training.
- 10% of non-crewmember employees of deficient part 135 carriers [1] will receive hazardous materials training.
- 5% of employees, of non-deficient part 121 carriers,[1] who have already received the necessary hazardous materials training, will receive that training every other year resulting in cost saving for their employer.
- All crewmembers and 10% of employees, of non-deficient part 135 carriers,[1] who have already received the necessary hazardous materials training, will receive that training every other year resulting in cost savings for their employer.

Changes in Cost Analysis From the NPRM to the Final Rule

The NPRM costs were estimated to be $107.5 million ($75.8 million, discounted) over a 10-year period. The final rule costs are estimated at $7.2 million ($5.0 million, discounted) over a 10-year period. This decrease in costs is attributed to several changes made from the issuance of the NPRM to the publication of this final rule.

As shown in the table below, the majority of the cost reduction is due to aligning the training requirements to the ICAO/IATA standards, reducing the number of employees at part 121 and part 135 operators who will need to be trained, and reducing the recurrent training requirements to every 24 months instead of the every 12-month requirement in the NPRM. Additionally, administrative costs were reduced significantly from the NPRM for part 121 and part 135 operators, largely due to the final rule allowing for electronic recordkeeping.

[1] A deficient operator is an operator who is not already in compliance with the standards, while a non-deficient operator is an operator who is already in compliance with the standards. This determination was based on the operators' responses to the ''Special Emphasis Review: Hazardous Materials or Dangerous Goods Programs and Requirements,'' as summarized in Appendix A of the full regulatory evaluation in the public docket for this rulemaking.

	Administrative	Training		Total
	Recordkeeping	Alignment with ICAO/IATA	Change in population estimates	
Undiscounted				
NPRM	$13,525,600	$91,565,900		$105,091,500
Final Rule	220,107	4,608,915		4,829,022
Difference	13,305,493	7,763,157	16,193,828	100,262,478
Discounted				
NPRM	9,294,000	64,523,400		73,817,400
Final Rule	220,107	3,056,216		3,276,323
Difference	9,073,893	44,064,820	17,402,364	70,541,077

Further, the NPRM estimated significant training costs for repair stations. The FAA has since learned that repair stations have stopped performing job functions related to hazardous materials transport, including loading. However, this rule requires repair stations to train their employees, contractors, and subcontractors if they are performing job functions related to hazardous materials transport for part 121 or part 135 carriers. Repair stations that are hazmat employers will be required to train their employees so they are in compliance with 49 CFR part 172, but that is not a cost of this rule. Repair stations that do not perform the listed job functions will not be required to train their employees, so generally, the only increased costs borne by repair stations will be administrative.

Costs of This Rulemaking

The estimated cost to part 121, part 135 operators, and domestic part 145 repair stations to comply with the administrative and training provisions over a 10-year period are approximately $3.1 million ($2.1 million, discounted), $3.2 million ($2.3 million, discounted), and $876,000 ($575,000, discounted), respectively. The total costs of this rulemaking are approximately, $7.2 million ($5.0 million, discounted), over a 10-year period.

Cost Savings and Safety Benefits of This Rulemaking

The cost savings over a 10-year period are estimated at $70.8 million, or $44.1 million, discounted, of which ''will carry'' operators will realize cost savings of $37.4 million ($23.3 million, discounted) and ''will not carry'' operators will realize cost savings of $33.4 million ($20.8 million, discounted).

The expected part 121 benefits of the rule over 10 years from avoided accidents involving the carriage of hazardous materials will be approximately $60.9 million. However, there is a 15 percent probability (based on the Poisson distribution) that the estimated benefits from avoiding these types of accidents could be $319.7 million or higher over 10 years. The Poisson distribution model was used to estimate the probability of experiencing potential rare incidents on board U.S. air carriers over the next 10 years. The Poisson distribution provides a realistic model for predicting rare and random phenomena.

The expected part 135 benefits of the rule over 10 years from avoided accidents involving the carriage of hazardous materials will be approximately $3.4 million. However, there is a 26 percent probability (based on the Poisson distribution) of one or more fatal accidents and the estimated benefits from avoiding these types of accidents will range between $6 million and $25 million.

VII.4. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Act) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) suggests that ''small'' entities can be identified either on the basis of employees or revenues. For this rule, small entities are composed of two distinct groups: aircraft operators and repair stations. The SBA suggests that aircraft operators with 1,500 or fewer employees are ''small'' entities. The SBA does not provide revenue information for firms with fewer than 1,500 employees, but does provide data for firms with fewer than 500 and fewer than 20 employees. To determine the impact of the proposed rule on the 87 small part 121 operators and the 2,536 small part 135 operators, the FAA has estimated the annualized cost impact on these two categories of small entities separately, since the rule's impacts differ.

The final rule is expected to impose an estimated cost of $2.1 million on the 87 small part 121 operators over the next 10 years. The average annualized cost per small operator is estimated at $2,600. However, the FAA estimates that part 121 ''will not carry'' operators will incur all six cost elements and the annualized cost to each of these entities is estimated at $3,500. The costs to ''will carry'' operators will be lower since less training will be required. According to a Small Business Administration analysis of Bureau of Census data for scheduled air transportation firms, firms with fewer than 500 employees have

average revenues of $10.8 million. (Source: *http://www.SBA/gov/advo/stats.* Data are not available for firms with fewer than 1,500 employees. Presumably, the average revenue for firms with 1,500 employees would be higher than those firms with fewer than 500 employees.) Data are not available for firms with fewer than 1,500 employees. Presumably, the average revenue for firms with 1,500 employees would be higher than those firms with fewer than 500 employees. The estimated cost to each of the ''will not carry'' entities is only .032 of one percent of the average revenue of $10.8 million of these firms. The FAA does not consider a cost of 0.032 of one percent of revenues to be a significant cost. Thus none of the 87 small part 121 entities will incur a significant economic impact in the form of higher annual costs as the result of the final rule.

The final rule is expected to impose an estimated cost of $3.1 million on the 2,536 small part 135 operators over the next 10 years. The average annualized cost per small 135 operator is estimated at $150. The FAA does not consider $150 costs to be significant. Thus none of the small part 135 entities will incur a significant economic impact in the form of higher annual costs as the result of the rule. Therefore, the FAA has determined that this final rule will not have a significant impact on a substantial number of small part 121 or part 135 operators.

The SBA suggests that ''small'' repair stations can be identified as those firms with annual revenues of $5 million or less. Research conducted for the FAA indicates that approximately 56 percent of all repair stations meet this criterion. (''An Analysis of International Trade Flows in Aircraft Repair Services'' GRA Inc. Contract No. DTFA01–93–C–00066 Work Order 46 Figure 6, page 18.) The final rule is expected to impose an estimated cost of $876,000 on the 2,006 small independent domestic part 145 repair stations. The average annualized cost to the 62 small repair stations that incur both cost elements is estimated at $76. The FAA considers this amount economically insignificant.

Therefore, the FAA has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII.5. 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 safety, 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 accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will have the same impact on foreign sponsors as on domestic sponsors and, therefore, creates no obstacles to the foreign commerce of the United States.

VII.6. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, 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 assessing the effects of any Federal mandate in a proposed or final agency rule 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 deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

VII.7. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

VII.8. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of FAA Order 1050.1E and involves no extraordinary circumstances.

VII.9. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

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

14 CFR Part 135

Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend part 119 by adding Special Federal Aviation Regulation No. 99 as follows:

Special Federal Aviation Regulation No. 99—Hazardous Materials Regulations Governing Manual and Training Requirements

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all U.S. air carriers and commercial operators that are issued a certificate under part 119 of this chapter on or before November 7, 2005 to operate under part 121 or part 135 of this chapter. For purposes of hazardous materials training, these air carriers and commercial operators may comply with the provisions of this SFAR until its expiration. Alternatively, they may comply with the provisions of part 121, subpart Z, or part 135, subpart K, as applicable. All other provisions of parts 121 and 135 not affected by this rule remain applicable.

2. *Expiration.* This Special Federal Aviation Regulation expires on February 7, 2007.

3. *Definition.* The term certificate holder, as used in this SFAR, means a person certificated in accordance with part 119 subpart C, of this chapter and operating under part 121 or part 135 of this chapter.

4. *Manual Contents.* (a) Each manual required by § 121.133 shall contain procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following:

(1) Procedures for determining whether the material is accompanied by the proper shipper certification required by 49 CFR chapter I, subchapter C; whether it is properly packed, marked, and labeled; whether it is accompanied by the proper shipping documents; and whether requirements for compatibility of materials have been met.

(2) Instructions on the loading, storage, and handling.

(3) Notification procedures for reporting hazardous material incidents as required by 49 CFR chapter I, subchapter C.

(4) Instructions and procedures for the notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR chapter I, subchapter C.

(b) Each manual required by § 135.21 of this chapter shall contain procedures and instructions to enable personnel to recognize hazardous materials, as defined in 49 CFR, and if these materials are to be carried, stored, or handled, procedures and instructions for:

(1) Accepting shipment of hazardous material regulated by 49 CFR to assure proper packaging, marking, labeling, shipping documents, compatibility of articles, and instructions for loading, storage, and handling;

(2) Notification and reporting hazardous material incidents as required by 49 CFR; and

(3) Notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR.

5. *Training Program.* (a) Each certificate holder required to have a training program under § 121.401 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide, a training program that meets the requirements of part 121, subpart O, and appendices E and F of part 121 of this chapter. Each certificate holder required to have a training program under § 121.401 of this chapter shall ensure that each crewmember, aircraft dispatcher, flight instructor, and check airman, and each person assigned duties for the carriage and handling of hazardous materials, is adequately trained to perform his or her assigned duties.

(b) Each certificate holder required to have a training program under § 135.341 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of this SFAR. Each certificate holder required to have a training program under § 135.341 of this chapter shall ensure that each crewmember, flight instructor, check airman, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform their assigned duties.

6. *Training requirements: Handling and carriage of hazardous materials under part 121 of this chapter.*

(a) No certificate holder conducting operations under part 121 of this chapter may use any person to perform and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials governed by 49 CFR, unless within the past year that person has satisfactorily completed training in a program established and approved under this SFAR, which includes instructions regarding the proper packaging, marking, labeling, and documentation of hazardous materials, as required by 49 CFR, and instructions regarding their compatibility, loading, storage, and handling characteristics. A person, who satisfactorily completes training in the calendar month before, or the calendar month after, the month in which it becomes due, is considered to have taken that training during the month it became due.

(b) Each certificate holder conducting operations under part 121 of this chapter shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) When a certificate holder conducting operations under part 121 of this chapter operates in a foreign country where the loading and unloading of aircraft must be performed by personnel of the foreign country, that certificate holder may use personnel not meeting the training requirements of paragraphs 5 (a) and 5 (b) of this SFAR if they are supervised by a person qualified under paragraphs 5 (a) and 5 (b) of this SFAR to supervise the loading, offloading and handling of hazardous materials.

7. *Training requirements: Handling and carriage of hazardous materials under part 135.*

(a) Except as provided in paragraph 7 (d) of this SFAR, no certificate holder conducting operations under part 135 of this chapter may use any person to perform, and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless within the past year that person has satisfactorily completed initial or recurrent training in an appropriate training program established by the certificate holder, which includes instruction on—

(1) The proper shipper certification, packaging, marking, labeling, and documentation for hazardous materials; and

(2) The compatibility, loading, storage, and handling characteristics of hazardous materials.

(b) Each certificate holder conducting operations under part 135 of this chapter, shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) Each certificate holder, conducting operations under part 135 of this chapter, that elects not to accept hazardous materials shall ensure that each crewmember is adequately trained to recognize those items classified as hazardous materials.

(d) If a certificate holder conducting operations under part 135 of this chapter operates into or out of airports at which trained employees or contract

personnel are not available, it may use persons not meeting the requirements of paragraph 7 (a) or 7 (b) of this SFAR to load, offload, or otherwise handle hazardous materials if these persons are supervised by a crewmember who is qualified under paragraphs 7 (a) and 7 (b) of this SFAR.

■ 3. Amend § 119.49 by redesignating paragraphs (a)(13), (b)(13), and (c)(12) as paragraphs (a)(14), (b)(14), and (c)(13) respectively, and adding new paragraphs (a)(13), (b)(13), and (c)(12) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

(b) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

(c) * * *

(12) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

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

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

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 5. Amend § 121.135 by revising the section heading and paragraph (b)(23) to read as follows:

§ 121.135 Manual contents.

* * * * *

(b) * * *

(23)(i) Procedures and information, as described in paragraph (b)(23)(ii) of this section, to assist each crewmember and person performing or directly supervising the following job functions involving items for transport on an aircraft:

(A) Acceptance;

(B) Rejection;

(C) Handling;

(D) Storage incidental to transport;

(E) Packaging of company material; or

(F) Loading.

(ii) Ensure that the procedures and information described in this paragraph are sufficient to assist the person in identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials. The procedures and information must include:

(A) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(B) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16 and discrepancy reporting requirements of 49 CFR 175.31

(C) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(D) If the certificate holder's operations specifications permit the transport of hazardous materials, procedures and information to ensure the following:

(*1*) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(*2*) That packages containing hazardous materials are properly handled, stored, packaged, loaded, and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(*3*) That the requirements for Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(*4*) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and transported.

* * * * *

■ 6. Amend § 121.401 by revising paragraph (a)(1) to read as follows:

§ 121.401 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and appendices E and F of this part and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 121.433a [Removed]

■ 7. Remove § 121.433a.

■ 8. Add subpart Z, consisting of §§ 121.1001 through 121.1007, to read as follows:

Subpart Z—Hazardous Materials Training Program

Sec.

121.1001 Applicability and definitions.
121.1003 Hazardous materials training: General.
121.1005 Hazardous materials training required.
121.1007 Hazardous materials training records.

§ 121.1001 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each crewmember and person performing or directly supervising any of the following job functions involving any item for transport on board an aircraft:

(1) Acceptance;

(2) Rejection;

(3) Handling;

(4) Storage incidental to transport;

(5) Packaging of company material; or

(6) Loading.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or directly supervises any of the job functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The training required every 24 months for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or directly supervises any of the job functions specified in paragraph (a) of this section.

§ 121.1003 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix O of this part;

(2) Ensures that each person performing or directly supervising any of the job functions specified in § 121.1001(a) is trained to comply with all applicable parts of 49 CFR parts 171 through 180 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may

contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each crewmember and person performing or directly supervising any of the job functions specified in § 121.1001(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 121.1005 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any crewmember orperson to perform any of the job functions or direct supervisory responsibilities, and no person may perform any of the job functions or direct supervisory responsibilities, specified in § 121.1001(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past 24 months.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a job function involving storage incidental to transport, or loading of items for transport on an aircraft, may perform those job functions for not more than 30 days from the date of hire or a change in job function, if the person is under the direct visual supervision of a person who is authorized by the certificate holder to supervise that person and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past 24 months.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or directly supervise a job function specified in § 121.1001(a), when that person also performs or directly supervises the same job function for another certificate holder, need only train that person in its own policies and procedures regarding those job functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from the person designated to hold the training records representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific job function under the other certificate holder's FAA approved hazardous material training program under Appendix O of this part; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and transport of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work for, or on the certificate holder's behalf is notified in writing of the certificate holder's policies and operations specification authorization permitting or prohibition against the acceptance, rejection, handling, storage incidental to transport, and transportation of hazardous materials, including company material. This notification requirement applies only to repair stations that are regulated by 49 CFR parts 171 through 180.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's FAA approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load aircraft.

§ 121.1007 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this part received within the preceding three years for each person who performs or directly supervises a job function specified in § 121.1001(a). The record must be maintained during the time that the person performs or directly supervises any of those job functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or directly supervises these job functions for or on behalf of the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section for all initial and recurrent training received within the preceding 3 years for all persons performing or directly supervising the job functions listed in Appendix O at a designated location. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 121.1001(a). Records may be maintained electronically and provided on location electronically. When the person ceases to perform or directly supervise a hazardous materials job function, the certificate holder must retain the hazardous materials training records for an additional 90 days and make them available upon request at the last location where the person worked.

(c) *Content of records.* Each record must contain the following:

(1) The individual's name;

(2) The most recent training completion date;

(3) A description, copy or reference to training materials used to meet the training requirement;

(4) The name and address of the organization providing the training; and

(5) A copy of the certification issued when the individual was trained, which shows that a test has been completed satisfactorily.

(d) *New hire or new job function.* Each certificate holder using a person under the exception in § 121.1005(b) must maintain a record for that person. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 121.1001(a). Records may be maintained electronically and provided on location electronically. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job function;

(4) The name of the supervisor of the job function; and

(5) The date the person is to complete hazardous materials training in accordance with appendix O of this part.

Appendix N—[Reserved]

■ 8.A. Add and reserve Appendix N.

■ 9. Add Appendix O to read as follows:

Appendix O—Hazardous Materials Training Requirements For Certificate Holders

This appendix prescribes the requirements for hazardous materials training under part 121, subpart Z, and part 135, subpart K of this chapter. The training requirements for various categories of persons are defined by job function or responsibility. An ''X'' in a box under a category of persons indicates that the specified category must receive the noted training. All training requirements apply to direct supervisors as well as to persons actually performing the job function. Training requirements for certificate holders authorized in their operations specifications to transport hazardous materials (will-carry) are prescribed in Table 1. Those certificate holders with a prohibition in their operations specifications against carrying or handling hazardous materials (will-not-carry) must follow the curriculum prescribed in Table 2. The method of delivering the training will be determined by the certificate holder. The certificate holder is responsible for providing a method (may include email, telecommunication, etc.) to answer all questions prior to testing regardless of the method of instruction. The certificate holder must certify that a test has been completed satisfactorily to verify understanding of the regulations and requirements.

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Table 1. Operators That Transport Hazardous Material – Will-Carry Certificate Holders

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See Note 1)	Shippers (See Note2) Will-carry	Operators and ground-handling agent's staff accepting hazardous materials (See note 3) Will-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-carry	Passenger-handling staff Will-carry	Flight crew members and load planners Will-carry	Crew members (other than flight crew members) Will-carry
General philosophy	X	X	X	X	X	X
Limitations	X	X	X	X	X	X
General requirements for shippers	X	X				
Classification	X	X				
List of hazardous materials	X	X			X	
General packing requirements	X	X				
Labeling and marking	X	X	X	X	X	X
Hazardous materials transport document and other relevant documentation	X	X				
Acceptance procedures		X				
Recognition of undeclared hazardous materials	X	X	X	X	X	X
Storage and loading procedures		X	X		X	
Pilots' notification		X	X		X	
Provisions for passengers and crew	X	X	X	X	X	X

Emergency procedures	X	X	X	X	X	X

Note 1 – Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in the table.

Note 2 –When a person offers a consignment of hazmat, including COMAT, for or on behalf of the certificate holder, then the person must be trained in the certificate holder's training program and comply with shipper responsibilities and training. If offering goods on another certificate holder's equipment, the person must be trained in compliance with the training requirements in 49 CFR. All shippers of hazmat must be trained under 49 CFR. The shipper functions in 49 CFR mirror the training aspects that must be covered for any shipper offering hazmat for transport.

Note 3 – When an operator, its subsidiary, or an agent of the operator is undertaking the responsibilities of acceptance staff, such as the passenger handling staff accepting small parcel cargo, the certificate holder, its subsidy, or the agent must be trained in the certificate holder's training program and comply with the acceptance staff training requirements.

Table 2. Operators That Do Not Transport Hazardous Materials-Will-Not-Carry Certificate Holders

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See Note 1)	Shippers (See Note2) Will-not-carry	Operators and ground-handling agent's staff accepting cargo other than hazardous materials (See Note3) Will-not-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-not-carry	Passenger-handling staff Will-not-carry	Flight crew members and load planners Will-not-carry	Crew members (other than flight crew members) Will-not-carry
General philosophy	X	X	X	X	X	X
Limitations	X	X	X	X	X	X
General requirements for shippers	X					
Classification	X					
List of hazardous materials	X					
General packing requirements	X					
Labeling and marking	X	X	X	X	X	X
Hazardous materials transport document and other relevant documentation	X	X				
Acceptance procedures						
Recognition of undeclared hazardous materials	X	X	X	X	X	X
Storage and loading procedures						
Pilots' notification						
Provisions for	X	X	X	X	X	X

passengers and Crew						
Emergency procedures	X	X	X	X	X	X

Note 1 –Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in the table.

Note 2 – When a person offers a consignment of hazmat, including COMAT, for air transport for or on behalf of the certificate holder, then that person must be properly trained. All shippers of hazmat must be trained under 49 CFR. The shipper functions in 49 CFR mirror the training aspects that must be covered for any shipper, including a will-not-carry certificate holder offering dangerous goods for transport, with the exception of recognition training. Recognition training is a separate FAA requirement in the certificate holder's training program.

Note 3 –When an operator, its subsidiary, or an agent of the operator is undertaking the responsibilities of acceptance staff, such as the passenger handling staff accepting small parcel cargo, the certificate holder, its subsidiary, or the agent must be trained in the certificate holder's training program and comply with the acceptance staff training requirements.

BILLING CODE 4910–13–C

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

■ 10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 11. Amend § 135.23 by revising paragraph (p) to read as follows:

§ 135.23 Manual contents.

* * * * *

(p)(1) Procedures and information, as described in paragraph (p)(2) of this section, to assist each crewmember and person performing or directly supervising the following job functions involving items for transport on an aircraft:

(i) Acceptance;

(ii) Rejection;

(iii) Handling;

(iv) Storage incidental to transport;

(v) Packaging of company material; or

(vi) Loading.

(2) Ensure that the procedures and information described in this paragraph are sufficient to assist a person in identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials. The procedures and information must include:

(i) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(ii) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16 and discrepancy reporting requirements of 49 CFR 175.31.

(iii) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(iv) If the certificate holder's operations specifications permit the transport of hazardous materials, procedures and information to ensure the following:

(A) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(B) That packages containing hazardous materials are properly handled, stored, packaged, loaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(C) That the requirements for Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(D) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and transported.

* * * * *

■ 12. Amend § 135.323 by revising paragraph (a)(1) as follows:

§ 135.323 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 135.333 [Removed]

■ 13. Remove § 135.333.

■ 14. Add subpart K, consisting of §§ 135.501 through 135.507, to read as follows:

Subpart K—Hazardous Materials Training Program

Sec.

135.501 Applicability and definitions.
135.503 Hazardous materials training: General.
135.505 Hazardous materials training required.
135.507 Hazardous materials training records.

§ 135.501 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each crewmember and person performing or directly supervising any of the following job functions involving any item for transport on board an aircraft:

(1) Acceptance;

(2) Rejection;

(3) Handling;

(4) Storage incidental to transport;

(5) Packaging of company material; or

(6) Loading.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or directly supervises any of the job functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The training required every 24 months for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or directly supervises any of the job functions specified in paragraph (a) of this section.

§ 135.503 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix O of part 121 of this part;

(2) Ensures that each person performing or directly supervising any of the job functions specified in § 135.501(a) is trained to comply with all applicable parts of 49 CFR parts 171 through 180 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each crewmember and person performing or directly supervising any of the job functions specified in § 135.501(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 135.505 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any crewmember or person to perform any of the job functions or direct supervisory responsibilities, and no person may perform any of the job functions or direct supervisory responsibilities, specified in § 135.501(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past 24 months.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a job function involving storage incidental to transport, or loading of items for transport on an aircraft, may perform those job functions for not more than 30 days from the date of hire or a change in job function, if the person is under the direct visual supervision of a person who is authorized by the certificate holder to supervise that person and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past 24 months.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or directly supervise a job function specified in § 135.501(a), when that person also performs or directly supervises the same job function for another certificate holder, need only train that person in its own policies and procedures regarding those job functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from the person designated to hold the training records representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific job function under the other certificate holder's FAA approved hazardous material training program under appendix O of part 121 of this chapter; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and transport of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work for, or on the certificate holder's behalf is notified in writing of the certificate holder's policies and operations specification authorization permitting or prohibition against the acceptance, rejection, handling, storage incidental to transport, and transportation of hazardous materials, including company material. This notification requirement applies only to repair stations that are regulated by 49 CFR parts 171 through 180.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's FAA approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load aircraft.

§ 135.507 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this part received within the preceding three years for each person who performs or directly supervises a job function specified in § 135.501(a). The record must be maintained during the time that the person performs or directly supervises any of those job functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or directly supervises these job functions for the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section for all initial and recurrent training received within the preceding 3 years for all persons performing or directly supervising the job functions listed in Appendix O of part 121 of this chapter at a designated location. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 135.501(a). Records may be maintained electronically and provided on location electronically. When the person ceases to perform or directly supervise a hazardous materials job function, the certificate holder must retain the hazardous materials training records for an additional 90 days and make them available upon request at the last location where the person worked.

(c) *Content of records.* Each record must contain the following:

(1) The individual's name;

(2) The most recent training completion date;

(3) A description, copy or reference to training materials used to meet the training requirement;

(4) The name and address of the organization providing the training; and

(5) A copy of the certification issued when the individual was trained, which shows that a test has been completed satisfactorily.

(d) *New hire or new job function.* Each certificate holder using a person under the exception in § 135.505(b) must maintain a record for that person. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 135.501(a). Records may be maintained electronically and provided on location electronically. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job function;

(4) The name of the supervisor of the job function; and

(5) The date the person is to complete hazardous materials training in accordance with Appendix O of part 121 of this chapter.

PART 145—REPAIR STATIONS

■ 15. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 16. Revise § 145.53 to read as follows:

§ 145.53 Issue of certificate.

(a) Except as provided in paragraph (b), (c), or (d) of this section, a person who meets the requirements of this part is entitled to a repair station certificate with appropriate ratings prescribing such operations specifications and limitations as are necessary in the interest of safety.

(b) If the person is located in a country with which the United States has a bilateral aviation safety agreement, the FAA may find that the person meets the requirements of this part based on a certification from the civil aviation authority of that country. This certification must be made in accordance with implementation procedures signed by the Administrator or the Administrator's designee.

(c) Before a repair station certificate can be issued for a repair station that is located within the United States, the applicant shall certify in writing that all ''hazmat employees'' (see 49 CFR 171.8) for the repair station, its contractors, or subcontractors are trained as required in 49 CFR part 172 subpart H.

(d) Before a repair station certificate can be issued for a repair station that is located outside the United States, the applicant shall certify in writing that all employees for the repair station, its contractors, or subcontractors performing a job function concerning the transport of dangerous goods (hazardous material) are trained as outlined in the most current edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air.

■ 17. Amend 145.57 by revising paragraph (a) to read as follows:

§ 145.57 Amendment to or transfer of certificate.

(a) The holder of a repair station certificate must apply for a change to its certificate in a format acceptable to the Administrator. A change to the certificate must include certification in compliance with § 145.53(c) or (d), if not previously submitted. A certificate change is necessary if the certificate holder—

(1) Changes the location of the repair station, or

(2) Requests to add or amend a rating.

* * * * *

■ 18. Add § 145.165 to subpart D to read as follows:

§ 145.165 Hazardous materials training.

(a) Each repair station that meets the definition of a hazmat employer under 49 CFR 171.8 must have a hazardous materials training program that meets the training requirements of 49 CFR part 172 subpart H.

(b) A repair station employee may not perform or directly supervise a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator including loading of items for transport on an aircraft operated by a part 121 or part 135 certificate holder unless that person has received training in accordance with the part 121 or part 135 operator's FAA approved hazardous materials training program.

■ 19. Add § 145.206 to read as follows:

§ 145.206 Notification of hazardous materials authorizations.

(a) Each repair station must acknowledge receipt of the part 121 or part 135 operator notification required under §§ 121.905(e) and 135.505(e) of this chapter prior to performing work for, or on behalf of that certificate holder.

(b) Prior to performing work for or on behalf of a part 121 or part 135 operator, each repair station must notify its employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 of each certificate holder's operations specifications authorization permitting, or prohibition against, carrying hazardous materials. This notification must be provided subsequent to the notification by the part 121 or part 135 operator of such operations specifications authorization/designation.

Issued in Washington, DC, on September 18, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–19659 Filed 10–6–05; 8:45 am]

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Federal Register

Friday,
October 7, 2005

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 483

Medicare and Medicaid Programs; Condition of Participation: Immunization Standard for Long Term Care Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS–3198–F]

RIN 0938–AN95

Medicare and Medicaid Programs; Condition of Participation: Immunization Standard for Long Term Care Facilities

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

ACTION: Final rule.

SUMMARY: The goal of this final rule is to increase immunization rates in Medicare and Medicaid participating long term care (LTC) facilities by requiring LTC facilities to offer each resident immunization against influenza annually, as well as lifetime immunization against pneumococcal disease. LTC facilities will be required to ensure that before offering the immunization, each resident or the resident's legal representative receives education regarding the benefits and potential side effects of immunization. The facilities will be required to offer immunization against influenza annually and immunization against pneumococcal disease once, unless medically contraindicated or the resident or the resident's legal representative refuses immunization. Increasing the use of Medicare-funded preventive services is a goal of both CMS and the Centers for Disease Control and Prevention (CDC). This final rule is intended to increase the number of elderly receiving influenza and pneumococcal immunization and decrease the morbidity and mortality rate from influenza and pneumococcal diseases.

DATES: *Effective Date:* These regulations are effective on October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Anita Panicker, (410) 786–5646. Jeannie Miller, (410) 786–3164. Rachael Weinstein, (410) 786–6775.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The CDC's Advisory Committee on Immunization Practices (ACIP) reported on May 28, 2004 (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5306a1.htm*) that epidemics of influenza have been responsible for an average of approximately 36,000 deaths per year in the United States between 1990 and 1999. There is an added danger when it comes to people age 65 or older or with high risk conditions such as individuals residing in long term care facilities. In 2002, ACIP estimated the rates of influenza related hospitalization as 392 to 635 per 100,000 among adults with one or more high risk conditions, compared to 13 to 33 per 100,000 among those without high risk conditions.

According to the CDC, influenza and invasive pneumococcal disease kill more people in the United States each year than all other vaccine-preventable diseases combined. Influenza and pneumonia combined represent the fifth leading cause of death in the elderly. Immunization is the primary method for preventing invasive pneumococcal disease as well as influenza and its more severe complications. In 2002, the ACIP reported that the primary target group for influenza vaccination includes persons who are at high risk for serious complications from influenza, including approximately 35 million persons who are more than 65 years of age and approximately 33 to 39 million persons less than 65 years of age who have chronic underlying medical conditions. ACIP recommends that all residents of long term care facilities should be assessed for their needs for pneumococcal polysaccharide vaccine (PPV) and that people 65 or older, as well as persons less than 65 who have chronic illness or who are living in long term care facilities, receive the immunization, if eligible.

Despite the Federal Government's unified efforts to increase the availability of safe and effective vaccines and despite substantial progress in reducing many vaccine-preventable diseases; many individuals are not receiving influenza and pneumococcal vaccines.

Section 4107 of the Balanced Budget Act of 1997 extended the influenza and pneumococcal immunization campaign being conducted by CMS in conjunction with CDC and the National Coalition for Adult Immunization through fiscal year 2002, authorizing $8 million for each fiscal year from 1998 to 2002. Although Medicare reimbursement for influenza and pneumococcal immunizations was increased under this legislation, rates of immunization did not improve as anticipated.

On April 30, 1999, the CDC and CMS entered into an interagency agreement (IA 99–87) to establish a program of collaboration between the two agencies to enhance assessment of health status and delivery of preventive services to beneficiaries of the Medicare program. One of the initial areas highlighted for collaboration was improving influenza and pneumococcal immunization coverage through ''standing orders'' for those populations and settings designated as appropriate by the ACIP.

A March 24, 2000 ACIP report, which includes implementation guidelines, recommended the use of standing orders programs in both outpatient and inpatient settings to increase the number of individuals who receive the influenza vaccine. See implementation guidelines at (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4901a1.htm*). On October 2, 2002, (67 FR 61808) CMS published a final rule with comment period that removed the physician order requirement for influenza and pneumococcal vaccinations from the Conditions of Participation (CoPs) for Medicare and Medicaid participating hospitals, (LTC) facilities, and home health agencies (HHAs). The final rule was effective as of its publication date. Although the CoPs for these provider types require a physician's order for drugs and biologicals that must be signed by the practitioner responsible for the care of the patient or resident, the CoPs make an exception for influenza and PPV. These vaccines can now be administered per a physician-approved facility or agency policy, following assessment of the patient or resident for contraindications. The final rule was a major step towards increasing the immunization rates in the LTC population. To date, however, we do not have data on the specific immunization rates of nursing facility residents following the effective date of the final rule.

The Medicare Current Beneficiary Survey (MCBS) data shows that the rate of influenza vaccination of individuals age 65 and older was 70.4 percent in the year 2000, 67.4 percent in 2001, 69 percent in 2002 and 70.4 percent in 2003. MCBS data for pneumococcal vaccination for individuals age 65 and older was 62.7 percent in 2000, 63.3 percent in 2001, 64.6 percent in 2002 and 66.4 percent in 2003. Nursing facility residents are included in these figures. These rates demonstrate the need to implement strategies to help achieve, the goal set by the Department of Health and Human Service's (DHHS) Healthy People 2010 campaign. The Department's goal in this campaign is to increase the rate of influenza and pneumococcal vaccination of adults aged 65 years and older to 90 percent. Further information on preventive services, like immunizations, are available at the healthy aging site at *http://www.cms.hhs.gov/healthyaging/*

2a.asp and at *http://www.healthypeople.gov/*.

B. Influenza Incidence and Prevention

Numerous studies referenced by the CDC on the Morbidity and Mortality Weekly Report (MMWR) Web site show that—(1) persons 65 years and older are at high risk of contracting influenza; (2) they are more likely than the general population to need hospitalization or to die from complications of influenza; and (3) immunizations are effective in preventing influenza and its complications in this population (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5306a1.htm*).

In the May 2004 MMWR referenced above, the ACIP stated that while rates of influenza infection are high among children, rates of serious illness and death are highest among persons aged ≥65 years and persons of any age who have medical conditions that place them at increased risk for complications from influenza. According to ACIP, the primary target groups recommended for annual vaccination are as follows: (1) Persons at increased risk for influenza-related complications (for example, those aged ≥65 years and persons of any age with certain chronic medical conditions); (2) persons aged 50 to 64 years (because this group has an elevated prevalence of certain chronic medical conditions); and (3) persons who live with or care for persons at high risk (for example, health-care workers and individuals within a household who have frequent contact with persons at high risk and who can transmit influenza to those persons at high risk).

The ACIP report states that vaccination is associated with reductions in the following: influenza-related respiratory illness and physician visits among all age groups, hospitalization and death among persons at high risk, otitis media among children, and work absenteeism among adults. Although influenza vaccination levels increased substantially during the 1990s, further improvements in vaccine coverage levels are needed. Influenza vaccination remains the cornerstone for the control and treatment of influenza. (MMWR: Recommendations and Reports May 28, 2004/53 (RR06); 1–40 *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5306a1.htm*).

Although influenza affects persons of all ages, the CDC has identified several groups who are at increased risk for complications. One such group is comprised of residents of nursing homes or other long-term care facilities. An article in American Family Physician, January 1, 2002 titled, ''Influenza in the Nursing Home,'' notes that during influenza epidemics, mortality rates among nursing home residents often exceed 5 percent of the nursing home population in the country. To lessen the impact of this infectious disease, the CDC recommends the influenza vaccine as the primary way of preventing the illness and its complications (*http://www.aafp.org/afp/20020101/75.html*).

On September 28, 2004, the Director of Health Care-Public Health Issues for the General Accountability Office (GAO) testified before the United States Senate Special Committee on Aging concerning a 2004 GAO study titled, ''Infectious Disease Preparedness: Federal Challenges in Responding to Influenza Outbreaks'' (*http://www.gao.gov/new.items/d041100t.pdf*). The Director of GAO stated that the study was conducted to identify the challenges in preventing the spread of the influenza virus because influenza is associated with an average of 36,000 deaths and more than 200,000 hospitalizations each year in the United States. Furthermore, nine out of ten persons who die from influenza and one out of two who are hospitalized due to influenza are age 65 or older. The GAO was asked to conduct the study to assess issues related to supply, demand, and distribution of vaccine during a typical flu season and to assess the Federal plan to respond to an influenza pandemic. The study was based on a survey of physician group practices, interviews with health department officials in all 50 states, as well as information about CDC activities in the 2003–04 flu season. The GAO found that the most effective way to prevent influenza is by immunizing individuals against influenza every fall season.

The 2004 ACIP recommendations referenced earlier note that influenza vaccine effectiveness varies in the elderly; however, influenza vaccine is still effective at preventing severe illness, secondary complications, and death. In the elderly population residing in nursing homes, the vaccine can be 50–60 percent effective in preventing hospitalization or pneumonia and 80 percent effective in preventing death, even though the effectiveness in preventing influenza illness often ranges from 30 percent to 40 percent.

According to the January 1, 2002 article in American Family Physician referenced earlier, a number of studies have also shown that nursing homes with high rates of vaccinated residents have fewer outbreaks of influenza than nursing homes with lower vaccination rates. The article further states that many studies have shown that influenza vaccination of nursing home residents and staff can significantly decrease rates of hospitalization, pneumonia, and related mortality. Therefore, it is vital to the well-being of the residents of nursing homes that they are offered immunization if not medically contraindicated, and that facilities ensure residents receive the immunizations at the appropriate time to prevent the spread of the influenza virus if not refused by the resident or the resident's representative.

The February 14, 2005, article in the Archives of Internal Medicine titled ''Impact of Influenza Vaccination on Seasonal Mortality in the U.S. Elderly Population'' reports the results of the study conducted by Lone Simonsen and colleagues on flu vaccination rates among the elderly population (*http://archinte.ama-assn.org/cgi/content/abstract/165/3/265*). This study reports that vaccination of the elderly population against influenza may be less effective in preventing death among the elderly than previously estimated. A joint CDC and National Institutes of Health (NIH) press release (February 15, 2005), (*http://www.cdc.gov/flu/pdf/statementeldmortality.pdf*), stated that the Simonsen, *et al.* study did not show that the flu vaccine is ineffective at protecting the elderly from influenza. Rather, the study indicated that different research approaches result in different estimates of influenza vaccine effectiveness at preventing death among the elderly.

The Simonsen, et al., study does not imply that the elderly should not receive influenza vaccine. Furthermore, we note that this study addresses the elderly population as a whole, and does not analyze the more vulnerable group of nursing home residents addressed by this regulation and the studies of those residents summarized later in this preamble. The conclusions in the study are in contrast to most other peer-reviewed studies that address the same issue (See for example, JAMA; Chicago; Oct 22–Oct 29 1997; 278; 16; Jane E Sisk; Alan J Moskowitz; William Whang; Jean D Lin. et al). The CDC and ACIP continually review their influenza vaccine recommendations as well as published research in order to develop the best recommendations for protecting all Americans from influenza.

The study is a reminder that there is room for improvement in how we protect the elderly from influenza, and the CDC and NIH encourage research that strengthens our ability to do so. The study conducted by the CDC and published in the *Journal of American Medical Association* (JAMA), ''Impact of Influenza Vaccination on Seasonal Mortality in the U.S. Elderly Population'' by Simonsen et al.,

September 2005, looked at hospital data from 1961 to 2001 and found an overall increasing trend in the number of flu-related hospitalizations in the United States each year, despite the fact that the number of immunizations for influenza has increased. The CDC has provided the following information to explain this phenomenon:

1. The range of illnesses analyzed in the new study is broader than in the previous study. The new study includes respiratory and heart diseases associated with influenza infections. The earlier CDC study published in 2000 analyzed only pneumonia and influenza hospitalizations. When analyses were restricted to pneumonia and influenza hospitalizations, however, there was still an increase in hospitalizations.

2. Influenza A (H3N2) viruses predominated in several recent influenza seasons, and these viruses generally have been associated with higher numbers of serious illnesses than influenza A (H1N1) or influenza B viruses. The higher numbers of people hospitalized during H3N2 influenza seasons may have increased the average.

3. The U.S. population is growing older and therefore, more vulnerable to developing severe complications from influenza.

4. During the 1990s influenza viruses have either circulated or been detected for longer periods of time. (*http://www.cdc.gov/flu/about/qa/hospital.htm*). The CDC also provided additional information to help put the study in context.

- The Simonsen et al. study does not show that the flu vaccine is ineffective at protecting the elderly from influenza. Rather, the study indicates that different research approaches result in different estimates of influenza vaccine effectiveness at preventing death among the elderly.
- The Simonsen study has some significant limitations when it comes to assessing the effectiveness of influenza vaccination.
- The study analyzes patterns of influenza vaccination and death among the elderly from 1961 to 2001 and suggests a relationship between the two. This type of analysis is called an ''ecologic study''.
- Ecologic studies look at overall trends and do not include information on specific individuals, such as vaccination status and health conditions.
- Since there is no information on which of the individuals who died were vaccinated or their underlying conditions, the death and vaccination patterns identified in this study cannot be directly linked. Apparent associations can be inferred, but may be misleading or hard to interpret.
- Many previously published ''observational studies'' suggest a higher level of influenza vaccine effectiveness against death in the elderly than indicated in the Simonsen paper.
- There are several types of epidemiologic studies, including ecologic studies, observational studies (for example, studies that compare vaccinated people to people who choose not to get vaccinated), and clinical trials (or experiments), where people are randomly assigned to a treatment or control group. Clinical trials provide the most reliable and valid data on vaccine effectiveness. However, conducting a true clinical trial of the effect of influenza vaccine in the elderly would be unethical, because investigators would randomly assign participants to get vaccinated or not, despite the fact that influenza vaccination has been recommended for many years for all those aged 65 and older. So, to study vaccine effectiveness researchers have observed what has happened among people who have chosen on their own to be vaccinated and those who have not (called ''observational studies'').
- The main weakness of observational studies is that they are likely to be influenced by selection bias (for example, if very vulnerable elderly people are less likely to get vaccinated than the relatively healthy elderly, then this bias might lead to overestimates of vaccine effectiveness for preventing deaths).
- The main strength of observational studies is that information on individuals is analyzed and factors that may bias the result can be taken into account during the analysis. For this reason, observational studies have been considered more appropriate than ecologic studies for evaluating vaccine effectiveness. For the entire CDC response to the Simonsen study see *http://www.amda.com/clinical/immunization/flustudy.htm.*

A meta-analysis of 40 years of studies performed by an international collaboration of scientists called the Cochrane Review Group was published in the British journal The Lancet in September 2005. The analysis found that the vaccine is only about 28 percent effective when given to people over 65. However, the researchers said that the vaccine is less effective for those elderly who live in the community and described the vaccine as ''modestly effective'' for elderly people in long-term care facilities. The study found that when used in nursing facilities, influenza vaccines prevented up to 42 percent of deaths from influenza and pneumonia. They also found that for the elderly living in the community, influenza vaccination could prevent up to 30 percent of hospitalizations. Despite the results of this most recent study, influenza vaccination is still recommended by the CDC and the World Health Organization. In response to the study, a CDC spokesperson stated, ''There are a number of studies published that report on varying degrees of effectiveness. But there are also a lot of studies that point to the fact that the vaccines are effective in preventing the serious complications that lead to hospitalizations and death, and that's an important note that we should never lose sight of. If I had a loved one who was in the high risk group, I would strongly recommend they get vaccinated.'' Further, William Schaffner, who heads the preventive medicine department at Vanderbilt University's medical school, pointed out in the September 22, 2005 Washington Post, ''Vaccination is not perfect, but it still is enormously beneficial. Even 30 percent effectiveness prevents a lot of suffering.'' We agree. See *http://www.thelancet.com/.*

The CDC continues to recommend that people aged 65 and older get vaccinated against influenza each year as persons aged 65 and older are at high risk for complications, hospitalizations, and death from influenza. In the joint press release referenced above, the CDC and National Institutes of Health (NIH) continue to support the ACIP recommendation that people aged 65 and older get vaccinated against influenza each year.

C. Pneumococcal Disease Incidence and Prevention

Like influenza, invasive pneumococcal disease is particularly prevalent and severe in those 65 years and older. This population is at high risk of contracting invasive pneumococcal disease, with a high risk of resultant complications, hospitalizations, and deaths. Pneumococcal immunizations are effective in preventing pneumococcal disease in this population.

According to CDC's Active Bacterial Core Surveillance for pneumococcal disease, approximately 5,700 deaths from invasive pneumococcal disease (bacteremia and meningitis) are estimated to have occurred in the United States in 2002 (*http://www.cdc.gov/ncidod/dbmd/abcs/survreports/spneu02.pdf*). An article in the American Journal of Preventive Medicine, August 2003, titled ''Standards for Adult Immunization Practices,'' notes that overall, vaccine

effectiveness against invasive pneumococcal disease among immunocompetent people aged 65 years is 75 percent. Based on 1998 projections, annually, 76 percent of invasive pneumococcal disease cases and 87 percent of resulting deaths occurred in people who were eligible for pneumococcal vaccine in the United States. (*http://www.cdc.gov/nip/recs/rev_stds_adult_AJPM.pdf*).

The ACIP and CDC recommend immunization for pneumococcal disease for those 65 years old or older, and for people with a serious long-term health problem, such as heart disease, diabetes, or immunosuppression due to disease, organ transplantation, or medical treatment such as chemotherapy. The American Lung Association warns that people considered at high risk for invasive pneumococcal disease include the elderly, the very young, and those with underlying health problems, such as chronic obstructive pulmonary disease (COPD). Patients with diseases that impair the immune system, such as AIDS, or patients with other chronic illnesses, such as asthma, or those undergoing cancer therapy or organ transplantation, are particularly vulnerable.

According to CDC recommendations, usually one dose of the PPV is all that is needed to prevent pneumococcal disease or a person only needs to be immunized once in a lifetime. However, a second dose is recommended for people 65 and older who received their first dose prior to 65 years of age, if five or more years have passed since that dose. A second dose is also recommended for people with a damaged spleen or without a spleen, sickle-cell disease, HIV infection or AIDS, cancer, leukemia, lymphoma, multiplemyeloma, kidney failure or nephrotic syndrome, an organ or bone marrow transplant, or who are taking medication that lowers immunity (such as chemotherapy or long-term steroids).

Accordingly, we believe it vital that facilities secure the consent of their residents or legal representative for vaccination and provide their residents with vaccinations. Educating residents about the advantages of being vaccinated allows residents to understand the benefits of pneumococcal vaccines. The 1997 ACIP recommendations state that, ''Pneumococcal polysaccharide vaccine generally is considered safe based on clinical experience since 1977, when the pneumococcal polysaccharide vaccine was licensed in the United States. Approximately half of the persons who receive pneumococcal vaccine develop mild, local side effects (for example, pain at the injection site, erythema, and swelling). These reactions usually persist for less than 48 hours. Moderate systemic reactions (for example, fever and myalgias) and more severe local reactions (for example, local induration) are rare. Severe systemic adverse effects (for example, anaphylactic reactions) rarely have been reported after administration of pneumococcal vaccine. In a recent meta-analysis of nine randomized controlled trials of pneumococcal vaccine efficacy, local reactions were observed among approximately one third or fewer of 7,531 patients receiving the vaccine, and there were no reports of severe febrile or anaphylactic reactions.'' The 1997 ACIP recommendations further stated that pneumococcal vaccination has not been causally associated with death among vaccine recipients. Additional information about precautions and contraindications can be obtained from the CDC. The vaccine manufacturer's package insert may also be reviewed for more information. See: (*http://www.cdc.gov/mmwr/preview/mmwrhtml/00047135.htm#00002349.htm*).

CDC's March 24, 2000 MMWR states that in recent years, a rapid emergence of antimicrobial resistance among pneumococci, especially to penicillin, has occurred. Increasing pneumococcal vaccination rates could help prevent invasive pneumococcal disease caused by vaccine-type, multidrug-resistant pneumococci. Outbreaks of pneumococcal disease caused by a single drug resistant pneumococcal serotype have occurred in institutional settings, including nursing homes. The same MMWR report notes that in 1999, because of concerns about pneumococcal antimicrobial resistance and under use of pneumococcal vaccine, the American Medical Association and several partner organizations issued a Quality Care Alert that supports ACIP's recommendations for pneumococcal vaccination. (Use of Standing Orders Programs to Increase Adult Vaccination Rates: MMWR 2000/49 RR01 15–26 March 24).

A CMS/CDC report, ''Respiratory Disease Burden in Nursing Homes'' (*http://www.nationalpneumonia.org/sop/RDBNH_INTERIMProjectRpt_1-31-03.pdf*) notes that both influenza vaccine and PPV are protective to residents in nursing homes. Based on two years of analysis (multivariate/multilevel), influenza vaccine may be associated with a 27 to 35 percent reduction in mortality, and a 44 to 52 percent reduction in all-cause hospitalization. Similarly, pneumococcal vaccination may be associated with a 20 to 26 percent reduction in mortality, and a 12 to 28 percent reduction in all-cause hospitalization in nursing home residents. The report also suggests that a facility-level influenza vaccination of 80 percent of residents may be independently associated with reduced patient hospitalization and death.

D. Why a Change in the Conditions of Participation Is Needed

In January 2000, the Department of Health and Human Services launched Healthy People 2010, a comprehensive, nationwide health promotion and disease prevention campaign. ''Immunizations and Infectious Diseases'' is one of the focus areas. Healthy People 2010 set the target rate for influenza and PPV vaccination of adults aged 65 years and older at 90 percent. According to CMS's Adult Immunization Project ''despite the fact that influenza and pneumococcal vaccines are clinically effective, cost-effective, and are Medicare Part B covered benefits, they remain underutilized.'' (*http://www.ofmq.com/user_uploads/National%20Immunization%20Project.pdf*).

Based on the 1999 National Nursing Home Survey, only 66 percent of nursing home residents had received the influenza vaccine in the previous year and only 38 percent had ever had the pneumococcal vaccine. The October 2004 article in the American Family Physician titled ''Pneumonia in Older Residents of Long-Term Care Facilities'' noted that,'' when compared to persons in the overall community, residents in LTC facilities have more functional disabilities and underlying medical illnesses and are at increased risk of acquiring infectious diseases (*http://www.aafp.org/afp/20041015/1495.html*). Risk factors include unwitnessed aspiration, sedative medication, and co-morbid illnesses. Influenza-associated mortality is a major concern for persons with chronic diseases; this mortality increase is most marked in persons 65 years of age or older, with more than 90 percent of the deaths attributed to pneumonia and influenza occurring in persons of this age group.

As noted in the October 15, 2004 article, ''Pneumonia in Older Residents of Long-Term Care Facilities'' in the journal American Family Physician, ''The number of frail older adults living in LTC facility is expected to increase dramatically over the next 30 years.'' (*http://www.aafp.org/afp/20041015/1495.html*). The article further states

that an estimated 40 percent of adults will spend some time in a LTC facility before dying. Unless control measures are more vigorously implemented, the number of deaths from influenza and pneumonia with respect to residents in LTC facilities and the number of consequent complications might increase significantly.

In summary, immunizations save lives and can help avoid needless suffering and unnecessary costs of complications from various infectious diseases, and, as many family members and health care workers know, they can prevent the spread of infection to others. However, despite the availability of safe and effective vaccines, substantial portions of susceptible adults are not being immunized. To reduce morbidity and mortality rates, delivering appropriate vaccinations in a timely manner is vital. This rule is expected to facilitate the delivery of appropriate vaccinations to residents in LTC facilities in a timely manner and increase vaccination rates, thereby decreasing the morbidity and mortality rate of influenza and pneumococcal diseases in this population. This rule also has the potential to reduce overall healthcare costs by reducing the need for the treatment of influenza and pneumococcal diseases and their complications.

E. Immunizations and LTC Facilities

According to a June 2002 CDC summary of the National Nursing Home Survey, 46,000 nursing home residents (2.5 percent) had pneumonia in 1999. The average length of stay in a LTC facility for a resident with pneumonia as the primary diagnosis was 124 days in 1999 (*http://www.cdc.gov/nchs/data/series/sr_13/sr13_152.pdf*).

A November 2000 article in the journal *Infection Control and Hospital Epidemiology* titled ''Increasing Pneumococcal Vaccination Rates Among Residents of Long-Term Care Facilities,'' noted that there were 1,590,763 individuals over 65 years of age residing in LTC facilities in the United States in 1990, and the number is estimated to grow to 2.9 million by 2020 (Infection Control and Hospital Epidemiology, Volume 21 (11) (705–710) November 2000). A substantial increase in vaccination rates among such a large population will decrease the number of cases of influenza and pneumococcal bacteremia and related death.

A 1999 RAND report stated that the proportion of the U.S. population over age 65 had increased from 5 percent in 1900 to 13 percent in 1997. This change in demographics, combined with an increase in average life expectancy, has highlighted the importance of preventive care services for older individuals. The October 1997 Journal of the American Medical Association (JAMA) article ''Cost-Effectiveness of Vaccination Against Pneumococcal Bacteremia Among Elderly People'' indicated that vaccination of elderly people against pneumococcal bacteremia is one of the few interventions that have been found to both improve health and save medical costs. Vaccination both reduced medical expenses and improved health for the overall age group of 65 years and older (JAMA; Chicago; Oct 22–Oct 29 1997; 278; 16; Jane E Sisk; Alan J Moskowitz; William Whang; Jean D Lin et al). The article further noted ''Vaccination of the 23 million elderly people unvaccinated in 1993 would have gained about 78,000 years of healthy life and saved $194 million.''

Overall, the literature supports increasing pneumococcal immunizations. Pneumococcal vaccination saves health care dollars by preventing bacteremia alone and is greatly underused among the elderly population. These results support both recent recommendations of the ACIP as well as public and private efforts to increase vaccination rates.

F. Vaccine Shortages

In the Fall of 2004, there was a major shortage of inactivated influenza vaccine in the United States. One of the major manufacturers of the influenza vaccine informed the CDC in early October 2004 that none of its flu vaccine would be available for distribution in the United States. Because of the shortage, Federal health officials released new guidelines as to whom should receive a flu vaccine, describing those at high-risk of influenza-related health complications as priority groups. At that time, the interim recommendations from the CDC stated that people 65 and older, as well as all those between the ages of 2 to 64 with chronic medical conditions and 6–23 month old children, were to be prioritized for receiving influenza vaccination. Another group deemed a priority was the population residing in nursing homes.

We understand that providers of LTC services may be concerned about how they will meet the requirements of this regulation should an influenza vaccine shortage occur in the future. The September 2, 2005 MMWR, ''Update: Influenza Vaccine Supply and Recommendations for Prioritization During the 2005–06 Influenza Season,'' states that both influenza vaccine distribution delays and vaccine supply shortages have occurred in the United States in three of the last five influenza seasons. In response, prioritization has been implemented in previous years to ensure that enough influenza vaccine is available for those at the highest risk for complications. In the case of a true vaccine shortage as declared by HHS, CMS would exercise its enforcement discretion by instructing the State Survey Agencies (SSAs) not to take enforcement actions against facilities that are out-of-compliance with this requirement if they were unable to obtain vaccine for their residents.

G. Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule finalizes proposed provisions set forth in the August 15, 2005 proposed rule (70 FR 47759), after considering public comments. In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

II. Provisions of the Proposed Rule

On August 15, 2005, we published a proposed rule in the **Federal Register** (70 FR 47759) to respond to the ACIP recommendations on ''Prevention and Control of Influenza'' (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5306a1.htm*), as well as to promote the DHHS Healthy People 2010 goals for increasing immunization rates. Specifically, the ACIP outlined the requirements for a successful vaccination program including combined publicity and education for health-care workers and other potential vaccine recipients; a plan for identifying persons at high risk; and efforts to remove administrative and financial barriers that prevent persons from receiving the vaccines, including use of

standing orders programs. Based on the ACIP recommendation, we proposed the following requirements for LTC facilities at § 483.25(n):

- Require LTC facilities to offer each resident immunization against influenza October 1 through March 31 annually, and facilities must also offer (without a specified timeframe) lifetime immunization against pneumococcal disease. A second immunization may be given under certain circumstances.
- Require documentation in the resident's medical record indicating the resident's influenza and pneumococcal immunization status including whether influenza and pneumococcal immunizations were medically contraindicated and whether the influenza and pneumococcal immunization were refused. If refused, the record must indicate that the resident or his/her representative received appropriate education and consultation.

III. Analysis of and Responses to Public Comments

We received 61 comments from individuals, physicians, nurses, hospitals, long term care facilities, health care associations, pharmacy associations and state agencies. All comments were reviewed and analyzed. After associating like comments, we placed them in categories based on subject matter. Summaries of the public comments received and our response to those comments are set forth below.

General

Many commenters supported the proposed requirements. We also received comments suggesting changes in the rule (for example, to protect residents' rights), and we received requests for clarification of various issues. In addition, some commenters said they did not believe the rule was necessary, and some commenters believed the rule could be harmful to LTC facility residents. The comments and our responses are listed below.

Comment: Many commenters supported our proposed immunization rule, which would mandate offering influenza and pneumococcal vaccines to all residents of LTC facilities. The commenters cited the major impact that both influenza and pneumococcal diseases have on LTC residents. One commenter noted, ''We consider this Proposed Rule to be of critical importance to the long-term care provider community and to the recipients of nursing facility services, all of whom are entitled to the ongoing provision of optimal care and services.'' Another commenter supported the rule because ''* * * the prevention of influenza and pneumococcal disease is both cost effective and good practice. Simply put, it is the right thing to do!'

Response: We appreciate commenters recognizing the positive impact of immunizations on the health of LTC residents.

Comment: Some commenters stated that the influenza vaccine is contaminated with thimerosal (a vaccine preservative containing mercury), aluminum, or bacteria. One commenter stated that ''until the flu shots are cleaned up (at least mercury and aluminum removed) it is madness to even administer them to long term care patients.'' The commenter suggested instead investing in building immunity with raw and fermented food. Another commenter mentioned the influenza vaccine that was manufactured in England in 2004 and expressed concern about future bacterial contamination of influenza vaccine.

Response: Some people believe that the mercury in thimerosal, a preservative used in some vaccines, has caused autism in children. Although researchers so far have found no evidence of a connection between the use of thimerosal in vaccines and autism, research is continuing. In 1999 at the urging of the U.S. Public Health Service and the American Academy of Pediatrics, vaccine manufacturers agreed to reduce or eliminate thimerosal in pediatric vaccines. However, the FDA requires manufacturers to include a preservative in all vaccines distributed in multi-dose vials to prevent bacterial contamination of the vaccine. Since most injectable influenza vaccine is dispensed in multi-dose vials, most influenza vaccine contains thimerosal. Nevertheless, according to the CDC, there is no convincing evidence of harm caused by the low doses of thimerosal in vaccines, except for minor reactions like redness and swelling. Pneumococcal vaccine does not contain thimerosal. Influenza and pneumococcal vaccines do not contain aluminum. The CDC points out that, ''Vaccines are held to the highest safety standards.''

We note that FDA found the influenza vaccine manufactured in England in 2004 to be unsuitable for use, and the vaccine never reached the market.

Comment: One commenter asks ''Does anyone remember when President Ford got on TV to propagandize the masses into getting the Swine Flu vaccine?'' The commenter said that lives were ruined due to Guillain-Barré Syndrome caused by a vaccine that was supposed to protect them.

Response: According to the CDC, ''In 1976, swine flu vaccine was associated with a severe temporary paralytic illness called Guillain-Barré Syndrome (GBS) *http://www.cdc.gov/nip/vacsafe/concerns/gbs/default.htm.*

Influenza vaccines since then have not been clearly linked to GBS, although research suggests a small risk of the syndrome was associated with the influenza vaccines in 1992–1993 and 1993–1994. However, if there is a risk of GBS from current influenza vaccines, it is estimated at 1 or 2 cases per million persons vaccinated * * * much less than the risk of severe influenza, which can be prevented by vaccination.''

Comment: A few commenters charged that the influenza vaccine can cause the flu or other illnesses and may even cause death. Some provided anecdotal information about becoming ill after receiving a flu shot or said that an elderly parent had died after receiving a flu shot. One commenter said that some individuals have experienced severe reactions after receiving more than one pneumococcal immunization. One commenter raised the issue of the ''substantial injuries and medical costs that inevitably occur from mass vaccination.''

Response: Both the influenza and pneumococcal vaccines are inactivated, that is, the virus in the vaccine has been killed; therefore these vaccines cannot cause influenza or pneumonia. We note that Flu Mist uses a live vaccine; however, it is not indicated for use in the elderly. The CDC has stated, ''Most people who receive vaccines experience no, or only mild, reactions such as fever or soreness at the injection site. Very rarely, people experience more serious side effects, like allergic reactions * * * life-threatening allergic reactions are very rare,'' particularly in relation to influenza vaccines. The 1997 ACIP recommendations state that pneumococcal vaccination has not been causally associated with death among vaccine recipients. As we stated in the preamble to the proposed rule ''In a meta-analysis of nine randomized controlled trials of pneumococcal vaccine efficacy, very few local reactions were observed, and there were no reports of severe febrile or anaphylactic reactions.'' The CDC article further states that, influenza and invasive pneumococcal disease kill more people in the United States each year than all other vaccine-preventable diseases combined. Therefore, the benefits of immunizations outweigh the small number of significant adverse effects observed after immunizations are administered.

Comment: Many commenters stated that nursing home residents must be able to refuse immunizations. One commenter said, ''Seniors should not be forced to be immunized since they are free sovereign individuals who are capable of making their own decisions on such matters.'' Another commenter said that forced vaccination of American citizens is unconstitutional. One commenter expressed the fear that there would be reprisals against residents who refused or whose representatives refused immunization, including being refused treatment or being forced to leave the nursing home.

Response: We agree with the commenters that residents of LTC facilities have the right to refuse immunizations. In fact, the existing Conditions of Participation (CoP) at § 483.10(b)(4) state that residents of LTC facilities have the right to refuse treatment. On admission to an LTC facility, residents or their representatives are given written documentation about their right to refuse any medication or treatment. We have further emphasized this right in the text of the final rule, which states, ''The resident or the resident's legal representative has the opportunity to refuse immunization.'' Nevertheless, the final rule requires every facility to offer immunization because a goal of the rule is to prevent the spread of preventable illness. In addition, in accordance with § 483.10(b)(4), residents have the right to refuse treatment. Therefore, facilities would not force any resident who refuses to be immunized to receive the vaccine. The benefits of immunization are evidenced in numerous studies referenced by the CDC in the Morbidity and Mortality Weekly Report (MMWR), which show that: (1) persons 65 years and older are at high risk of contracting influenza, (2) they are more likely than the general population to need hospitalization or to die from complications of influenza, and (3) immunizations are effective in preventing influenza and its complications in this population. (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5306a1.htm*).

Comment: Some commenters stated that this rule is based on ''pharmaceutical company propaganda,'' and it is for their benefit. One commenter stated that pharmaceutical companies have a strong influence over U.S. lawmakers and that drug companies spend millions in campaign contributions. Another commenter stated that ''preying upon unsuspecting seniors whose care families have entrusted to long term care facilities to the financial benefit of pharmaceutical companies is criminal.'' Another commenter stated that ''vaccination is the quintessential form of medical quackery in our day and age and is causing untold damage to health, wellbeing and prosperity for all except those who profit from its use.''

Response: The goal of this rule is to protect the health of LTC facility residents using a proven preventive measure to stop the spread of infection and reduce morbidity and mortality. The rule is not being published based on ''propaganda from pharmaceutical companies,'' but on data and evidence that the CDC and many other researchers have provided to the public and health care communities. The ACIP reported on May 28, 2004 that epidemics of influenza have been responsible for an average of approximately 36,000 deaths per year in the United States between 1990 and 1999. It stated that there is an added danger when it comes to people age 65 or older or with high risk conditions such as individuals residing in long term care facilities. According to the January 1, 2002 article in American Family Physician, a number of studies have also shown that nursing homes with high rates of vaccinated residents have fewer outbreaks of influenza than nursing homes with lower vaccination rates. The article further states that many studies have shown that influenza vaccination of nursing home residents and staff can significantly decrease rates of hospitalization, pneumonia, and related mortality.

Consent for immunization

Comment: Many commenters stated that before an immunization is given to a resident, informed consent must be obtained. Other commenters specified that a resident's consent should be in writing. One commenter referenced an article, ''The moral right to conscientious, personal belief or philosophical exemption to mandatory vaccination laws'' by Barbara Loe Fisher, (*http://www.nvic.org/Loe-Fisher/blfstmt052097.htm*) which states that ''The National Vaccine Information Center has not advocated the abolishment of vaccination laws as other groups have proposed. However, we have always endorsed the right to informed consent as an overarching ethical principle in the practice of medicine for which vaccination should be no exception.''

Response: We agree it is vital that facilities secure the informed consent of their residents or legal representatives for vaccinations before they are administered. Therefore, we would require that the facilities document the resident's immunization status and related information in the resident's medical record. Moreover, we are requiring LTC facilities to ensure that before offering the immunizations, each resident or resident's representative receives education regarding the benefits and potential side effects of influenza and pneumococcal immunizations. This final rule clearly states that the resident or the resident's representative has the right to refuse the immunization.

Comment: Under the proposed rule, we would have required facilities to educate residents or their representatives about immunization only if immunization were refused. Some commenters stated that educating residents or their representatives on the risks and benefits of immunization prior to giving the immunization is important, too. One commenter said that a more effective way to educate residents is to present the information upon admission. The commenter said, ''This avoids the impression that the facility is trying to talk the resident into receiving a vaccination that the resident does not want.''

Response: We agree that it is important to provide education prior to immunization. Therefore, this final rule requires LTC facilities to educate all residents or resident's representation on the benefits and potential side effects of the influenza and pneumococcal vaccinations before offering immunization. At the discretion of the facility, this education can be provided at any time, including upon admission to the facility, as long as the education is provided before the immunizations are offered.

Comment: One commenter asked for clarification of the intent of the proposed requirement for ''consultation'' with residents who refused immunization.

Response: We proposed a requirement for education and consultation in the proposed rule if immunization is refused. This final rule does not contain a specific requirement for consultation with residents or their representatives if immunization is refused. Instead, LTC facilities are required to provide education about immunization to all residents. We removed the word ''consultation'' so as not to confuse facilities.

Comment: Commenters had several suggestions to ensure residents receive adequate education about the immunizations. Some commenters said we should specify that residents must receive educational information in writing.

Response: We are providing flexibility to the facilities on how they provide educational information to the residents or their representatives. It is important to note, however, that all health care providers are required by the National Childhood Vaccine Injury Act to provide vaccine information sheets (VISs) prior to immunization. These sheets contain a wealth of information. For example, the influenza VIS explains how flu is spread, the symptoms, the potential complications, what types of flu vaccines are available (including vaccines with and without the preservative thimerosal), how the vaccines work, who should be vaccinated, contraindications to vaccination, and the risk of developing a reaction (including rare but life-threatening allergic reactions and Guillain-Barre Syndrome). Single camera-ready copies of the vaccine information materials are available from State health departments. Copies are also available on the CDC Web site at *http://www.cdc.gov/nip/publications/VIS.* Copies are available in English and in other languages. Instructions for using the vaccination information sheets can be found at *http://www.cdc.gov/nip/publications/VIS/vis-instructions.txt.* Facilities may choose to use the VIS documents as a means of providing education. Note that the National Vaccine Injury Compensation program (NVICP) requires Vaccine Information Statements (VIS) be provided to patients or their legal representatives, once a vaccine is in the program and a final VIS has been developed. The NVICP provides compensation to adults as well as children for adverse events related to vaccines covered by the program. To date, pneumococcal vaccine is not in the program and although influenza vaccine is, the final VIS will not be available until approximately October.

Comment: One commenter asked for clarification of the word ''consent'' and stated that the Vaccine Information Sheet (VIS) can be given to the resident or his or her representative and documented in the medical record to fulfill the requirement for informed consent. Special written consent is not required for vaccination, according to the commenter.

Response: We agree that a special written consent is not necessary for vaccinations. As stated in the previous response, the National Childhood Vaccine Injury Act (''the Act'') requires health care providers to provide a current, relevant vaccination information sheet (VIS) produced by the CDC prior to giving immunizations to children or adults for diphtheria, tetanus, pertussis, measles, mumps, rubella, polio, hepatitis B, Haemophilus influenzae type b (Hib), varicella (chickenpox), or pneumococcal conjugate vaccinations (effective 12/15/02). Additionally, the Act requires health care providers to make a notation in each patient's permanent medical record at the time vaccine information materials are provided indicating: (1) The edition date of the materials distributed and (2) the date these materials were provided as per CDC's requirements.

Comment: One commenter stated that verbal discussion with the resident or the resident's representative may be a problem if the resident is cognitively impaired and the representative lives out of state or is difficult to reach.

Response: We understand that providing education prior to offering influenza and pneumococcal immunizations and obtaining consent may be difficult under some circumstances. However, as with other procedures that take place in LTC facilities, facilities should make a reasonable effort to obtain consent.

Documentation

Comment: One commenter stated that CMS should consider implementing a mechanism for residents or their representatives to indicate if they received immunizations within the recommended time frame. Another commenter stated CMS should create a system that ensures that accurate immunization information is captured.

Response: We appreciate the comment. CMS is working on adding the immunization information in the MDS 3.0 version and that will be a source to capture accurate immunization information for each resident in the nursing facility. The other elements of resident's medical record would also be a potential source for information. Another source of information would be individual State immunization registries.

Comment: One commenter pointed out that it can be difficult or impossible to obtain a complete immunization history for some LTC facility residents. The commenter said that most residents have some degree of cognitive impairment and may not be able to provide a history. Family members or friends may be unavailable or unaware of a resident's immunization history.

Response: We agree that there may be difficulties in obtaining the history of immunizations especially in the case of cognitively impaired residents. However, we expect that facilities will make reasonable efforts to obtain immunization histories for their residents.

Comment: One commenter pointed out that it can be difficult or impossible to obtain a complete immunization history for some LTC facility residents. The commenter said that most residents have some degree of cognitive impairment and may not be able to provide a history. Family members or friends may be unavailable or unaware of a resident's immunization history.

Response: We agree. This final rule does not contain language requiring LTC facilities to obtain and document complete immunization histories for all residents. However, we expect that facilities will make reasonable efforts to obtain immunization histories for their residents to avoid giving unnecessary immunizations.

Comment: A few commenters pointed out that individual facilities, must have the flexibility to develop their own protocols for immunization and their own formats for documentation. One commenter said they we should specify that the medical records of residents who are immunized should be documented with the name and lot number of the vaccine, the quantity given, the route of administration, the date, and the signature of the person who administers the vaccine.

Response: We agree that facilities must have some flexibility in implementing the requirements. The final rule dictates neither the protocols that need to be in place nor the format for documentation. However, facilities will need to be able to demonstrate to State agency surveyors that they have an immunization protocol and that they have documentation for each resident to show that they have educated residents or their representatives and offered influenza and pneumococcal immunizations. Additionally, we expect that facilities will follow standard practice and when an immunization is given, document the type of vaccine, the lot number, and other pertinent information per facility policy.

Vaccine Availability

Comment: Some commenters stated that the final rule should indicate that if a shortage or substantial delay in vaccine supply occurs, SNFs and nursing homes will be automatically exempt from compliance with this CoP during the shortage period.

Response: We understand that providers of LTC services are concerned about meeting the requirements of this regulation if an influenza vaccine shortage occurs in the future. In the case of a vaccine shortage as declared by HHS or documented local or regional shortages, CMS could exercise its enforcement discretion by instructing

State Survey Agencies (SSAs) not to take enforcement action against LTC facilities that are out of compliance with this requirement if the facilities were unable to obtain vaccine for their residents. We do not agree that the final rule should include an exemption for all LTC facilities, because situations and vaccine availability may vary across the country. We expect that the SSA would need to verify that a facility was unable to meet the requirement due to a shortage before determining that enforcement action was not warranted.

Comment: One commenter said that CMS regards a vaccine shortage as the only relevant variable in exercising enforcement discretion to alter its mandated immunization of LTC residents. The commenter argued that a mandate to immunize a target population annually is not an essential feature of a responsible flu prevention and control strategy because a new influenza prevention and control strategy must be tailored to the distinctive characteristics of each year's influenza strain; the types, effectiveness, and availability of potential preventive and other interventions; and other practical and ethical considerations. The commenter said that, in some years, there might be a better way to protect LTC residents from influenza than achieving a target vaccination rate. Further, there might be another subgroup for which access to the influenza vaccine is more scientifically and ethically justified.

Response: We agree that each new flu season presents a challenge in terms of how best to prevent and control the spread of influenza throughout the U.S. population. We will carefully consider CDC's annual guidance on an ongoing basis to determine whether to exercise our enforcement discretion for reasons other than a vaccine shortage. In addition, in contemplating future rulemaking, we will consider whether there are additional interventions that facilities should put into place to protect their residents from influenza.

Staff Immunization

Comment: A few commenters stated that staff in LTC facilities need to be immunized. One commenter pointed out that emerging data indicate that the best protection for the LTC population is to prevent exposure by immunizing health care providers and visitors to the facilities.

Response: We agree that it is very important for health care workers to be immunized. In fact, CMS conditions of participation (CoPs) for nursing facilities (NFs) at 42 CFR 483.65 require nursing facilities (NF) to establish and maintain an infection control program designed to prevent the development and transmission of disease and infection. The CDC recommends that all health care workers be immunized annually. The Occupational Safety and Health Administration (OSHA) strongly supports the CDC guidelines for immunization of health care workers. OSHA's mission is to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health. OSHA has placed links to the CDC guidelines on immunization on the OSHA Web site at *http://www.cdc.gov/flu/professionals/vaccination/hcw.htm* and *http://www.cdc.gov/flu/index.htm.* We are not requiring health care workers be immunized in this rule. We believe the current LTC requirements provide adequate incentives for LTC facilities to develop immunization protocols for their health care workers.

Comment: One commenter stated that CMS should address the commenter's concern that student nurses are not covered under the OSHA blood borne pathogens requirements for hospitals.

Response: We agree that it is important for health care workers to be immunized in order to protect residents. OSHA seeks to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health. As indicated above, we require nursing facilities to take steps to prevent staff transmission of disease. These requirements apply to all staff, whether or not they are students.

Payment and Coverage

Comment: One commenter stated that after publishing the final regulation and paying for the program for a year or two, Medicare might decide that the LTC facilities should be responsible for the immunizations and stop paying for them.

Response: In accordance with section 1861(s)(10) of the Social Security Act, Medicare covers both influenza and pneumococcal vaccines. Medicare began covering annual influenza immunizations in 1993 for Medicare beneficiaries. Medicare covers both the costs of the vaccine and its administration. There is no coinsurance or co-payment applied to this benefit, and a beneficiary does not have to meet his or her deductible to receive this benefit. Medicare began covering pneumococcal polysaccharide vaccinations in 1981. Medicare provides coverage for one pneumococcal polysaccharide vaccine per beneficiary. One vaccine at age 65 generally provides coverage for a lifetime, but for some high risk persons, a booster vaccine is needed. Medicare will cover a booster vaccine for high risk persons if 5 years have passed since the last vaccination. Medicare covers both the costs of the vaccine and its administration. There is no coinsurance or co-payment applied to this benefit, and a beneficiary does not have to meet his or her deductible to receive it. These programs are described in detail on the CMS Web site (*http://www.cms.hhs.gov/preventiveservices/2.asp*). The Medicare reimbursement for influenza and pneumococcal immunizations has never been decreased or denied since it was started; in fact, payment amounts have increased. The 2005 influenza vaccination administration reimbursement rate is $18 (unweighted average of Medicare ''National Flu Biller Administration Codes''). The 2005 Influenza vaccine reimbursement rate is $10.10 (Medicare rate; 95 percent of Average Wholesale Price (AWP)). Facilities that immunize their residents are not only reimbursed by Medicare but also experience cost savings because there is less illness among their residents.

Comment: A few commenters argued that it is wrong to withhold Medicare payments to LTC facilities that do not provide flu and pneumococcal immunizations to nursing home residents. One commenter stated, ''I am frustrated that you would consider linking nursing home payments to vaccinations.'' However, another commenter praised the proposed rule as being ''well thought out'' and said that the rule, ''importantly, does not penalize the facility if the resident or the resident's legal representative refuses immunization or there are medical contraindications.''

Response: Several commenters misunderstood the proposed rule. This rule does not penalize a facility financially if the resident or the resident's representative refuses immunization. In this final rule, we are making it clear that residents must be immunized unless there is a medical contraindication or the resident or resident's legal representative refuses. Therefore, if the LTC facility offers immunization, but the resident refuses, this would not be considered non-compliant.

Comment: One commenter recommended that CMS authorize

Medicare payments to SNFs for the outlier cost of intravenous antibiotics.

Response: The cost of intravenous antibiotics to SNFs is not within the purview of this regulation. SNFs are reimbursed as per the PPS payment rates, which cover all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs).

Comment: One commenter stated that the nursing facilities should have information on billing related to immunizations.

Response: Information and guidance about billing for influenza and pneumococcal vaccinations, including electronic billing, is currently available to all providers at: *http://www.cms.hhs.gov/medlearn/flupdf.pdf.* Alternately, LTC facilities may contact their Medicare Administrative Contractors.

Comment: One commenter stated that CMS should direct Quality Improvement Organizations (QIOs) to increase immunization rates among nursing home residents and staff as a part of the core activities in the QIO Statement of Work with necessary additional funding apportioned for these efforts.

Response: QIOs currently conduct projects focused on improving the health of all Medicare beneficiaries. These projects include, for example, efforts to improve diabetes care and the delivery of mammography and adult immunizations (influenza and pneumococcal). The goals of the adult immunization projects are to increase influenza and pneumococcal immunization rates for Medicare beneficiaries and improve treatment for pneumonia. Descriptions of these projects are available on the Medicare Quality Improvement Center (MedQIC) Web site at (*http://www.medqic.org*).

Comment: One commenter stated that CMS should encourage superior performance on rates of resident and staff immunizations by posting performance information on Nursing Home Compare and including such measures as part of any LTC pay-for-performance.

Response: We appreciate the comment. Incentives for high performance are beyond the purview of this rule. The MDS 3.0 is being modified to include immunizations, and is part of our effort to collect data that can be easily accessed for comparative study. Other efforts may follow including posting of performance information on the Nursing Home Compare Web site.

Comment: One commenter stated that we do not have enough data on the number of LTC residents who have medical contraindications to immunization or who refuse immunization to determine whether we need to require facilities to offer immunization to all LTC residents. Another commenter protested the burden associated with the rule and recommended that immunization be a voluntary program.

Response: We agree that additional data would be useful. By requiring documentation of these data in residents' medical records, we expect to have the data available for reference in the future. However, as we stated in the preamble of the proposed rule, studies indicate that many LTC facility residents are not being immunized, despite the fact that these services are covered by Medicare. It is clear that voluntary immunization of residents is not adequate to ensure that all residents are being offered immunization.

Comment: One commenter asks for clarification of the qualifications of the person who educates the resident or their representative on immunizations.

Response: We believe it is important to give LTC facilities the flexibility to decide who will provide the education to the residents or their representatives, based on the resources available at the LTC facility. We are not requiring health care workers to be immunized in this rule.

Comment: One commenter expressed concern that time constraints may result in implementation problems for facilities that must have policies and procedures in place by the effective date of the regulation. The commenter also noted that the 15-day comment period was not adequate for individuals and organizations to provide a thorough response, especially for organizations that would like their comments to reflect the opinions of their members.

Response: The rule was expedited and published with a 15-day comment period so that it would be effective for the 2005–2006 flu season. We believe this rule will save lives, and a delay in implementation of the rule would greatly hinder increased immunization of residents in LTC facilities before the onset of this year's influenza season. Therefore, a 60-day comment period was considered contrary to public interest. However, we understand that it may be difficult for LTC facilities to have their policies and procedures in place by the effective date of the rule. We expect facilities to begin implementation of the rule and move their implementation forward as quickly as possible. If surveyed by the State Survey Agency, they should be ready to discuss with the surveyors their process and plans. Since this rule is effective on publication, we expect surveyors will survey for these requirements with the understanding that facilities need a certain amount of time to fully implement the requirement. Surveyors will take the time factor into consideration as they review facilities for compliance with the CoPs.

Comment: Two commenters asked for clarification regarding what facilities must do between October 1 and March 31. One commenter asked whether influenza vaccination must be offered to a resident who is admitted on March 31, even if the vaccine will not be administered immediately because it is unavailable.

Response: We expect facilities to use common sense in regard to residents admitted toward the end of March when supplies of the vaccine may be limited or unavailable. If the vaccine is unavailable, then the facility will not be able to vaccinate the new resident, and the facility can document this in the resident's record.

Comment: One commenter said, ''Let the physicians make the medical decisions. If inappropriate medical decision making then results in a pandemic, only then would a Federal mandate be justified.''

Response: The purpose of immunization is to avoid illness or death. The value of immunization is minimal once influenza is widespread.

Comment: One commenter recommended that CDC and CMS work collaboratively to create an electronic health record that would include standard immunization verification information for Medicare beneficiaries.

Response: CMS is in the process of including immunization status of all LTC facility residents in MDS 3.0. Also, on May 28, 2004, DHHS awarded a grant to promote the use of electronic health records to improve the quality of care provided to Americans by supporting a pilot project to provide comprehensive, standardized electronic health record (EHR) software to the health care community. In addition, DHHS has a recently-appointed National Coordinator of Health Information Technology, whose mission includes developing, maintaining, and directing the implementation of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care. More information can be found on the DHHS Web site at *http://www.dhhs.gov.*

Comment: One commenter stated that assisted living residents should also be immunized because these high risk individuals fall under the CDC's Advisory Committee on Immunization Practices (ACIP) priority grouping.

Response: We agree; however, CMS does not have the statutory authority, through the Medicare program, to regulate the care provided in assisted living facilities. Generally, assisted living facilities are regulated and monitored by the states in which they are located.

Comment: One commenter requested clarification in the final rule on whether it applies to skilled nursing services provided in hospital swing beds.

Response: This rule is a Condition of Participation for nursing facilities and does not apply to skilled nursing services provided in hospital swing beds. However, there is nothing to prevent hospitals from immunizing this population.

Comment: One commenter said that our statement in the preamble that, ''epidemics of influenza have been responsible for an average of approximately 36,000 deaths per year in the United States between 1990 and 1999'' is incorrect because fewer than 10 percent of the 36,000 deaths were from the flu. The commenter's conclusion was that since there are not very many deaths from influenza, immunization is not needed.

Response: The commenter does not explain why the commenter thinks the statistic we provided in the preamble to the proposed rule overstates the number of deaths from influenza.

According to ''Prevention and Control of Influenza: Recommendations of the Advisory Committee on Immunization Practices (ACIP)'' (MMWR 29 July 2005;54[RR08]:1–40), ''Influenza-related deaths can result from pneumonia and from exacerbations of cardiopulmonary conditions and other chronic diseases. Deaths of older adults account for > 90 percent of deaths attributed to pneumonia and influenza. In one study of influenza epidemics, approximately 19,000 influenza-associated pulmonary and circulatory deaths per influenza season occurred during 1976–1990, compared with approximately 36,000 deaths during 1990–1999. Estimated rates of influenza-associated pulmonary and circulatory deaths/100,000 persons were 0.4–0.6 among persons aged 0–49 years, 7.5 among persons aged 50–64 years, and 98.3 among persons aged > 65 years. In the United States, the number of influenza-associated deaths might be increasing in part because the number of older persons is increasing. In addition, influenza seasons in which influenza A (H3N2) viruses predominate are associated with higher mortality; influenza A (H3N2) viruses predominated in 90 percent of influenza seasons during 1990–1999, compared with 57 percent of seasons during 1976–1990.

Comment: One commenter stated that a recent study shows no decreased morbidity or mortality from the flu, despite rising rates of vaccination. One commenter specifically cited last year's data as indicating that the flu vaccine is not effective.

Response: As referenced earlier in this preamble, the Simonsen study published in September 2005 found an overall increasing trend in the number of flu-related hospitalizations in the United States each year, despite the fact that the number of immunizations for influenza has increased. In response, the CDC has pointed out that (1) The range of influenza-related illnesses analyzed in the study is broader than in the previous study; (2) certain influenza viruses that predominated in several recent influenza seasons are associated with higher numbers of serious illnesses than other strains; (3) the U.S. population is growing older and more vulnerable to developing severe complications; and (4) during the 1990s influenza viruses have either circulated or been detected for longer periods of time.

It is true that influenza vaccine is not as effective in the elderly as it is in younger individuals. As discussed earlier in this preamble, although influenza vaccine effectiveness varies in the elderly, vaccination is still effective at preventing severe illness, secondary complications, and death. Recommendations made by ACIP in 2004 state that in the elderly population residing in nursing homes, the vaccine can be 50–60 percent effective in preventing hospitalization or pneumonia and 80 percent effective in preventing death, even though the effectiveness in preventing influenza illness often ranges from 30 percent to 40 percent. A study published in Lancet in September 2005 found that when used in nursing facilities, influenza vaccines prevented up to 42 percent of deaths from influenza and pneumonia.

Comment: One commenter asked whether Medicare Part B or Part D will pay for the immunizations.

Response: As we stated earlier, immunization is covered under Part B coverage, and Medicare will reimburse one flu vaccination per person per season. This may result in more than one bill per 12-month period across two flu seasons. Further information can be accessed online on the ''immunizations toolkits'' Web page at (*http://www.medqic.org*).

Comment: One commenter requested that CMS provide policy guidance with respect to immunizing residents who are receiving end-of-life care. The commenter expressed concern about potential side effects in residents who may have only weeks to live.

Response: We would expect that when a resident is receiving end-of-life care, the resident's attending practitioner would decide whether vaccination should be offered to the resident.

Comment: One commenter stated that we greatly underestimated the burden associated with documentation because documenting immunization in residents records will take more than 5 minutes.

Response: After further consideration of the time required for documentation, we agree with the comment and have increased the estimated amount of time in the burden estimate from 5 minutes to 10 minutes.

Comment: One commenter stated that influenza vaccine does not work in the elderly because of their age.

Response: CDC states that ''persons with certain chronic diseases might develop lower post vaccination antibody titers than healthy young adults.'' It further states that the vaccine can also be effective in preventing secondary complications and reducing the risk for influenza-related hospitalization and death among adults aged >65 years with and without high-risk medical conditions (for example, heart disease and diabetes). Among older persons who do reside in nursing homes, influenza vaccine is most effective in preventing severe illness, secondary complications, and deaths. See *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5408a1.htm.* The CDC also provided the following information in its discussion of the Simonsen study. Observational studies, to date, have generally found that when the ''match'' between the vaccine and circulating influenza strains is close, the vaccine is 30 percent-70 percent effective in preventing hospitalization for pneumonia and influenza among elderly persons living outside chronic-care facilities (such as nursing homes) and those persons with long-term (chronic) medical conditions. Observational studies have also found that among elderly nursing home residents, the flu shot can be 50 percent-60 percent effective in preventing hospitalization for pneumonia and up to 80 percent effective in preventing death from the flu. See *http://www.amda.com/clinical/immunization/flustudy.htm.*

Comment: One commenter was concerned that by including October 1 in the regulation's text, facilities were being required to begin immunizing residents on that date. The commenter further stated that if the influenza

immunization is given too early in the flu season, the resident's resistance may wane over time. The commenter also stated that facilities are guided by CDC information on how many early flu cases are occurring and that often, the best date to begin immunizing for the flu is November 1.

Response: In choosing the October 1 through March 31 dates, we are following the guidelines that CDC has provided for the beginning and end of the flu season. Although flu season can begin as early as October, facilities should follow CDC guidelines for each flu season to determine the most efficacious time to begin immunizing their residents. The CDC states in ''When to Get Vaccinated'' that October or November is the best time to get vaccinated, but getting vaccinated even later (before March 31) can still be beneficial.

Comment: One commenter expressed concern regarding possible consequences that would result from a resident refusing immunization.

Response: The rule clearly gives the right to the residents and their representatives to refuse immunization if they choose. Therefore, there would be no adverse effect or consequence because of the refusal. The existing CoP at 42 CFR 483.10 on resident rights, also provides freedom of choice to the resident.

Comment: One commenter objected to the estimate of $5 million per statistical life saved and stated ''While all life is sacred, placing $5 million per life saved on someone likely to die in a few weeks or months is exaggerated and unjustified. The commenter further stated that the savings are grossly inflated through use of this estimate.''

Response: Five million dollars per statistical life saved is a figure commonly used by Federal agencies. Although the age of the affected population has been identified as an important factor in the theoretical literature on the value of a statistical life (VSL), the empirical evidence on age and VSL is mixed. In light of the continuing questions over the effect of age on VSL estimates, OMB Circular A–4 recommends that agencies not use an age-adjustment factor in an analysis using VSL estimates. We could have used an alternative measure, such as statistical years of lives saved, but that would not have changed the overall conclusion that the benefits of the rule are substantial. In fact, the savings to Medicare alone are sufficient to make the rulemaking cost-beneficial, therefore the choice of how to value the lives saved due to this rulemaking is not decision critical.

Comment: One commenter stated that CMS, at the very least, should describe within the rule a standardized format for obtaining required documentation. This will protect the facility from liability and provide a guide for surveyors.

Response: The final rule provides flexibility to the facilities on how to document the information. This flexibility gives facilities the opportunity to choose the process and format that works best for them.

Comment: One commenter expressed concern that by placing the requirements of the rule in § 483.25, rather than § 483.65, the facility could be subject to termination of the nurse aide training program if documentation deficiencies are widespread and the facility is found to be providing substandard care.

Response: We believe this new requirement is appropriately placed under the ''Quality of Care'' CoP. It is more than just a documentation requirement. The extent of the deficient practices found in meeting this requirement during a survey will determine the type of enforcement warranted.

Comment: One commenter wanted us to define a ''legal'' representative.

Response: As they implement the requirements of the rule, we expect that facilities will be guided by the laws that pertain to the definition of ''legal representative'' of the states in which the facilities are located. Due to the variations in state law, we are not defining the term ''legal representative.''

Comment: One commenter asked for clarification of the ''exception'' under (2)(iv), specifically the requirements for the assessment.

Response: We expect that the residents practitioner would decide on the degree of assessment necessary to determine if a second immunization is warranted in order to provide protection for the resident.

IV. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. The provisions of this final rule that differ from the proposed rule are as follows:

1. Based on comments, LTC facilities must provide education to residents or the resident's legal representative concerning influenza and pneumococcal immunization prior to immunization. Further we modified the regulation to include not just the benefits but also the potential side effects of influenza and pneumococcal immunization when education is provided to the resident or resident's legal representative.

2. We have listed some of the minimum documentation requirements and still provide the facilities the flexibility to document any additional information they believe is relevant. (See 483.25(n)(2)(iv).)

V. Waiver of the 60-Day Delay in Effective Date

We ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(d)), which requires a 30-day delayed effective date. The Congressional Review Act (5 U.S.C. 801(a)(3)), requires a 60-day delayed effective date for major rules. As stated in our regulatory impact analysis below, we believe this is a major rule. However, we can waive the delay in effective date if the Secretary finds, for good cause, that such delay is impracticable, unnecessary, or contrary to public interest, and incorporates a statement of the finding and the reasons in the rule issued. 5 U.S.C. 553(d)(3); 5 U.S.C. 808(2).

The Secretary finds that good cause exists to implement the requirements related to the LTC facilities offering each resident immunization against influenza annually, as well as lifetime immunization against pneumococcal disease immediately upon publication in the **Federal Register**. In accordance with section 1871(b)(2)(C) of the Act, we have waived the delay in the effective date for this final rule from 60-day delay to an immediate effective date to allow for implementation of the requirements in time for the 2005–2006 flu season. It is our view that a 60-day delay in effective date on this final rule will be extremely detrimental to the health of nursing home residents, as epidemics of influenza typically occur during the winter months and are responsible for an average of approximately 20,000 to 40,000 deaths per year in the United States. Influenza viruses also can cause pandemics, during which rates of illness and death from influenza-related complications can increase dramatically. Rates of infection are highest among children, but rates of serious illness and death are highest among persons 65 and older and persons of any age who have medical conditions that place them at increased risk for complications from influenza and pneumonia. Vaccines are the most effective means to protect against many complications related to influenza and pneumonia. The ACIP recommendations for 2004 to 2005, to decrease the risk of influenza, state that the optimal time for influenza vaccinations is October through

November. If expedited and published with an immediate effective date, a delay can be prevented and the rule can be effective in the 2005–2006 flu season, with the potential of saving many lives and preventing illness.

One of our goals of publishing this rule is to increase immunization rates in nursing homes to 90 percent, which is the Healthy People 2010 goal. This will enable about half a million elderly individuals who are not currently immunized to be immunized. The CMS/CDC standing orders project in 2003 found that in nursing home residents, influenza vaccine is associated with a 31–33 percent reduction in mortality, and a 38–45 percent reduction in all-cause hospitalizations. Similarly, pneumococcal vaccination is associated with a 21–22 percent reduction in mortality, and a 27–28 percent reduction in all-cause hospitalization. We recognize that these associations are not necessarily causal because the data are cross-sectional with no correction for confounding variables. However, the findings are consistent with findings regarding immunization in the general population. Therefore, it is imperative that this final rule is published with an immediate effective date so that the requirements can be implemented in time for the 2005–2006 flu season. Even though pneumococcal vaccines can be administered throughout the year, the percentage of patients and residents immunized remains low. Therefore, this final rule would be a vehicle to improve immunization rates and would be consistent with the Healthy People 2010 objective.

We believe that a delay in implementation of this rule would greatly hinder increased immunization of residents in LTC facilities before the onset of this year's influenza season. We conclude that, in this instance, a 60-day delay in effective date is unnecessary and contrary to public interest. We find on this basis, that there is good cause for waiving the 60-day delay in effective date under section 1871(b)(2)(C) of the Act.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on the following information collection requirements contained in this document.

This rule does require facilities to develop specific documentation. As a facility develops and implements immunization protocols or procedures, we expect that obtaining previous immunization history on each resident, when possible, would be a part of the process. Additionally, we expect the facility would document in the resident's medical record information concerning immunization history, contraindications etc. as a part of the process of immunizing residents.

The burden associated with these requirements in the first year, would be approximately 10 hours of a registered nurse's time per facility that is 161,390 hours for the first year (10 hours × 16,139 facilities). In subsequent years, we estimate that the burden associated approximately 10 minutes of the registered nurse's time, which would be 16,139,000 minutes = 268,983 hours per year (10 minutes per resident × 100 residents per facility × 16,139 facilities). Based on the latest data in an Online Survey Certification and Reporting System (OSCAR), there are 16,139 facilities.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Jim Wickliffe, CMS–3198–F, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, CMS–3198–F, *Christopher_Martin@omb.eop.gov.* Fax (202) 395–6974.

VII. Regulatory Impact

A. Overall Impact

We have examined the impacts of this rulemaking as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, Executive Order 13132 (August 4, 1999, Federalism), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to issue regulations only after consideration of all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year). This final rule is an economically ''significant regulatory action'' as defined by section 3(f) of Executive Order 12866, and a ''major rule'' as defined in the Congressional Review Act. We have reached this conclusion because of the substantial life-saving effects of the rule and its anticipated reduction in the medical costs associated with influenza and pneumonia. We believe that there are no significant costs associated with this final rule. It will not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million in any given year. Since most program participants comply with the statutory and regulatory requirements making unnecessary the imposition of termination from Medicare, Medicaid and, where applicable, other Federal health care programs, and since Medicare generally pays the cost of the vaccines that are the subject of this rule we do not anticipate more than a minimal economic impact on nursing facilities as a result of this proposed rule. There is a cost to the Medicare program for the vaccines to the extent that they are provided to Medicare beneficiaries, as discussed below.

This final rule will have a life-saving effect. We have developed estimates of these life-saving effects, along with estimated changes in medical care costs, and present these estimates and the assumptions on which they are based in the discussion and tables that follows.

Influenza

Assumptions (Benefit): There are approximately 2 million residents in LTC facilities. Sixty-five percent had documentation stating they received influenza immunization per the 1999 National Nursing Home Survey, National Center for Health Statistics, CDC. An October 2000 article in the Journal of American Geriatric Society ''Influenza outbreak detection and control measures in nursing homes in the United States (Zadeh MM, Buxton Bridges C, Thompson WW, Arden NH, Fukuda K.)'' indicated that 83 percent of LTC residents in the study received immunizations. The midpoint between the two reports is 74 percent. The projected immunization rate after regulation implementation is 90 percent.

The 2005 influenza vaccination administration reimbursement rate is $18 (unweighted average of Medicare ''National Flu Biller Administration Codes''). The 2005 Influenza vaccine reimbursement rate is $10.10 (Medicare rate; 95 percent of Average Wholesale Price (AWP). There is a wide variation in the influenza rate year to year, due to the prevalent strains of influenza virus each influenza season and the degree to which the vaccine matches prevalent strains as well as other factors. Effectiveness of influenza vaccine for preventing influenza illness is 30–40 percent according to ACIP (Harper SA, Fukuda K, Uyeki TM, Cox NJ, Bridges CB; Prevention and control of influenza: recommendations of the ACIP. MMWR Recomm Rep. 2004 May 28; 53(RR–6):1–40).

As stated above, the rate of hospitalization for the LTC population among those ill with influenza is 25 percent (Arden NH, et al.). The influenza vaccine is 50–60 percent effective in preventing hospitalization due to influenza in the LTC population (ACIP, May 2004).

According to (Arden NH, et al.) the case-fatality for influenza disease in the LTC population is 10 percent of the number of residents who become ill with influenza. The influenza vaccine is 80 percent effective in preventing death in LTC residents with influenza illness (ACIP, May 2004). The average Medicare cost per hospital discharge for influenza is $8,500 per the Office of the Actuary, CMS (including medical education, disproportionate share and other pass through). The data on the influenza related hospitalization of SNF residents is not available. SNF residents are short term stay therefore we do not think those numbers are sufficiently large to have a great impact on the overall Medicare costs.

TABLE 1.—ESTIMATED FEDERAL BENEFITS DUE TO INCREASED RATE OF INFLUENZA IMMUNIZATIONS

LTC residents	Current	Projected	Difference
Percent who receive influenza immunization	74%	90%	16%
Number who receive influenza immunization	1,480,000	1,800,000	320,000
Number ill with influenza	133,380	123,300	(10,080)
Number hospitalized due to influenza	20,358	15,030	(5,328)
Number who die from influenza complications	7,344	5,040	(2,304)
Direct Medicare cost of inpatient hospital treatment	$173,043,000	$127,755,000	($45,288,000)

Assumptions (Cost): Influenza vaccine must be administered annually: however, virtually all influenza vaccinations administered in LTC facilities are covered under the Medicare Part B program. The cost to Medicare for provision of the influenza vaccinations is equal to the cost of the vaccines plus administration costs. In addition to these direct Medicare costs, an indirect Federal cost will be incurred from reduced savings in the Medicaid program. For every hospitalization of a LTC facility resident, Medicaid saves $1,000 for nursing home care not provided while the resident is in the hospital. The weighted average of the federal contribution to Medicaid is 57 percent (Office of the Actuary, CMS), and Medicaid is a primary source of payment for 40 to 59 percent of LTC facility residents (1999 National Nursing Home Survey) and with a midpoint of 50 percent. The total federal cost related to the increased influenza immunizations is the total of the direct Medicare costs combined with the lost savings to Medicaid.

TABLE 2.—ESTIMATED FEDERAL IMPACT OF INCREASED INFLUENZA IMMUNIZATION ON MEDICARE & MEDICAID

	Current ($)	Projected ($)	Difference
Total Medicare reimbursement for cost of influenza vaccine and administration (320,000 × $28.10)	41,588,000	50,580,000	$8,992,000
Federal share of Medicaid LTC facility savings due to resident hospital stays*	(5,802,030)	(4,283,550)	1,518,480
Total Federal Costs	35,785,970	46,296,450	10,510,480

* (Number of residents hospitalized) × ($1000 cost for NH facility per hospitalization) × (57% Federal portion of Medicaid payments) × (50% portion of all NH patients paid by Medicaid).

TABLE 3.—NET FEDERAL SAVINGS DUE TO INCREASED INFLUENZA IMMUNIZATION

Estimated Federal Savings (from Table 1)	($45,288,000)
Estimated Federal Costs (from Table 2)	$10,510,480
Total Net Federal Savings	($34,777,520)
Lives saved per year	2,304

* Negative numbers reflect savings.

We have used an average value of a statistical life of $5 million to monetize the decreased mortality benefits of the rule, as we have in other rulemakings. This value is in the middle of the range of $1–$10 million per statistical life saved recommended by OMB Circular A–4. The population affected by this rule has different demographic and other characteristics from the populations that were addressed in other CMS rulemakings. However, due to the lack of data on this specific population, we are assuming a value of $5 million for the average value of a statistical life for this rule. In addition, although the age of the affected population has been identified as an important factor in the theoretical literature, the empirical evidence on age and VSL is mixed. In light of the continuing questions over the effect of age on VSL estimates, OMB Circular A–4 recommends that agencies not use an age-adjustment factor in an analysis using VSL estimates.

Therefore, since we estimate 2,304 lives will be saved by the influenza vaccination, we estimate the value saved from saving these lives as $11.5 billion.

As previously indicated in response to a comment, this estimate would be lower if we used an alternate measure such as statistical years lives saved. In addition, VSL is an inherently uncertain measure of value. By any reasonable measure of the value of these medical improvements, however, the benefits would, nonetheless, be very substantial.

Invasive Pneumococcal Disease

Assumptions (Benefit): There are approximately 2 million residents in LTC facilities. The projected immunization rate after regulation implementation is 90 percent. The LTC resident vaccination rate is estimated between 39 percent (1999 National Nursing Home Survey (NNHS)) and 56 percent (community rate, 2003 National Health Interview Survey). Virtually all residents with invasive disease are hospitalized. The rate of pneumococcal invasive disease in unvaccinated persons aged greater than or equal to 65 equals 52–85/100 000, (ACIP, 1997). The case fatality ratio of invasive pneumococcal disease in persons aged greater than or equal to 65 (despite appropriate medical treatment) is 30–40 percent. The average cost per hospital discharge for invasive pneumococcal disease is $8500 (including medical education, disproportionate share and other pass through) (Office of the Actuary, CMS). According to CDC recommendations, usually one dose of the pneumococcal polysaccharide vaccine (PPV) is all that a person needs in a lifetime. However, in some situations a second dose is recommended for people 65 and older. Therefore, expense related to this rule is projected to cost more at the beginning period of implementation.

The 45 percent documented immunization rate in the table below represents data obtained in the year 1999, and since then the rate may have increased. Implementing the influenza immunization process is more challenging than implementing the similar PPV immunization process. Pneumococcal immunizations can be given all through the year without time constraints and the vaccine supplies have not been an issue. We anticipate that implementation of this rule would result in increase in immunization rate and documentation of the related data for future comparison. The table below is relating the years 1–5 to the current data.

Invasive Pneumococcal Disease

Assumptions (Benefit):

TABLE 4.—ESTIMATED FEDERAL BENEFITS DUE TO INCREASED RATE OF PNEUMOCOCCAL IMMUNIZATIONS

LTC residents	Current year	Projected				
		Year 1	Year 2	Year 3	Year 4	Year 5
Percent who receive pneumococcal immunization	45%	70%	75%	80%	85%	90%
Number who receive pneumococcal immunization per year	.....	500,000	100,000	100,000	100,000	100,000
Cumulative number immunized (since inception of Medicare pneumococcal immunization benefits)	900,000	1,400,000	1,500,000	1,600,000	1,700,000	1,800,000
Number who develop invasive pneumococcal disease	970	742	697	651	606	560
Deaths from invasive pneumococcal disease (or complications related to the disease)						
Benchmark—Number of deaths without increased immunizations	340	340	340	340	340	340
Number of deaths following implementation of immunization regulation	.....	260	244	228	212	196
Number of lives saved due to pneumococcal immunization	.....	80	96	112	128	144
Direct Federal costs for treatment of invasive pneumococcal disease						
Benchmark—costs without increased immunizations	$8,246,190	$8,246,190	$8,246,190	$8,246,190	$8,246,190	$8,246,190
Costs following implementation of immunization regulation	.....	$6,310,740	$5,923,650	$5,536,650	$5,149,470	$4,762,380
Savings following implementation of increased pneumococcal immunizations	.....	($1,935,450)	($2,322,540)	($2,709,540)	($3,096,720)	($3,483,810)

Assumptions (Cost): The 2005 pneumococcal vaccination administration reimbursement rate is $18 (unweighted average of Medicare ''National Flu Biller Administration Codes'') and the pneumococcal vaccine reimbursement rate is $23.28 (Medicare rate; 95 percent of AWP). The pneumococcal vaccine is generally

administered once per beneficiary lifetime. Therefore this is not a recurring cost, but would cost more up front to give lifetime immunity to residents (for the cost estimate, we assumed 500,000 people would receive the vaccine in the first year and 100,000 people each would receive the vaccine in years two through five). The reason we assume the higher number the first year is because we expect all the eligible residents in the facilities in the first year would receive the pneumococcal vaccine. In the following years only the new residents who are eligible would need the immunization. Virtually all pneumococcal immunizations administered in LTC facilities are covered under the Medicare Part B program. For every hospitalization concerning Medicaid beneficiaries, Medicaid saves $1000 for nursing home care not provided while the resident is in the hospital. The weighted average of the Federal contribution to Medicaid is 57 percent (Office of the Actuary, CMS). Medicaid is a primary source of payment for 40 to 59 percent in LTC (1999 National Nursing Home Survey) and the mid point is 50 percent. The total Federal cost related to the increased pneumococcal immunizations is the total of the direct Medicare reimbursement costs combined with the lost savings to Medicaid.

TABLE 5.—FEDERAL IMPACT OF INCREASED PNEUMOCOCCAL IMMUNIZATION ON MEDICARE AND MEDICAID

	Current year ($)	Projected ($)				
		Year 1	Year 2	Year 3	Year 4	Year 5
Medicare reimbursement for cost of pneumococcal vaccine and administration						
Annual Medicare cost following increased pneumococcal immunization *.	.....	20,640,000	4,128,000	4,128,000	4,128,000	4,128,000
Cumulative Medicare cost (since inception of Medicare pneumococcal immunization benefits).	37,152,000	57,792,000	61,920,000	66,048,000	70,176,000	74,304,000
Federal share of Medicaid LTC facility savings due to resident hospital stays						
Federal savings per year without increased immunizations **.	(276,490)	(276,490)	(276,490)	(276,490)	(276,490)	(276,490)
Federal savings per year following increased pneumococcal immunization **.	.....	(211,595)	(198,617)	(185,638)	(172,659)	(159,680)
Lost Federal savings due to increased pneumococcal immunization.	.....	64,895	77,874	90,852	103,831	116,810
Total Federal Costs (annual Medicare costs + lost Federal savings).	Not Available	20,704,895	4,205,874	4,218,852	4,231,831	4,244,810

*Year 1 (500,000 × $41.28); Years 2–5 (100,000 × $41.28).

** (# of residents hospitalized) × ($1000 cost for NH facility per hospitalization) × (57% Federal portion of Medicaid payments) × (50% portion of all NH patients paid by Medicaid).

TABLE 6.—NET FEDERAL COSTS DUE TO INCREASED PNEUMOCOCCAL IMMUNIZATION

Year 1:	
Estimated Federal Savings (from Table 4)	($1,935,450)
Estimated Federal Costs (from Table 5)	$20,704,895
Total Net Federal Cost in Year 1	$18,769,445
Years 2–5: Estimated Federal savings (from table 4) + Estimated Federal costs (from table 5):	
Total Net Federal Cost in Year 2 ($2,322,540) + 4,205,874	$1,883,334
Total Net Federal Cost in Year 3 ($2,709,540) + 4,218,852	$1,509,312
Total Net Federal Cost in Year 4 ($3,096,720) + 4,231,831	$1,135,111
Total Net Federal Cost in Year 5 ($3,483,810) + 4,244,810	$761,000
Total Net Federal Cost Years 1–5	$24,058,202
Lives saved Years 1–5	560

Using the same $5 million per life value of a statistical life as before and since we estimate 560 lives will be saved by the pneumococcal vaccination, we estimate the value saved from saving these lives as $2.8 billion.

For the purpose of this analysis we have considered the protective effects of influenza and pneumococcal immunization individually. However, the combined effect of both immunizations is additive in preventing hospitalization and deaths. The July 30, 1999 article in the journal ''Vaccine'' titled ''The additive benefits of pneumococcal vaccinations during influenza seasons among elderly persons with chronic lung disease'' reports that both vaccinations together demonstrated additive benefit as there was a 65 percent reduction in hospitalization for pneumonia and 81 percent reduction in death versus the situation when neither had been received. Also excluded in this analysis is the increased protection against influenza infection afforded by the ''herd'' effect after 80 to 90 percent of residents are immunized against influenza. The 2003, CMS/CDC standing orders project report states that a facility-level influenza vaccination of 80 percent and more of residents may be independently associated with reduced patient hospitalization and death. Further, the cost-saving effects of this

rule, and the costs of the vaccine doses themselves, are respectively benefits and costs to the taxpayer. Since Medicare pays virtually all medical, hospital, and (starting in 2006) drug costs for this population, the expected savings from reduced hospitalizations would largely accrue to the Federal budget.

In order to comply with this rule, facilities will develop the necessary policies and procedures which will be followed by staff as a standard practice. We estimate the time and cost related to this process in the following tables:

POLICY AND PROCEDURE DEVELOPMENT RELATED TO THE IMMUNIZATION RULE

[This is only a one time expense for the facilities]

Number of LTC facilities	Hours spent per facility	Total burden hours	Total cost
16,139	10 hours first year only	161,390 hours only first year	161,390 hours × $23.70 * = $3,824,943.

* $23.70 is the average salary of a registered nurse as per U.S. Department of Labor at *(http://www.bls.gov/oes/current/oes291111.htm#nat).*

This rule proposes that the resident's immunization status be documented in the resident's medical record therefore, the following table presents the estimated time and cost related to the implementation of this process.

DOCUMENTATION TIME OF IMMUNIZATION

[These expenses are annual]

Number of LTC facilities	Hours spent per resident per facility	Total burden hours	Total cost
16,139	16,139 × 100 ** residents × 10 minutes = 16,139,000 minutes k= 268,983 hours.	268,983	268,982 hours × $23.70 * = $6,374,897.

* $23.70 is the average salary of a registered nurse as per U.S. Department of Labor (*http://www.bls.gov/oes/current/oes291111.htm#nat*).
** 100 is the average number of residents in each facility.

The RFA (15 U.S.C. 603(a)), as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), requires agencies to determine whether proposed or final rules will have a significant economic impact on a substantial number of small entities and, if so, to identify in the notice of proposed rulemaking or final rulemaking any regulatory options that could mitigate the impact of the proposed regulation on small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Most nursing facilities are small entities, either by nonprofit status or by having revenues of $11.5 million or less annually (the applicable size standard of the Small Business Administration). Individuals and States are not included in the definition of a small entity, and other medical care providers are not affected by this final rule except indirectly, through reduced utilization of care by individuals who do not, but would otherwise, require hospitalization. For the reasons explained in this analysis, we have concluded that this final rule will not have significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not believe a regulatory impact analysis is required here because, for the reasons stated above, this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars. This final rule will impose no mandates on State, local, or tribal governments. As indicated elsewhere in this analysis, costs mandated on nursing facilities, are minimal, and do not remotely approach this threshold.

Executive Order 13132 on federalism establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have determined that this final rule will not significantly affect the rights, roles, or responsibilities of the States. This final rule will not impose substantial direct requirement costs on State or local governments, preempt State law, or otherwise implicate federalism.

B. Anticipated Effects

1. Effects on LTC facilities. Based on the various studies and reports referenced earlier in the preamble, we expect that LTC facilities will benefit from the implementation of this final rule. The various studies discussed are evidence that prevention of influenza and pneumonia will lower the level of acuity, staff time and other expenses resulting in cost reductions.

2. Effects on beneficiaries. The influenza vaccine is 50–60 percent effective in preventing hospitalization due to influenza in the LTC population and increased immunizations are expected to improve health overall for the age group of 65 years and older. As estimated above 2,304 lives may be saved annually when residents receive influenza immunizations.

According to CDC's Active Bacterial Core Surveillance for pneumococcal disease, approximately 5,700 deaths from invasive pneumococcal disease

(bacteremia and meningitis) are estimated to have occurred in the United States in 2002. The October 1997 *Journal of the American Medical Association* (JAMA) article ''Cost-Effectiveness of Vaccination Against Pneumococcal Bacteremia Among Elderly People'' indicated that vaccination of elderly people against pneumococcal bacteremia is one of the few interventions that have been found to both improve health and save medical costs.

3. Effects on the Medicare and Medicaid Programs. The report from the January 2000, CMS's Adult Immunization Project, indicates that ''despite the fact that influenza and pneumococcal vaccines are clinically effective, cost-effective, and are Medicare Part B covered benefits, they remain underutilized.'' Increased immunizations are expected to reduce the medical expenses and improve health overall for the age group of 65 years and older as reported in the Oct, 1997 JAMA article referenced earlier. As stated above, the rate of hospitalization for the LTC population among those ill with influenza is 25 percent (Arden NH, et. al.). The average cost per hospital discharge for influenza is $8,500 per the Office of the Actuary, CMS. The influenza vaccine is 80 percent effective in preventing death in the LTC population (ACIP, May 2004). As estimated above the net saving will be $34,777,520 and 2,304 lives saved when residents receive influenza immunizations. The net cost related to pneumococcal immunizations is estimated to be $18,821,360 the first year of implementation and $3,753,887 in the following 2 to 5 years and 143 lives saved.

C. Alternatives Considered

We considered other alternatives regarding immunizing residents.

1. One alternative would be to keep the present rules, as they are written. The current regulations, however, have thus far not been effective at assisting us in increasing the rate of immunization of institutionalized residents to 90 percent. Despite the Federal Government's unified efforts to increase the availability of safe and effective vaccines and despite substantial progress in reducing many vaccine-preventable diseases, at-risk individuals are not receiving influenza and pneumococcal vaccines. Section 4107 of the Balanced Budget Act of 1997 extended the influenza and pneumococcal immunization campaign being conducted by CMS in conjunction with CDC and the National Coalition for Adult Immunization through fiscal year 2002, authorizing $8 million for each fiscal year from 1998 to 2002. Although Medicare reimbursement for influenza and pneumococcal immunizations was increased under this legislation, rates of immunization did not improve as anticipated.

2. Another alternative would be to educate providers on the value of influenza and pneumococcal vaccines without rule making. However, as discussed in studies cited earlier in this rule, this has not been effective in improving immunization rates.

D. Conclusion

Increasing the utilization of cost-effective preventive services is the goal of both CMS and CDC, and this final rule will facilitate the delivery of appropriate vaccinations in a timely manner, increase the levels of vaccination rate, and decrease the morbidity and mortality rate of influenza and pneumococcal diseases. As a result, the economic effects of the rule are substantial and overwhelmingly beneficial. In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this final rule.

List of Subjects in 42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, and Safety.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

■ 2. Section 483.25 is amended by adding paragraph (n) to read as follows:

§ 483.25 Quality of care.

* * * * *

(n) *Influenza and pneumococcal immunizations*—(1) *Influenza.* The facility must develop policies and procedures that ensure that—

(i) Before offering the influenza immunization, each resident or the resident's legal representative receives education regarding the benefits and potential side effects of the immunization;

(ii) Each resident is offered an influenza immunization October 1 through March 31 annually, unless the immunization is medically contraindicated or the resident has already been immunized during this time period;

(iii) The resident or the resident's legal representative has the opportunity to refuse immunization; and

(iv) The resident's medical record includes documentation that indicates, at a minimum, the following:

(A) That the resident or resident's legal representative was provided education regarding the benefits and potential side effects of influenza immunization; and

(B) That the resident either received the influenza immunization or did not receive the influenza immunization due to medical contraindications or refusal.

(2) *Pneumococcal disease.* The facility must develop policies and procedures that ensure that—

(i) Before offering the pneumococcal immunization, each resident or the resident's legal representative receives education regarding the benefits and potential side effects of the immunization;

(ii) Each resident is offered an pneumococcal immunization, unless the immunization is medically contraindicated or the resident has already been immunized;

(iii) The resident or the resident's legal representative has the opportunity to refuse immunization; and

(iv) The resident's medical record includes documentation that indicates, at a minimum, the following:

(A) That the resident or resident's legal representative was provided education regarding the benefits and potential side effects of pneumococcal immunization; and

(B) That the resident either received the pneumococcal immunization or did not receive the pneumococcal immunization due to medical contraindication or refusal.

(v) *Exception.* As an alternative, based on an assessment and practitioner recommendation, a second pneumococcal immunization may be given after 5 years following the first pneumococcal immunization, unless medically contraindicated or the resident or the resident's legal representative refuses the second immunization.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 23, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 27, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–19987 Filed 9–30–05; 3:51 pm]

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October 7, 2005

Part IV

Department of the Interior

Bureau of the Interior

43 CFR Parts 3000, 3100 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; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 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: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this final rule to amend its mineral resources regulations to increase certain fees and to impose new fees to cover BLM's costs of processing documents relating to its minerals programs. The new fees include costs of actions such as environmental studies performed by BLM, lease applications, name changes, corporate mergers, lease consolidations and reinstatements, and other processing-related costs. BLM established some fixed fees and some fees on a case-by-case basis. BLM based these fee changes on statutory authorities, which authorize us to charge for our 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. This rule also responds to recommendations issued in audit reports by the DOI's Office of Inspector General (OIG). The final rule also reflects changes to the proposed rule required by the Energy Policy Act of 2005.

DATES: This rule is effective November 7, 2005.

ADDRESSES: You may mail suggestions or inquiries to Bureau of Land Management, Minerals Group, Room 501 LS 1849 C Street, NW., Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Tim Spisak, Fluid Minerals Group Manager (202) 452–5061 or Ted Murphy, Solid Minerals Group Manager (202) 452–0351, for issues related to BLM's minerals programs, or Cynthia Ellis, Regulatory Affairs Group (202) 452–5012, for regulatory process issues. Persons 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. Background
  A. Procedural Background
  B. Authority for This Rule
  C. Continuation of Rulemaking
II. How Does the Final Rule Differ From the Proposed Rule?
III. Responses to Comments on the December 2000 and July 2005 Proposed Rules
  A. General Comments
  B. Comments on Oil and Gas Leasing Cost Recovery
  C. Comments on Geothermal Leasing Cost Recovery
  D. Comments on Coal Leasing Cost Recovery
  E. Comments on Cost Recovery for Leasing of Solid Minerals Other Than Coal
  F. Comments on Cost Recovery for Mineral Materials Sales
  G. Comments on Cost Recovery for Mining Law Administration
IV. Procedural Matters

I. Background

A. Procedural Background

On December 15, 2000, BLM published a proposed 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 fee changes were BLM's response to recommendations made in a 1988 OIG report (No. 89–25). That 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.

On July 19, 2005, BLM reissued the proposed rule (70 FR 41532), and added 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 renewing mineral materials competitive contracts.

The 2005 proposed rule also included a fixed fee for the processing of oil and gas geophysical exploration permits, instead of the case-by-case fee that we proposed in 2000.

This final rule adopts many provisions of the July 19, 2005 proposal. We discuss below changes we have made from that proposal. The rationale for most of this final rule was set forth in the July 2005 preamble and BLM continues to rely on the discussions contained therein.

B. Authority for This Rule

Federal agencies are authorized to charge processing costs by the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. 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. This section was discussed in greater detail in the July 2005 preamble. In FLPMA, public land 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 includes Federal mineral lands with private or state surface as well as lands where the United States owns both the surface and mineral rights. A mineral lease or mineral materials disposal administered by BLM, and a mining claim (for which BLM determines validity), even in land where another agency administers the surface, are ''interests in land'' for the purposes of FLPMA.

The IOAA and Section 304 of FLPMA authorize BLM to charge applicants for the cost of processing documents by issuing regulations, which BLM is doing in 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) (Circular A–25), entitled ''User Charges.'' Part 346 of the Departmental Manual (DM) also provides guidance. The general Federal policy as stated in Circular A–25 is that a charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the public. 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, Circular A–25 guides agency implementation of charges and the disposition of collections.

Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) authorized a pilot project to improve Federal permit coordination, and directed in subsection (i) that ''the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.'' The provisions of the proposed rule related to drilling-

related permit applications and use authorizations are those that would have required cost recovery for oil and gas and geothermal permits to drill (APDs and GPDs), and geophysical and geothermal exploration permits. Therefore, we have removed all provisions regarding APDs, GPDs, and geophysical and geothermal exploration permits that appeared in the proposed rule from this final rule. The remainder of the 2005 proposed rule was not affected by the Energy Policy Act and may be finalized.

C. Continuation of Rulemaking

In the preamble to the July 19, 2005, proposed rule, we explained that in the final rule we might provide that BLM would recover costs of validity examinations and reports performed in connection with plan of operations (PoO) applications submitted under parts of the Code of Federal Regulations other than 43 CFR part 3800, such as those submitted under 36 CFR part 9, which implements the Mining in the Parks Act. (See 70 FR 41538.) The National Park Service (NPS) submitted a comment urging BLM to include in the final rule recovery of such costs for applications submitted pursuant to NPS regulations. At this time, BLM has not made a final decision whether to extend the rule to cover such other costs. Thus, BLM is including in this final rule the provision as proposed, but is continuing the rulemaking on the issue of whether it will revise the provision to include recovery of costs of validity examinations and reports associated with PoOs submitted under other parts of the CFR. BLM may issue a further final rule to address this issue. If BLM decides to promulgate a final rule that would recover such costs, the next final rule would likely contain conforming amendments to such other parts to notify affected applicants of the applicability of the cost recovery provisions of this rule.

II. How Does the Final Rule Differ From the Proposed Rule?

As stated earlier, in response to Congress's direction in the Energy Policy Act, BLM is not implementing cost recovery fees for APDs, GPDs, and geophysical and geothermal exploration permits.

Other changes we made are:

1. We adjusted the fees proposed in 2000 by using the Implicit Price Deflator for 4th Quarter 2004 (110.077) (IPD), rounded to the nearest $5.00. For example, for an oil and gas lease reinstatement, the cost recovery fee proposed in 2000 was $60. Applying the IPD, the equivalent cost recovery fee for the 4th Quarter 2004 would be $66.05. For this final rule, we rounded this figure to $65.

2. We amended the coal lease by application regulations. The proposed rule did not adequately account for case-by-case fee situations where the successful bidder is an entity other than the original applicant. The final coal leasing regulations at 43 CFR 3473.2 provide that the applicant who nominates a tract will pay BLM the processing costs that we incur up to the publication of the competitive lease sale notice. That fee amount will be included in the notice itself, and the successful bidder, if someone other than the original applicant, will be responsible for paying that amount to BLM. In such circumstances, BLM will refund the fees the original applicant paid to BLM. If there is no successful bidder, the applicant will remain responsible for processing fees and there will be no refund. It should be noted that an applicant will not be reimbursed for moneys the applicant (and not BLM) may pay directly to third persons to perform studies, because it is not clear that FLPMA Section 304 applies in that situation.

Because persons other than the applicant could also be a successful bidder under BLM's other programs, we have made similar changes to the regulations at 43 CFR part 3500 applicable to the leasing of solid minerals other than coal, and to the mineral materials sales regulations at 43 CFR part 3600.

3. We amended the mining claim patent application adjudication fee so that patent applications covering 10 or fewer claims will be charged only half the cost recovery fee that applications with more than 10 claims will be charged. This change was made in response to comments expressing concern that the proposed fee would be too burdensome on claimants who submit patent applications for only a few claims. We selected the 10-claim threshold because that is the number Congress chose to define the class of miners who may perform assessment work in lieu of paying the claim maintenance fee. The adjudication fee in the proposed rule was a fixed fee based on a weighted average of BLM's adjudication costs. We believe that the commenters may have a valid concern and that it may be more reasonable to base the adjudication fees on the per claim costs depending on how many claims are included in an application. BLM plans to reassess its costs of adjudication and may propose a revision to this fee in the future. In this final rule, we decided that it was reasonable to phase in the adjudication fee for patent applications that contain 10 or fewer claims. A discussion of phasing in fees is contained in the preamble to the proposed rule. 70 FR 41533. This rule contains the first step of this phasing-in process.

4. The final rule adds language at section 3000.11 to clarify that a decision of BLM to change a fixed fee to a case-by-case fee may be appealed to the Interior Board of Land Appeals.

5. In response to comments objecting to the applicability of the fee provisions to applications pending when this rule is made final, we have revised the rule to make the fee provisions of the final rule applicable only to documents BLM receives after the effective date of this rule. Section 3000.10(d) has been restructured to clarify the timing of the applicability of both fixed and case-by-case fees established by this rule. Because both the new fixed and case-by-case fee provisions apply only to documents received after the effective date of this rule, proposed section 3000.11(c), which would have addressed how to treat costs of pending documents, is not necessary and has not been included in the final rule. Also, rather than include in section 3000.10(a) a statement that required fees must be included with documents that are filed, we moved the statement to section 3000.12(a) of this chapter to make it clear that such a requirement applies only to fixed fees. We have also amended paragraphs (d)(1) and (d)(2) of section 3000.10 to make it clear that the documents for which BLM will begin to charge the new fees are those that BLM receives on or after November 7, 2005. The proposed rule referred to documents that BLM ''accepted.'' We have amended this language to avoid confusion. The date of receipt may be easily evidenced by a log-in date on the document or by a receipt given to an applicant by BLM.

6. We amended the language of section 3000.11(b)(4)(i) to clarify that we will not stop ongoing processing if we re-estimate the costs associated with a case-by-case document. (This issue is further discussed in the preamble under III.A. General Comments.) We also moved the last sentence of section 3000.11(b)(4)(ii) regarding refunds into a new paragraph (b)(4)(iii) to make it clear that whenever money paid as a case-by-case fee was not spent on processing costs, BLM will refund that money once processing is complete.

We wish to make one further clarification with regard to section 3000.11, relating to the charging of processing fees on a case-by-case basis. Under paragraph (a), if at any time BLM

decides that a particular document designated for a fixed fee will have a unique processing cost, such as an Environmental Impact Statement, we may set the fee under the case-by-case procedures. BLM intends to recover on a case-by-case basis those costs that BLM incurs following the decision that the document processing will have a unique processing cost. BLM will not charge for costs that BLM incurred before that decision was made. The applicant will receive a credit for any fixed fee already paid against the case-by-case fees that are billed.

7. We have clarified the final regulatory text for section 3800.5 as it relates to the applicability of case-by-case cost processing for validity examinations and common variety determinations associated with mining notices, applications for PoOs, and applications for patents. We divided proposed paragraph (b) into final paragraphs (b) and (c). Revised paragraph (b) relates to mining notices and plans of operation and redesignated paragraph (c) applies to patent applications.

Revised paragraph (b) makes it clear that a notice level operation or an applicant for a plan of operations for which a mineral examination, including a validity examination or a common variety determination, and associated reports, are performed and prepared under 43 CFR 3809.100 or 3809.101, must pay a processing fee on a case-by-case basis. It was not BLM's intent to include validity examinations BLM may perform on its own volition that are not performed under sections 3809.100 or 3809.101. This change is in response to comments that the regulatory text contained in the July 2005 proposed rule was confusing. It also should be noted that the cost recovery provisions are not intended to modify BLM policy as to when mineral examinations are performed.

Final paragraph (c) provides that an applicant for a mineral patent under 43 CFR subpart 3860 must pay a processing fee on a case-by-case basis as described in section 3000.11 for any validity examination and report prepared in connection with the application. This includes any analyses performed in connection with the validity examination and report, such as common variety determinations. Although contained in a new paragraph, this is not a substantive change from the July 2005 proposed rule. 43 CFR subpart 3860 applies to all mineral patent applications that BLM processes, regardless of the agency with surface management responsibility for the lands covered by the patent applications. Thus, case-by-case cost recovery will occur for validity examinations associated with BLM processing of mineral patent applications, whether the surface is administered by BLM, the U.S. Forest Service, NPS, or other agencies.

BLM wishes to make one further clarification with regard to section 3800.5(a), relating to the case-by-case cost recovery for the processing of PoOs requiring the preparation of an environmental impact statement. Under paragraph (a), an applicant for a PoO under 43 CFR part 3800 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 PoO requires the preparation of an Environmental Impact Statement (EIS). The costs that BLM intends to recover on a case-by-case basis under the final rule are those costs BLM incurs following the decision that an EIS is necessary, not costs that BLM may have incurred before that decision.

8. As a conforming amendment, we added language revising section 3835.32(c) so that it refers to a processing fee rather than a non-refundable service charge. Paragraph (c) includes a cross-reference to the table in section 3830.21 on service charges and fees, which BLM considered for amendment in the proposed rule. This conforming amendment to section 3835.32 was inadvertently omitted in the proposed rule.

The rule also contains other technical conforming and editorial changes.

Today's rule adopts both fixed fees and case-by-case fees. The table below sets forth the final fees that are imposed by this rule, compared to the fees as proposed in 2000 and 2005.

TABLE 1.—FEES FOR FY 2006

[Note that fees will be adjusted annually for changes in the IPD–GDP, published in the Federal Register, and posted on BLM's website. Revised fees are effective each October 1.]

Document/action	Existing fee	Proposed fee in 2000 rule	Proposed fee in 2005 rule [1]	Final fee [2]
Oil and Gas (Part 3100, 3110, 3120, 3130):				
Noncompetitive lease application	$75	$305	$324	$335
Competitive lease application	$75	$120	$127	$130
Assignment and transfer	$25	$70	$74	$75
Overriding royalty transfer, payment out of production.	$25	$9	$10	$10
Name change, corporate merger or transfer to heir/devisee.	$0	$160	$170	$175
Leases consolidation	$0	$335	$356	$370
Lease renewal or exchange	$75	$305	$324	$335
Lease reinstatement, Class I	$25	$60	$64	$65
Leasing under right-of-way	$75	$305	$324	$335
Geophysical exploration notice of intent—outside Alaska.	$0	Case-by-case	$500	$0
Geophysical exploration permit application—Alaska.	$25	Case-by-case	$500	$25
Application for Permit to Drill (AP)	$0	Not included	$1600	$0
Geothermal (Group 3200):				
Noncompetitive lease application	$75	$305	$324	$335
Competitive lease application	$0	$120	$127	$130
Assignment and transfer of record title or operating right.	$50	$70	$74	$75
Name change, corporate merger or transfer to heir/devisee.	$0	$160	$170	$175
Lease consolidation	$0	$335	$356	$370

TABLE 1.—FEES FOR FY 2006—Continued

[Note that fees will be adjusted annually for changes in the IPD–GDP, published in the Federal Register, and posted on BLM's website. Revised fees are effective each October 1.]

Document/action	Existing fee	Proposed fee in 2000 rule	Proposed fee in 2005 rule [1]	Final fee [2]
Lease reinstatement	$0	$60	$64	$65
Exploration operations permit application	$0	Not included	$500	$0
Geothermal Permit to Drill (GPD)	$0	Not included	$1600	$0
Coal (Group 3400):				
License to mine application	$10	$10	$11	$10
Exploration license application	$250	$250	$266	$275
Lease or lease interest transfer	$50	$50	$53	$55
Competitive coal lease	$250	Case-by-case	Case-by-case	Case-by-case
Coal lease modification	$250	Case-by-case	Case-by-case	Case-by-case
Logical mining unit formation or modification.	$0	Case-by-case	Case-by-case	Case-by-case
Royalty reduction application	$0	Case-by-case	Case-by-case	Case-by-case
Nonenergy Leasable (Group 3500):				
Applications other than those listed below.	$25	$25	$27	$30
Prospecting permit application amendment.	$0	$50	$53	$55
Extension of prospecting permit	$25	$80	$85	$90
Lease renewal	$25	$390	$414	$430
Prospecting permit application	$25	Case-by-case	Case-by-case	Case-by-case
Preference right lease application	$0	Case-by-case	Case-by-case	Case-by-case
Successful competitive lease	$0	Case-by-case	Case-by-case	Case-by-case
Application to suspend, waive or reduce your rental, minimum royalty, production royalty or royalty rate.	$0	Case-by-case	Case-by-case	Case-by-case
Future or fractional interest lease application.	$25	Case-by-case	Case-by-case	Case-by-case
Mineral Materials Disposal (Group 3600):				
Noncompetitive sale (excluding sales from community pits or common use areas).	$0	Case-by-case	Case-by-case	Case-by-case
Competitive sale	$0	Case-by-case	Case-by-case	Case-by-case
Competitive contract renewal	$0	N/A	Case-by-case	Case-by-case
Mining Law Administration (Group 3800):				
Notice of Location [3]	$10	$15	$16	$15
Amendment of location	$5	$10	$11	$10
Transfer of mining claim/site	$5	$10	$11	$10
Recording an annual FLPMA filing § 3835.30).	$5	$10	$11	$10
Deferment of Assessment	$25	$80	$85	$90
Mineral Patent Adjudication	1st claim—$250 Each additional claim $50.	$2,290	$2,433	$2,520 (>10 claims) $1,260 [4] (10 or fewer claims)
Adverse claim	$10	$80	$85	$90
Protest	$10	$50	$53	$55
Plan of Operations with EIS	$0	Case-by-case	Case-by-case	Case-by-case
Validity and Mineral Examinations and Reports performed in connection with a Patent Application, 43 CFR 3809.100 or 43 CFR 3809.101.	$0	Case-by-case	Case-by-case	Case-by-case

[1] The fees proposed in July 2005 adjusted the fees proposed in 2000 by using the Implicit Price Deflator 4th Quarter 2003 (106.244) and rounding to the nearest dollar.

[2] The fees in this final rule adjusted the fees proposed in 2000 by using the Implicit Price Deflator for 4th Quarter 2004 (110.077), then rounding to the nearest $5.00.

[3] 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 the $10 service charge shown in the table. The service charge becomes a $15 processing fee in this final rule, making the total fee $170.

[4] In this final rule, the fixed fee for adjudication of mineral patents has been modified in response to comments received. Applications with 10 or fewer claims will be charged a fixed fee of $1,260. Where the mineral patent application includes more than 10 claims, the fee will be $2,520.

III. Responses to Comments on the December 2000 and July 2005 Proposed Rules

In this section of the preamble, we respond to the substantive comments that we received on the December 15, 2000, proposed rule (65 FR 78440) and on the proposed rule published in the **Federal Register** on July 19, 2005 (70 FR 41532). In response to the December 15, 2000, proposed rule (65 FR 78440), BLM received approximately 136 comments. In response to the 2005 re-proposed rule (70 FR 41532), BLM received approximately 43 comments.

A. General Comments

Although BLM received some comments in support of the rule, the majority of comments generally opposed

any fee increases in BLM Mineral Programs. The commenters expressed many reasons for opposing the rule. Some commenters said that BLM appeared to have based the fee changes on out-of-date data from fiscal years 1988 to 1990. Similarly, a commenter said that BLM used cost recovery data from a period of low activity, resulting in an inaccurate fee structure.

The commenters are incorrect in asserting that BLM based the fees solely on data from fiscal years 1988 to 1990. In the mid-1990s, BLM reanalyzed the data and conducted spot checks to verify their continued validity as explained in more detail in the preamble to the proposed rule (70 FR 41534). BLM's processes covered by this rule have not changed significantly since that time. Moreover, we have adjusted the fees using the Implicit Price Deflator for 4th Quarter 2004 to reflect current costs. Accordingly, we believe that the fees in this final rule are not out of date. Moreover, the period for which BLM collected data was not a period of particularly low activity.

Some commenters asserted that the cost recovery fees are equivalent to a tax on producers. The commenters also objected to the proposed rule because operators already pay for the services provided by BLM through taxes. They recommended that operators be given a tax incentive or tax credit to offset the cost of these higher fees.

We disagree. The fees in this rule are not a tax. The fees are charged for special benefits received by identifiable beneficiaries and are intended to reimburse the agency for the costs of processing the various energy and minerals related filings. Creating tax incentives and tax credits to offset the cost to the operator of these fees is not part of this rule, and it is outside BLM's or DOI's jurisdiction or authority to initiate such a rule.

Some commenters asserted that the fees in this rule are unjustified in light of the fact that the government receives other revenues such as royalties, bonus bids, and rentals for the mineral activities covered by these fees, which in their view should cover processing costs. A commenter recommended that BLM deduct the costs of processing minerals and energy documents from the royalties that BLM is already paid. As an example, a commenter stated that the public receives ''the vast portion of the revenues from the proceeds from the federal coal lease'' but has no overhead costs or investment risks.

We disagree. Royalties, rents, and bonus bids reflect the value of the resource to the lessor. Congress authorized BLM to recover processing costs, and did so fully aware that BLM was already collecting bonuses, rents, and royalties, so there cannot have been any legislative intent that one fee should offset another.

BLM charges processing fees pursuant to its authorities under the Independent Offices Appropriation Act, as amended, 31 U.S.C. 9701 (IOAA); Section 304(a) of FLPMA; Circular A–25; DOI Manual 346 DM 1.2 A; and case law (also see the preamble to the proposed rule at 70 FR 41533 and Solicitor's Opinion M–36987 (December 5, 1996)). Congress clearly intended for agencies to recover processing costs in addition to bonuses, rents, and royalties.

The IOAA states that Federal agencies should be ''self-sustaining to the extent possible,'' and authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' Section 304(a) of FLPMA specifically authorizes the Secretary of the Interior to ''establish reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents relating to the public lands.'' Circular A–25 sets forth a general policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

A commenter said that other public land users who do not pay royalties should also pay processing costs.

BLM has implemented or is considering implementing cost recovery for other programs that it administers.

One commenter stated that, because much of the processing fees go toward satisfying other government regulations, as additional regulatory requirements are imposed and become part of BLM's processing, costs would continue to increase.

We appreciate the commenter's concern. In the short term, potential new requirements would not affect BLM's fixed fees. Over the longer term, BLM may have to reassess the fixed fees if our processing costs change significantly. Although we do not foresee increased regulatory burdens that would significantly affect processing costs, case-by-case fees would include any such increases. It is important to note, however, that as technology and automation improve, our document processing costs may decrease, which will be reflected in reduced case-by-case fees.

Some commenters asserted that case-by-case fees are open-ended and contain no cap, which makes it difficult to plan for future costs. Some of these commenters asked how an applicant would know in advance whether they could afford to submit an application.

Although case-by-case fees do not contain a prescribed cap, the process that BLM has established for case-by-case fees provides that cost estimates be given to applicants before processing begins. In advance of an application being submitted to BLM, an operator may also discuss the project with BLM and ask for cost projections. We expect that with time and experience, case-by-case fees will become more predictable.

Some commenters are concerned that the rule provisions give BLM too much authority to convert fixed fees into case-by-case fees under the provision that allows BLM to change a document designated for a fixed fee to a case-by-case fee if BLM decides that it will have a unique processing cost. The commenters said that BLM might arbitrarily change the designation during processing and set a higher fee under the case-by-case procedures. A commenter requested that, if possible, BLM identify fixed fees that will not be subject to case-by-case cost recovery.

We do not agree that the rule gives BLM unlimited discretion to convert fixed fees into case-by-case fees. By ''unique processing costs,'' BLM means costs associated with a processing step that would result in significantly higher costs than are customary for that fixed-fee category. When applied to certain fixed-fee categories, costs of efforts such as EISs, cultural resource surveys, or threatened or endangered species consultations and studies, may be considered unique because they are not usually required for actions in those categories. Although most fixed fees are not of a type that could incur unique processing costs, BLM cannot guarantee that any particular transaction cannot give rise to unique circumstances that would warrant case-by-case processing. However, BLM has guidelines for determining when it takes actions such as those referenced above and will not decide that a document will require such processing steps unless those guidelines are satisfied.

If the applicant disagrees with BLM's determination that the application merits a case-by-case fee, the applicant may appeal that determination to IBLA under BLM's appeals process at 43 CFR part 4, subpart E, when it receives the cost estimate from BLM. In response to the commenters' concern, we have added language to the rule text clarifying that such a determination may be appealed. If the applicant prevails, BLM will refund the disputed fee and charge only the fixed fee.

A commenter stated that, although estimated processing costs can be

appealed, he has no confidence in the ability of IBLA to process those cases expeditiously. The comment concluded that there is apparently no motivation for BLM or IBLA to move quickly on any appeals.

With respect to appeals, there is little BLM can do to shorten the period between when an appeal is filed and when an appeal is resolved. However, the regulations provide that an applicant can ensure that BLM will continue processing the document and issue a decision while an appeal is pending by paying the disputed fee under protest.

Some commenters contended that the fees would have a negative impact on small operators or miners. Some commenters said the proposed rule would have a negative impact on the national and local economies, especially as it relates to exploration, and will result in an increase in the number of energy and mineral projects being abandoned. They generally stated that higher fees would adversely affect mining industry ability to compete.

The Record of Compliance that BLM prepared for the 2005 proposed rule concluded that, when mineral industry revenues are compared with the cost increases in this rule, the projected annual total for these increases amounts to less than one percent of sales. Even if the entire amount of the increases were to be borne by small business entities, the effects would be minimal. For example, under this rule, we project that small oil and gas operators will pay an additional $2 million annually, approximately, while generating sales of about $1 billion annually from operations on Federal lands. As a matter of prudence, operators will factor these fees into their business decisions before pursuing on-the-ground operations. In addition, for competitive leasing, these higher costs may be reflected in the successful bid.

The increases in the fees paid by the applicants represent the direct economic impact of complying with the final rule. We estimate the cost of the rule, in the form of higher fees, will be approximately $7 million annually. We do not anticipate any measurable reduction in economic activity due to these fees.

Several commenters said that BLM did not adequately consider the FLPMA factors when calculating the proposed fee increases, and challenged BLM's statement that the projects for which fees are charged in this rule usually provide little or no service to the public. A commenter stated that developers are involved in tremendous financial risks in producing minerals, and urged that the rule should consider the financial risks involved and potential positive benefits to the general public. Commenters stated that we did not consider various benefits of mining, including improved grazing land, improved wildlife habitat on reclaimed mine lands, and maintenance of trails that benefit recreational and subsistence users. Some commenters asserted providing heat and electricity to homes and businesses and other mineral uses are an obvious service and benefit to the public. A few commented that BLM should give applicants a credit for the data they produce, or reimburse them for providing it. A commenter concluded that BLM should include discussion of how these factors were considered in the final decision-making process on the fee procedures.

A commenter also discussed the importance of coal production and contended that because coal resources from Federal leases are vital to supplying electricity at a reasonable price and in an environmentally sound manner, BLM should not charge additional document processing costs. The commenter contended that a FLPMA factor mandates that BLM not impose additional processing costs for leasable minerals because the public receives significant benefit from lease revenues.

BLM agrees that the domestic mining industry is vital to the American economy and provides immense benefits to the public. However, the FLPMA factor of ''service to the public'' concerns whether the applicant's project itself provides some significant direct service or benefit to the general public, not the fact that members of the public are the ultimate consumers of mineral resources extracted from the public lands (which is true of virtually all public land resources). Companies extracting resources from the public lands do not necessarily engage in extraction operations for the benefit of the public, but are for-profit enterprises. There is thus no basis for using the public's ultimate consumption of the resource as a reason for reducing processing fees below BLM's actual processing costs.

BLM agrees that there are times when the applicant's project itself does result in tangible benefits to the public, such as the identification of cultural and archaeological sites in resource surveys, trail maintenance, and others mentioned above. For documents processed on a case-by-case fee basis, BLM will consider each of the FLPMA factors as it relates to that individual project. For the fixed fee documents, we considered the likelihood of activities in those categories providing substantial direct benefits to the public. We concluded that such potential benefits from transactions in the fixed fee categories are too speculative to warrant charging less than BLM's actual costs of processing, particularly when weighed against the monetary value of the project to the applicant.

With regard to operators' financial risks, such investment risks and overhead costs of a for-profit entity operating on public land are normal costs of doing business and should not be a reason for BLM to collect less than its actual processing costs under the FLPMA reasonableness factors.

Some commenters asserted that BLM's processing activities provide benefits to the general public such that BLM should charge less than its actual costs of processing. Some commenters also objected that many of BLM's processing activities benefit only the public and not the applicant.

BLM disagrees. The processing fees charged in this rule are for the documents that an applicant must submit to satisfy various statutory and regulatory requirements pertaining to the various minerals programs that BLM administers. The processing of an application necessarily benefits the applicant. See 70 FR 41541. BLM considered the potential benefits to the public of its processing of the fixed fee documents in this rule and concluded that the monetary value to the applicant outweighs the possible benefit to the public.

Several commenters were unclear how the fees relate to situations where the applicant directly pays a third party to perform required studies. Some commenters suggested that because they often pay third party contractors to perform required environmental studies, BLM should credit those costs by reducing the fees BLM charges.

A credit is inappropriate because the fees in this rule do not include any costs that an applicant pays directly to a third party. For third party contracts, BLM's cost recovery is restricted to recovering the costs of its own activities, such as supervising the contractor, reviewing and approving the final document. If BLM pays for environmental studies in connection with its document processing, it will include those costs in its fee.

Some commenters said that because the industry already pays for the privilege of operating on public lands by performing many studies and inventories, and compiling National Environmental Policy Act (NEPA) documents, the Federal Government

should consider reimbursing industry for performing these undertakings.

BLM will not be reimbursing operators for studies they perform in compliance with various laws, mandates, and policies. All such costs are borne by the operator. The operator conducts these studies for their own benefit because an operator cannot receive a permit or authorization to extract resources from public lands until all required studies are completed. The operator does have the option of paying a BLM-permitted contractor to conduct these studies or they can ask BLM to conduct them at a charge to the operator.

Some commenters contended that BLM must ensure efficient and timely processing and provide time frames within which it will complete processing. A commenter suggested that BLM undertake an independent review of the processes that are funded by these increased fees before they are implemented in the final rule.

BLM recognizes that we have a responsibility to administer our programs in an efficient and effective manner, and review our procedures for processing applications to ensure their efficiency on an on-going basis. However, this is not a basis for delaying the implementation of this rule. Setting time frames for BLM processing is not part of this cost recovery rulemaking.

A few commenters asked BLM to hold public meetings before finalizing any fee increases. Several commenters asked that we extend the comment period. Another commenter asked BLM to develop regulations governing minerals management programs with more industry involvement.

BLM believes that adequate public involvement has occurred with respect to this rule. The original proposal, in December 2000, was very similar to this final rule, and the comment period at that time was open for over six months. We also provided a 30-day comment period for the July 2005 proposal.

Some commenters said that BLM's current fees are much higher than those charged by local governments and private industry for similar services.

BLM bases its fees on its own processing costs in conjunction with its consideration of the FLPMA reasonableness factors. Neither the states nor private industry has the same statutory responsibilities, as does BLM.

A commenter said that use of a weighted average creates a situation where they are charged more than is necessary and that they should not be penalized if a BLM office is less cost efficient than another one. A commenter requested that BLM define ''weighted average'' and said that this mathematical cost basing leads to unequal application under the law and creates a cost structure slanted toward higher than necessary fees. A commenter asked what authority gives BLM the means to use a ''weighted average'' instead of the actual or average cost.

BLM relied on its regulatory authority in FLPMA (43 U.S.C. 1740) to determine the proper method of analysis. BLM used a weighted average for fixed fees to incorporate economies of scale achieved by offices that process many more documents than those with less active oil and gas (or other mineral) programs. The processing cost fees in this rule are based on a weighted average, rather than a simple average, of BLM-wide processing costs for each type of document. This method gave greater weight to the processing cost data from field offices having a heavy workload, and thus more expertise, in processing a particular type of document. Offices that process a greater number of a particular type of document generally have a lower processing cost per document of that type. We first estimated the actual cost for a type of document and then considered each of the FLPMA factors to see if any of them might cause a fee to be set at less than actual cost. We then decided the amount of the fee, which cannot be more than our processing cost.

A commenter said that BLM failed to set reasonable ground rules like limits on dollars per hour for BLM staff to work on administering the project.

BLM will base case-by-case fees on the actual costs incurred in processing the application. Before processing begins, BLM will provide the applicant with an estimate of BLM's costs and its key components. The applicant will have an opportunity to object if it believes the estimated costs are excessive.

A commenter asked why there are differences in costs among BLM State Offices for the same program elements and services. Another commenter asked how BLM's processes can be ''reasonably efficient'' when BLM's preliminary review of the data showed large cost differences among BLM offices for processing certain types of documents as well as large numbers of documents filed and processed.

As stated in the proposed rule preamble, BLM determined that the differences in costs cited by the commenters were attributable to site-or sale-specific factors or economies of scale.

Some commenters said that BLM was attempting to circumvent the budgeting process by burdening industry with additional fees and increasing existing fees as much as 15 times the current fee.

BLM is not circumventing the budgeting process. Congress authorized BLM to recover processing costs under the IOAA and FLPMA, and OMB directives require us to do so. The IOAA states that Federal agencies should be self-sustaining to the extent possible and authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' Section 304(a) of FLPMA specifically authorizes the Secretary of the Interior to ''establish reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents related to the public lands.'' The IOAA and FLPMA give BLM authority to charge fees for processing applications. Moreover, Circular A–25 provides that 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.

A commenter stated that BLM went too far beyond what is reasonable in setting the proposed fees beyond the fees established in previous regulations.

BLM disagrees. The prior filing fees were more in the nature of a recordation fee, and were not intended to recover BLM's processing costs.

Several commenters argued that BLM's proposed cost recovery regulations are flawed because they rely on an incorrect legal conclusion in Solicitor's Opinion M–36987 (December 5, 1996) that cost recovery is mandatory under FLPMA and the IOAA.

The commenters are mistaken. The Solicitor's Opinion did not conclude that those statutes require cost recovery, nor did BLM's preamble to the proposed rule characterize the Opinion's conclusion as such. Solicitor's Opinion M–36987 concluded that ''BLM has authority under applicable statutory and case law to recover costs of minerals document processing * * *. Because it has this authority and because the Departmental Manual and OMB policy require that costs be recovered where possible, BLM should take steps to initiate cost recovery * * *.''

Commenters also maintained that the Department mistakenly relies on the BLM Manual to create a mandatory cost recovery obligation.

By ''BLM Manual,'' we assume the commenters meant to refer to the Departmental Manual, which was cited in both the Solicitor's Opinion and the proposed rule preamble. The commenters' objection that the Manual does not have the force or effect of law

and cannot override a Federal statute misses the point. As explained in the preamble to the proposed rule, Congress has authorized cost recovery in both the IOAA and FLPMA. The executive branch, through Circular A–25, has stated the general Federal policy to be that charges will be assessed against identifiable recipients of special benefits. The Secretary of the Interior, in the Departmental Manual, has instructed bureaus and offices within DOI to recover costs that they are authorized to recover. There is no issue here of a conflict between the Departmental Manual and statutory authority—the Manual, the OMB guidance, and the statutes are all in accord. Nor is there any issue, as the commenters assert, of BLM interpreting the Manual as directing it to disregard one of the FLPMA factors. As explained in the preamble to the proposed rule, BLM carefully considered each of the FLPMA factors in setting the proposed fees.

One commenter asserted that BLM appears to rid itself of its responsibility to prepare any special studies as outlined in NEPA and stated that BLM must maintain the necessary staff and resources to perform NEPA requirements.

BLM recognizes that it has continuing responsibilities to satisfy its requirements under NEPA. The provision in section 3000.11(b) simply allows the applicant to ask BLM's approval to do studies or other activities, under BLM supervision and to BLM standards, on a voluntary basis. If the applicant chooses not to do the work, BLM will perform the work and include the cost in the case-by-case fee. Nothing in these regulations relieves BLM from fulfilling any of its statutory responsibilities.

One commenter expressed concern that the fee increases will adversely affect academic interests involved in fossil research.

The cost recovery provisions apply to applications for certain commercial activities. Academic interests involved in fossil research, including collectors of petrified wood under 43 CFR subpart 3622 and other kinds of researchers under 43 CFR part 2930, will not be affected by this rule.

A few commenters stated that BLM should not be pursuing a prior administration's agenda or initiative.

The changes in this final rule do not represent the agenda of any particular administration. BLM's efforts to recover costs were initiated in response to recommendations from the OIG in 1988, as part of a 1980s Presidential initiative calling for all Federal agencies to charge appropriate user fees for agency services.

A commenter asked if BLM had considered implementing electronic filings of ownership transfers before implementing a new fee schedule.

BLM intends ultimately to implement electronic filings for title transfers. We will then review the processing costs and adjust them as necessary. This is not a reason to delay implementation of this rule.

A commenter said that the rule could be abused in its implementation by BLM offices seeking to delay or deny permit applications, including those that state regulatory agencies handle expeditiously.

The comment is speculative. We have carefully explained how the fees will be implemented in accordance with applicable authority. These fees will not be used to delay any BLM action unnecessarily.

A commenter said it is unclear what, if any, BLM costs other than land use plan studies and programmatic environmental assessments (EAs) were exempted from the rule.

BLM intends this rule to provide for the collection of document-specific costs rather than programmatic costs.

A commenter said that if BLM proceeds with this rule, it must ensure that all management overhead is excluded, citing *Nevada Power Co.* v. *Watt,* 711 F.2d 913, 931 (10th Cir. 1983).

BLM's actual costs are the sum of both direct and indirect costs. However, under FLPMA, BLM cannot recover the costs of management overhead. We have interpreted this to mean the 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. We have not excluded the costs of Deputy State Directors or other supervisory staff because they are typically involved in day-to-day decision making. BLM's cost accounting system is intended to reflect this distinction.

One commenter noted that it appeared that BLM was attempting to ''double-dip'' by assessing both an application fee and a filing fee. Another commenter noted that BLM was only assessing application and filing fees for some actions and questioned why BLM was not collecting the processing fee for those same actions.

Some commenters seem to have misunderstood how BLM structured the fixed fees. Some fixed fees were already-existing, nominal filing fees that we did not propose to change. Filing fees serve to limit filing to serious applicants and are not intended to reimburse processing costs. This rule adds certain fixed fees for other documents based on BLM's processing costs. Each action for which this rule charges a fee has either a filing fee or a processing fee. No action has both a filing fee and a cost recovery processing fee. We may in the future change some filing fees to processing fees. As explained in the preamble to the proposed rule, BLM intends to continue to work on establishing and collecting fees for other documents (70 FR 41533).

Some commenters stated that these provisions appear to create further delays in an already time consuming set of procedures. A commenter stated that at a minimum the final regulations should include provisions to establish an escrow-type account that BLM can access. A commenter recommended that BLM add the following language to proposed section 3000.11: ''You may elect to establish a standing contingency fund to be accessed and utilized by BLM in case of shortfall, to assure that processing continues. Provisions for appeals and fees paid under protest in subsection (c)(6) will apply equally to any funds utilized from such an account.''

This rule does not provide for escrow or contingency accounts to facilitate payments of case-by-case fees. However, based on these comments, we have amended the language of section 3000.11(b)(4)(i) to clarify that we will not stop ongoing processing if we re-estimate the costs associated with a case-by-case document. This revision should reduce potential delays associated with re-estimation of costs.

The commenter also asked BLM to consider that cost recovery should be limited to the costs of the actual hours that BLM staff worked directly on the project being charged and specifically should exclude any staff training.

The preamble to the proposed rule explained what costs BLM includes in determining its fees in this rule. Both direct and indirect costs are included. Training is only included to the extent that it is allowable as indirect costs.

One commenter asked that BLM consider dedicating funds collected from increased fees to paying personnel who process the permits for which the fees are levied. The commenter said that BLM staff that is responsible for the minerals permitting process should not have other assignments within their respective offices.

BLM intends to structure its budget processes to return fees collected to the BLM office which processes the actions. BLM staff workload is determined by the needs of individual BLM offices.

One commenter asked for further explanation of the relationship between

existing Federal fees, assessments, and levies and the proposed charges, asserting that existing fees already cover certain BLM document processing costs. Specifically, the commenter contended that net smelter royalties, other Mining Law Administration Program (MLAP) funds, and bonus bid payments that cover document processing costs should essentially be counted as document processing fees, and that BLM should not seek additional revenue from applicants if double recovery of such fees would occur.

As discussed earlier in this preamble, we have addressed the relationship between royalties, bonus bids, rents, and the processing fees in this rule. We address here the relationship between the processing fees and Mining Law fees, such as the annual maintenance fee on unpatented mining claims and the location fee on new claims.

Moneys that Congress has directed BLM to collect as location and maintenance fees are deposited directly to the Treasury and are to be used as an offset to BLM's appropriation, up to a certain ceiling. The purpose for the maintenance fee is to replace the $100 assessment work requirement in the Mining Law. The assessment work requirement was intended to show a mining claimant's bona fides in exploring for or developing minerals. Similarly, the location fee is intended to discourage speculative filings of mining claims. Consequently, the fundamental purpose for those fees is not for cost recovery.

The Interior Department's appropriation act specifies two purposes for which BLM can use mining claim fees. First, Congress has directed that a set amount of mining claim fees be used to cover the costs of administering the mining claim fee program. The mining claim fee program is the program under which BLM collects and processes the $125 claim maintenance fee and the location fee. We did not propose and have not adopted any additional processing fee for collecting and processing the statutory mining claim fees. Although the terminology may appear similar (the word ''location'' is used in both), the fee this rule imposes for processing location notices is intended to cover BLM's processing costs related to the statutory filing requirement imposed by FLPMA Section 314 (43 U.S.C. 1744), and is unrelated to the collection of the statutorily imposed location fee.

Second, Congress has directed that the bulk of the appropriation that is offset by mining claim fees be used for the MLAP generally This appropriation has averaged approximately $34 million a year for the past few years, and is used for the entire range of administrative costs incurred by the MLAP; it has historically been inadequate to operate all aspects of the program. In the past, BLM has used appropriated funds to cover the processing costs of documents when no processing fees were being charged. The fact that general Mining Law Program funds were used to cover these costs in the past, however, does not mean that these costs ''should'' be funded from those collections, or that BLM cannot now exercise its statutory authority to charge a specific processing fee to cover certain document processing costs. When general Mining Law Program funds no longer have to be directed to cover all processing costs, they can and will be directed to cover other aspects of the program.

The commenter also stated that because claim maintenance fees and location fees generate millions of dollars, which will increase as fees are increased, BLM should re-evaluate the need to impose additional processing fees.

As is the case with royalties, bonus bids, and rents, Congress imposes claim maintenance and location fees for purposes different from covering the costs of document processing. BLM cannot predict how much money will be collected from these statutory fees or the size of future Congressional appropriations for Mining Law administration. In the IOAA and FLPMA, Congress has also separately authorized the collection of fees to cover the costs of document processing. Those fees are the ones that will be collected under this rule.

One commenter objected to BLM charging for pending documents where processing has already begun. The commenter asserted that charging new fees on pending documents would constitute an unlawful retroactive application of new requirements. The commenter also asserted that equitable concerns arise regarding such charges since the charges could not have been anticipated and planned for in the planning phase of the action. In addition, the commenter stated that often the applicant has no control over the pace of document processing, and thus would be unfairly punished due to BLM's processing backlogs.

As discussed earlier in this preamble, BLM will apply both fixed and case-by-case fee provisions in this final rule to applications submitted after the effective date of this rule, and not to applications pending on that date. Although BLM disagrees with the characterization of the proposed regulations as retroactive, BLM is sensitive to practical concerns relating to applying this rule to pending applications, as well as perceived inequities, and has revised the rule accordingly.

Another commenter stated that any cost reimbursement policy should prohibit the imposition of significant new processing fees upon the lessee or operator of an existing lease, other than future minor filing fees, for specific actions such as processing right-of-way applications. The commenter asserted that at the time existing leases were bid upon and issued, BLM represented by implication and conduct that fees would be imposed under existing law and regulation only for certain activities, such as rights-of-way, and that other administrative costs associated with existing leases were reasonably expected to be borne by BLM. The commenter concluded that lessees' bids reflected those assumptions.

BLM rejects the comment. The commenter's assertions are based on speculation, not fact. Existing lessees do not have any contractual or other basis to be exempt from BLM cost recovery assessments. To the contrary, BLM leases typically contain a condition that lessees must comply with present and future BLM regulations. The recovery of processing costs by government agencies is not a new phenomenon, and BLM's doing so under existing authorities could have been anticipated by lessees at the time of lease acquisition.

Some commenters stated that deadlines are particularly important for documents where fees are collected on a case-by-case basis, and should be established preliminarily through negotiations between the applicant and BLM during the time period when they would be working together on the cost estimate.

This rule does not establish mandatory timelines for processing documents. BLM agrees, however, that it would be helpful to all persons if BLM and an applicant reach a common understanding as to the estimated time when various steps will be achieved.

B. Comments on Oil and Gas Leasing Cost Recovery

A commenter said that BLM's added costs do not address any improvement in services to industry. The commenter stated that by increasing fees BLM is attempting to drive up the cost of doing business on Federal lands and discourage companies from exploration and development of oil and gas.

A commenter said that poor customer service and long periods to process documents by BLM have been long-

standing industry concerns, and that BLM's budget and staffing have not kept up with increasing industry activity. The comment continued that this has created delays and permit backlogs. The commenter said these issues are more important than ''incremental cost recovery.''

Several commenters stated that if the price of energy decreases they would still be required to pay higher fees for reduced service from BLM and less commodity. Several commenters said they had concerns with BLM's quality of ''customer service.'' Others stated that the proposed cost recovery rule is contrary to the new National Energy Plan; and an impediment to domestic oil and gas exploration and development.

BLM takes seriously its customer service obligations, and is constantly looking to improve the means by which it addresses permit processing and its other program responsibilities. To the extent moneys recovered from processing fees are directed back to the offices from which they were collected, we hope this will serve to maintain or enhance the level of service that BLM provides.

We disagree that processing fees should decrease if the price of energy decreases. A processing fee covers the cost of a service that provides a benefit to the applicant and should be considered by the applicant as equivalent to any other cost of doing business. BLM's costs to process documents submitted by an applicant are unrelated to market fluctuations. Just as fees will not increase due to market upswings, they will not decrease due to market declines. BLM's economic analysis indicates that the new fees will not be an impediment to domestic oil and gas or other mineral development. The fees are minor in the context of the overall energy market.

Some commenters stated that these fee increases could result in operators not filing assignments and transfers with BLM. Another commenter said that the current fees are considerably higher when compared to those charged by local governments and private industry for similar services, and in order for operators to have good title to any oil and gas lease, the leases and transfers must be recorded in the county. The commenter continued that, because BLM requires a second set of records on BLM-prescribed forms to be filed with field offices, operators must undertake expensive curative title work when BLM records do not match the county records.

BLM disagrees that an increase in fees would result in operators not filing assignments and transfers with BLM. In accordance with statutory requirements, including the MLA, BLM must approve title transfers and, until they are approved, the transfer is not effective regardless of any private agreements between parties. While we appreciate the commenters' concern about a second set of title records, this is required by statute. Earlier in this preamble we have addressed the relationship between BLM fees and state and local fees.

A commenter said that BLM must set minimum fees that reflect the lesser of the reasonable or actual BLM administrative costs to conduct a pre-lease EA and promptly issue the lease. The commenter urged that any cost recovery program provide the lessee with a schedule of maximum fees and a time period for payment.

We agree that under FLPMA, BLM's fees must be based on the lesser of reasonable or actual costs. The fees in this rule were determined after a consideration of all of the FLPMA factors and reflect BLM's reasonable costs. As explained in the preamble to the proposed rule (70 FR 41540), the fixed fees for oil and gas leasing in this rule do not include the steps required to prepare an individual sale parcel before preparing the sale notice, such as earlier NEPA costs, even though such costs are recoverable. The fees are based on costs that BLM incurs from the point of preparing the sale notice. Unless there is a unique cost that would cause the conversion of the fixed fee to a case-by-case fee, the fees are established in the schedule in this rule.

A commenter asked BLM to return a portion of all revenues back to BLM districts based on the level of oil and gas activities in the district.

BLM is establishing a procedure through which the fees collected will go back to the office from which they were generated.

Some commenters asked BLM to abandon all case-by-case fees for oil and gas operations on Federal land.

BLM proposed case-by-case fees for certain oil and gas transactions in the 2000 proposed rule on cost recovery. However, they were not in the 2005 proposed rule, and they are not in this final rule.

Another commenter stated that the fee increases would be acceptable if the fees covered expenses that the operator has incurred. However, according to the commenter, many environmental, social, and economic issues have to be reviewed before land is listed in public auctions. The commenter said that these reviews are for the benefit of the public, and that it would be unfair to pass these costs on to the user and accuse users of causing this expense.

The fees in this final rule for BLM's oil and gas program do not include the environmental, social, and economic costs that BLM incurs before land is listed in public auctions. As was stated in the preambles to both the 2000 and 2005 proposed rules, we may propose in future rulemaking to recover those costs. As explained earlier in this preamble, these reviews are associated with a special benefit to an identifiable beneficiary and are recoverable under FLPMA and the IOAA.

A commenter stated that BLM's authority to impose cost recovery is discretionary, not required by statute. The commenter said that previous administrations chose not to impose this cost recovery proposal on oil and gas operators and lessees for sound public policy reasons and urged BLM to continue this policy and reconsider the proposed rule in its entirety.

Under the Administrative Procedure Act, an agency may change its policy if such changes have a rational basis and are supported by law. BLM has explained both its basis and purpose and the legal authority supporting this rule.

A commenter said that the transfer-of-operating-rights fees are inappropriate because the documents are not adjudicated, but only filed.

While operating rights transfers do not involve the same adjudicative processing steps as other documents, BLM must still review these documents for legal adequacy, and the cost recovery fee is appropriate.

C. Comments on Geothermal Leasing Cost Recovery

A commenter asked if we have considered fee increases from a national strategic energy viewpoint. For example, according to the comment, increased geothermal production from Federal lands would address the local energy shortages in the West in an environmentally benign way. The commenter therefore questions whether BLM should increase such fees.

As mentioned earlier in this preamble, this final rule does not include processing fees for geothermal permits to drill or geothermal exploration permits. Any remaining geothermal fees established by this rule will not hinder geothermal development.

D. Comments on Coal Leasing Cost Recovery

A commenter suggested that BLM offset the processing fees for a competitive coal lease by an equivalent

reduction in the fair market value bid for the lease.

Prospective bidders independently determine what they consider the fair market value of a coal lease to be. Companies will take all costs, including processing costs, into account when bidding. BLM will do the same when it makes its pre-lease determination of a minimum acceptable bid. Fair market value cannot be further reduced by the amount of processing costs, since those were already taken into account by the market. Also, Congress authorized the recovery of both fair market value and processing fees.

A commenter stated that BLM did not consider how the final rule would determine fees when the same or similar activity has been undertaken by another Federal or state agency with regard to the same transaction. The commenter stated that BLM should withdraw the rule until this issue is addressed.

To the greatest extent possible, BLM and other Federal agencies make diligent efforts to reduce or eliminate duplicative Federal or state requirements. This reduces the work burden for the agencies and provides better service to our customers. BLM and the Office of Surface Mining (OSM) have eliminated as many duplications of effort as possible. Moreover, in determining the fixed fees in this rule, we averaged our processing costs based on a survey of our actual costs (which included only our review time) plus consideration of the reasonableness factors. For the case-by-case fees, we will charge only for the time it actually takes BLM to process the document.

The commenter raised an issue about Resource Recovery and Protection Plans (R2P2). There are no fees currently assessed or proposed to be assessed for BLM to process an R2P2 for a Federal lease.

As stated in the preamble to the 2005 proposed rule at 70 FR 41536, at the time BLM was preparing the proposed rule for publication, BLM became aware that the case-by-case procedures outlined in proposed section 3000.11 were not appropriate for fees charged to the successful bidder in a lease sale or mineral materials sale context. Because a competitive sale requires BLM to perform work before conducting the sale, and BLM has the ability to track associated processing costs, the preamble to the 2005 proposed rule stated that it is our intent to include in the final rule a different set of procedures for charging a case-by-case fee to the successful bidder in the context of coal lease sales, solid mineral lease sales, and competitive mineral materials sales. Although the 2005 proposed rule contained revisions to sections 3473.2, 3508.21, and 3602.44, the proposed revisions did not address procedures for charging case-by-case fees to successful bidders, including situations in which the applicant is not the successful bidder. The final rule provides more extensive revisions to those sections as well as to related sections. These changes are described in an earlier section of this preamble.

One commenter suggested that BLM provide a mechanism whereby an unsuccessful bidder for a coal lease is not assessed any of the processing fees for the lease sale.

BLM agrees. As described above, the final rule requires the successful bidder to pay lease sale processing costs that BLM incurs.

A commenter asked BLM to clarify what happens when proprietary data is collected through activities that are covered by cost recovery. The commenter asked that BLM consider revising the regulation by incorporating mechanisms to ensure that any baseline data or information collected or contracted for collection by the applicant that is in excess of that information specifically required for applications would remain the property of the applicant, regardless of the outcome of the application process.

BLM will protect proprietary information in its possession to the extent provided under applicable law.

One commenter asserted that having an open-ended case-by-case cost recovery determination with no cap could easily create a disincentive to the coal lease modification process. The commenter stated that coal lease modifications are designed to maximize the recovery of the coal resources by allowing for a quick process and procedure to incorporate coal that cannot or will not be mined by anyone else into an existing coal lease. The commenter stated that BLM should encourage this practice, and that, in most instances, the additional royalties and bonus bids received more than offset the cost of processing these lease modifications.

BLM disagrees with this comment. We do not view a case-by-case fee as opposed to a fixed fee as a disincentive to filing an application for a coal lease modification. A lease modification is intended to provide the lessee an opportunity to obtain non-competitively adjoining tracts of coal that would otherwise be bypassed and that are not independently commercially viable. Other than not requiring a competitive lease sale and related public hearings on fair market value and maximum economic recovery, processing a lease modification application mirrors the processing steps associated with a competitive lease sale. The distinction between royalties and bonuses on the one hand and processing costs on the other was discussed earlier in this preamble. See also the earlier comment response in this preamble regarding the amounts and procedures related to case-by-case fees.

One commenter stated that a royalty rate reduction is an important component if a company reaches a critical financial or operational stage of their operation, and that if an operation is losing money and potentially facing closure of the property, then the Federal Government is also at risk of losing Federal mineral royalty income. The commenter stated that an open-ended case-by-case cost recovery process with no cap could be a big disincentive for a struggling company to overcome.

BLM disagrees with this comment. The commenter speculates as to the impact of the cost recovery process on a company requesting a royalty rate reduction. If a company requesting a royalty rate reduction objects to the cost estimate that BLM provides in a case-by-case cost recovery situation, it may appeal. BLM will apply the FLPMA reasonableness factors in setting cost recovery fees in case-by-case situations, as it applied them in setting the fixed fees in this rule. The authority for a royalty rate reduction (30 U.S.C. 209) does not address processing the royalty rate reduction applications. The MLA provides no authority to waive, suspend, or reduce recovery of processing costs. BLM will, of course, in its application of the FLPMA reasonableness factors, consider the facts that were presented in support of a royalty rate reduction.

One commenter stated that the proposed rule fails to recognize that applicants sometimes voluntarily pay for approved third-party contractors to perform studies to avoid certain delays associated with BLM processing of these documents. For example, the commenter stated, many applicants operating under the MLA pay BLM-approved third-party contractors to prepare the EISs associated with their leasing application.

BLM acknowledges that applicants have voluntarily paid for the preparation of an EIS for many actions to expedite the processing of that action. We anticipate that a similar process may continue under these regulations. Under this rule, if BLM pays for the preparation of studies such as an EIS, BLM's preparation costs will be included in the costs charged for case-by-case processing. If the coal lease

applicant pays a third party directly for the preparation of an EIS, for instance, these regulations do not provide that the applicant will be reimbursed if the applicant is not the successful bidder. The coal lease applicant will have the choice whether to pay a third party directly for the preparation of the environmental study or to have BLM fund the study, the cost of which, including BLM contracting costs, will be part of the fee charged to the successful bidder.

E. Comments on Cost Recovery for Leasing of Solid Minerals Other Than Coal

Comments received regarding leasing solid minerals other than coal were general in nature and have been addressed in the General Comments section earlier in this preamble.

F. Comments on Cost Recovery for Mineral Materials Sales

Most comments received regarding mineral materials sales were general in nature and have been addressed in the General Comments section earlier in this preamble.

One commenter inquired as to whether mineral materials free use permits will be subject to cost recovery fees.

Under this final rule, processing fees do not apply to free use permits issued under 43 CFR subpart 3604.

G. Comments on Cost Recovery for Mining Law Administration

A commenter suggested that the fees under part 3860 be dropped in the final rule and that if and when patents are allowed in the future BLM should consider cost recovery fees at that time.

BLM has established the fees relating to mineral patent applications so that they will be in place if Congress chooses to lift the current moratorium on issuing mineral patents.

Some commenters said they opposed the proposed fee changes because mining claimants have a stake in the patent process and, therefore, those who have paid for the patent process should not be charged additional fees.

BLM disagrees that steps that an applicant must take to qualify for a patent can substitute for BLM's recovery of its processing costs.

A commenter said the proposed rule conflicts with BLM's published policy on when and under what circumstances a validity or common variety mineral examination will be required.

This rule does not change the existing published policy concerning when mineral examinations are performed. It only requires that cost recovery be initiated if a validity or common variety mineral examination is performed under 43 CFR 3809.100 and 3809.101.

A commenter noted that BLM recently reported to Congress that BLM processes most PoOs within six months, with some plans taking longer to process. The commenter suggested that, because BLM thus processes most PoOs in an efficient manner, it is not justified in imposing cost recovery fees. It also suggested that if BLM had needed additional funds to process PoOs, it would have mentioned that in its report. The commenter suggested that because most PoOs are processed within six months, it would be reasonable and more efficient for BLM to establish a fixed processing fee for PoOs. Based on BLM's report that it processes most PoOs within six months and the failure of the report to express a need for additional funds, the commenter contended that it is inappropriate for BLM to assert in the July 2005 proposed rule a need to increase fees. Another commenter suggested that the BLM be required to demonstrate that the currently available fee and other subsidies are insufficient.

BLM disagrees with the commenters. The fact that BLM reported that it processes most PoOs within six months has no bearing on whether BLM recovers its processing costs. Whether or not a report to Congress stated that BLM ''needs'' additional funds in order to efficiently process PoOs is also not a determining factor in BLM's cost recovery effort. The report was prepared in response to a Congressional directive to create a PoO tracking system, report on how long it took BLM to process PoOs, and describe ways in which BLM's processing time could improve. It was not intended to address BLM's cost recovery efforts. As explained in the preamble to the proposed rule, the Department's OIG has determined that BLM should be recovering the costs included in this rule, and both the OMB, in Circular A–25, and the Secretary of the Interior, in the Departmental Manual, have directed that BLM should assess charges against identifiable recipients for special benefits. That is what BLM is doing in this rule. It needs to be recognized that PoOs that are processed within six months are those that require only an EA, not those that require an EIS. BLM agrees that it may be reasonable and efficient to set a fixed fee for PoOs that are authorized under an EA. However, in this rule BLM is not charging any fee for PoOs that are authorized under an EA. The rule imposes a fee, on a case-by-case basis, only for PoOs that require the preparation of an EIS. Case-by-case fees are appropriate for PoOs that require an EIS because of the significant variability in costs that may occur in the preparation of EISs and associated studies. We will consider whether to propose fees for PoOs that are authorized under an EA, and may propose a future rule on the subject.

Commenters also asserted that applicants for PoOs and other types of applications already typically pay significant costs by hiring third-party contractors to prepare the NEPA documentation, and often subsidize a BLM employee or retain a contractor to work as a project coordinator. In light of these costs already often borne by applicants, commenters contend that companies should not be required to subsidize additional costs, and that any additional costs should be covered by claim location and maintenance fees.

BLM recognizes that many companies have incurred financial expenditures related to processing PoOs. Such payments to third parties will not be included in BLM's case-by-case fees. The fee will only include costs that BLM incurs. BLM statutory responsibilities require that it independently review any analysis performed by an outside contractor. This review is an integral part of the processing required before BLM can act on an application. It is therefore reasonable and necessary that BLM consider the review costs in calculating its costs for processing a document, notwithstanding that a company may have incurred other expenses related to processing. We have addressed earlier in this preamble the relationship between claim location and maintenance fees and processing costs.

Another commenter was concerned that the procedure in proposed section 3000.11(b)(2) under which BLM will not process documents until BLM gives the applicant a written estimate of costs will not work in situations where BLM has to begin processing an application in order to decide whether a case-by-case fee will be imposed. The commenter used as an example that when BLM receives a mining PoO application, it must begin processing to determine whether an EIS is required.

The estimate that BLM provides under section 3000.11(b) precedes any case processing. However, if the initial estimate under section 3000.11(b)(4) needs to be revised, the rule provides that BLM will re-estimate its reasonable processing costs under section 3000.11(b)(4)(i). There is no fee in this rule for BLM's processing of a PoO that does not require an EIS. Therefore, the processing that BLM performs up to the point where a decision is made that an EIS will or will not be required is not

charged to the applicant. In response to this and other comments, we have stated earlier in this preamble that when a determination is made during the processing of a PoO that an EIS is required, the processing costs will be tracked and charged to the applicant on a case-by-case basis only from that point forward. This same principle applies when a fixed fee is changed to a case-by-case fee under section 3000.11(a).

A commenter said that third parties should not be permitted to appeal a BLM cost estimate because this could be used by opponents of the project as a delaying tactic.

It is clear from the context of the regulatory text at section 3000.11(b)(7), and confirmed by the preamble discussion in the proposed rule at 70 FR 41536–37, that only applicants may appeal a BLM cost estimate made under section 3000.11(b)(4).

Several commenters expressed opposition to BLM's proposed case-by-case fees because activities associated with case-by-case fee processing will add costs, especially when BLM has to re-evaluate cost estimates.

BLM appreciates the commenters' concern. However, we have not made changes to the final rule based on this comment. Means exist to keep costs down. For instance, an applicant should submit an application as complete as possible to allow BLM to provide an accurate initial cost estimate and to reduce BLM's processing costs. BLM already uses an automatic accounting system to streamline this process.

Commenters stated that a paying party should be permitted to audit BLM's accounting in case-by-case situations.

BLM disagrees that a paying party needs to audit BLM's accounting in case-by-case situations. The process has been set up to provide estimates as close as possible to actual costs, with re-estimates if BLM encounters higher or lower costs than anticipated. The applicant may appeal BLM's estimates. The process provides that the applicant may comment on BLM's written estimate of costs before BLM provides a final estimate.

A commenter stated that section 3800.5 contains provisions requiring applicants to pay for EISs and validity examinations if the Field Office requires them, and asserted that if the application is for a simple PoO, BLM has enough control to prevent severe environmental degradation.

It appears that this comment addresses PoOs that do not require an EIS. This rule does not impose cost recovery for processing PoOs that do not require an EIS. We note that validity examinations are not directly related to preventing severe environmental degradation.

A commenter stated that the proposed rule is inconsistent with the Mining and Mineral Policy Act of 1970, and that BLM should demonstrate that the proposed rule is consistent with the Act.

The Mining and Mineral Policy Act of 1970 (30 U.S.C. 21a) is a statement of Congressional policy relating to the benefits of mineral production to our society. BLM continues to support a healthy domestic mining industry. This rule is not expected to affect the nation's domestic mining industry adversely.

A commenter raised the findings of a 2001 General Accounting Office (now the Government Accountability Office—GAO) Report titled ''Improper Charges Made to the Mining Law Administration Program'' (GAO–010356), which stated BLM employees had improperly coded various activities to the MLAP, potentially resulting in an overcharge of about $1.2 million. The commenter asked BLM to withdraw the fee proposals until BLM implements appropriate training programs and provides detailed guidance.

BLM has remedied the problems the commenter identified. In fiscal year 2002, BLM removed all pertinent moneys from the State Offices that had miscoded the funds and placed these moneys into a central BLM account. BLM modernized its computer system for the field offices to use specifically for the surface management program and provided additional training courses at BLM's National Training Center for its mineral specialists that work in the surface management and mineral examination programs. In the same manner, additional training courses were held for BLM's adjudication staff that process mining claim documents and files.

A commenter recommended that the GAO evaluate BLM's need for cost recovery.

As explained in the preamble to the proposed rule, OIG reports in the 1980s and 1990s examined BLM's need for cost recovery for processing minerals-related documents. The OIG recommended that BLM establish and collect processing fees for all non-exempt types of documents. We believe this independent OIG report provides a sufficient audit of BLM activities related to minerals cost recovery. We do not believe any further audits are necessary before BLM goes forward with this rule.

A commenter said that an $80.00 processing fee to file a petition for deferment is inappropriate for the time required to determine whether an application is valid.

We disagree with the commenter's view of the work involved in determining whether a petition meets the regulatory requirements. Processing a petition for a deferment is time-consuming, as there are several steps involved in processing the document, including verifying the reason for the deferment. BLM must issue a formal decision and properly note the official records, costing the BLM both staff time and expenditure of operations funds.

A commenter opposed the proposed fees for non-patent validity exams, stating that these reports are being initiated by the agency to challenge the validity of the claim.

It is BLM's responsibility under its regulations to confirm the validity of a claim, including making a common variety determination, before allowing operations to proceed on withdrawn or segregated land, and in circumstances where the mineral claimed may not be locatable. See 43 CFR sections 3809.100 and 3809.101. The mining claimant is the beneficiary, as the examination enables BLM to act on the application.

A commenter expressed concern that the proposed rule indicates that BLM is going to perform mineral validity exams for most PoOs and Notices.

As discussed earlier in this preamble, we have clarified section 3800.5 to address this concern. Nothing in this rule changes BLM's policies on when it conducts a mineral examination.

A commenter noted that DOI published new policies on NEPA recently. They stated that in view of these policies and procedures, if BLM proceeds with this proposal for case-by-case fees for processing PoOs requiring preparation of an EIS, BLM needs to ensure that it will comply with its own policies and procedures implementing NEPA.

This rule does not affect BLM's obligation to comply with NEPA. BLM's policies concerning NEPA compliance are controlled by the regulations and guidelines issued by the Council on Environmental Quality, applicable Departmental policy, and other applicable law.

A commenter questioned the interplay between the proposed rule at section 3800.5(b) and the current regulations at section 3809.101. The commenter stated that under the proposed rule, if the applicant believes that uncommon variety minerals exist on its claim, it must first pay a case-by-case processing fee to conduct a validity examination as well as pay a processing fee on a case-by-case basis for processing a PoO. The commenter stated that discovery of minerals falling outside the ''common variety mineral''

classification should exempt the claimant from the requirement of a validity examination, and that the final rule should clarify this situation.

This rule does not impose a fee for processing PoOs that do not require an EIS. BLM would require the applicant to pay a case-by-case fee for a common variety determination under 43 CFR 3809.101 only when a question exists as to whether the mineral to be extracted is locatable under the Mining Law of 1872. If the claimant submits sufficient information to BLM that the mineral material is uncommon or that there is clearly a discovery of a valuable mineral deposit upon the claims, then the issue may be resolved without proceeding to a formal mineral examination. In this instance, the case-by-case cost will be minimal.

A commenter asked BLM to provide assurances that we will not decide that all PoOs require an EIS merely to allow BLM to recoup all its processing costs.

BLM is not revising the existing procedures and protocols for determining if an EIS is needed. Existing Council on Environmental Quality, DOI, and BLM guidance determines when an EIS is required.

A commenter stated that BLM might use these new fees as an administrative tool to drive out holders of valid existing rights under the Mining Law.

BLM does not believe this rule will adversely affect those who hold valid existing rights to any significant degree. The rule is not intended to deny or extinguish prior existing rights. These fees are set at reasonable levels based on the FLPMA Section 304(b) factors as explained in the preamble of the proposed rule. (70 FR 41537–41543). For a discussion of the possible impact of this rule on the validity of mining claims, see 70 FR 41538.

A commenter stated that imposing a mineral patent adjudication fee of $2,290 where none had been required is not reasonable. Several other commenters objected to the fee structure proposed for mineral patent applications, saying that a fixed fee for a patent application regardless of the number of claims is unfair to smaller operations involving fewer than 40 claims. Likewise, they contended that it unfairly benefits large operators that apply for patents on large claim blocks. The comment concluded that BLM should retain the current ''sliding scale'' fee.

In response to these comments, we amended the mining claim patent application adjudication fee so that patent applications covering 10 or fewer claims will be charged only half the cost recovery fee that applications with more than 10 claims will be charged. We selected the 10-claim threshold because that is the number Congress chose to define the class of miners who may perform assessment work in lieu of paying the claim maintenance fee. The adjudication fee in the proposed rule was a fixed fee based on a weighted average of BLM's adjudication costs. We believe that the commenters may have a valid concern and that it may be more reasonable to base the adjudication fees on the per claim costs depending on how many claims are included in an application. BLM plans to reassess its costs of adjudication and may propose a revision to this fee in the future. In this final rule, we decided that it was reasonable to phase in the adjudication fee for patent applications that contain 10 or fewer claims. A discussion of phasing in fees is contained in the preamble to the proposed rule at 70 FR 41533. This rule contains the first step of this phased-in fee.

A commenter said the fact that acquiring a patent is voluntary and not required by law does not justify imposing a fee.

We agree that the mere fact that acquiring a patent is voluntary is not a justification for requiring a processing fee. All processing fees in this rule, including those related to patent applications, are based on special benefits to identifiable beneficiaries beyond those provided to the general public. BLM's review of a patent application provides a special benefit to the applicant.

The commenter asked that the final rule clarify whether subpart 3809 notices are exempt from fees because they are not Federal actions.

Under this final rule, we are not charging fees for reviewing notices except where a validity examination is performed. As explained in Solicitor's Opinion M–36987 (Dec. 5, 1996) at page 25, ''[f]iling a notice under this section triggers agency review, which provides a special benefit to an identifiable recipient. BLM thus has authority to recover the agency costs of processing notices * * *.'' However, under section 3800.5(b) of the final rule, we are only exercising this authority in the limited context of validity examinations performed in connection with notices.

A commenter said that BLM's proposed fixed fees, such as $2,290 for Mineral Patent Adjudication, that are not appealable violate their right to due process, and non-appealable fees must be set at a low and reasonable amount.

BLM disagrees that the fixed fees violate due process. The fees were published in a proposed rule that allowed for public comment, and this final rule, including the fixed fees, is subject to challenge. The fee for a mineral patent adjudication is based on BLM's average costs. In the preamble to the proposed rule, we listed the processing steps involved in a mineral patent adjudication (70 FR 41539). As explained earlier in this preamble, in response to other comments, we have revised the final rule to phase in the processing fee for mineral patent adjudications that include 10 or fewer claims.

One commenter raised a question regarding how BLM should proceed in a specific situation in which an escrow account was set up under 43 CFR part 3809.

The comment addressed a hypothetical factual dispute following a specific IBLA decision and was not directly related to the processing fees imposed by this rule.

A commenter stated that the cost recovery regulations would result in sanctions or penalties on persons who propose mining operations rather than charging mineral claimants for special benefits.

The fees in this rule are not penalties. They are intended to recover BLM's reasonable costs of processing associated with special benefits to identifiable beneficiaries and are recoverable under FLPMA and the IOAA.

A commenter stated that most of the costs the rule would recover are the result of laws and regulations specifically created to protect the public. Therefore, according to the commenter, the public should be paying these costs with their tax dollars.

As discussed earlier in this preamble, the actions for which BLM will recover costs under this rule are undertaken as a direct result of an application that will provide a special benefit to the applicant. Any incidental benefit that BLM's processing actions may also provide to the public was considered as part of BLM's consideration of the FLPMA reasonableness factors for the fixed fees, and will be considered on an individual basis for the case-by-case fees.

One commenter supported fee increases, saying that taxpayers should not subsidize mining and mineral companies. The commenter also asserted that the 1872 Mining Law should be replaced with new provisions requiring mining companies to pay the full cost of associated expenses when they benefit from mining activity.

This rule implements recovery of some of the costs of processing documents associated with mineral activities on the public lands. It is not

necessary to change the 1872 Mining Law to implement these cost recovery fees.

A commenter stated that BLM should remove section 3000.11, asserting that the inadequacy of BLM's funding should not prevent an applicant's document from being processed.

The commenter appears to have misinterpreted section 3000.11(b)(4)(ii), which provides that if BLM determines that a case-by-case fee will be set at an amount less than BLM's actual costs due to the FLPMA reasonableness factors, and BLM does not have sufficient appropriated funds available to process the document immediately, an applicant has the option of paying BLM's actual costs (unreduced by FLPMA factor considerations), which would enable BLM to process the document without waiting for additional appropriated funds. If an applicant does not wish to pay actual costs, BLM will process the document as soon as it is able. We do not expect that this situation will arise often. Many companies now pay actual costs for the preparation of environmental studies in connection with an application. We included this option to allow applicants to continue that practice if they wish to do so.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

OMB has determined that this final rule is a significant regulatory action under Executive Order 12866. BLM has determined that the 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 rule. For instructions on how to view a copy of the analysis, please contact one of the persons list under **FOR FURTHER INFORMATION CONTACT**.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This 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 rule.

In addition, this final rule does 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. This occurs 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, 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.

The OIG reports documented the budgetary impact of delaying collection of fees to reimburse agency costs, and strongly admonished BLM to collect the fees in this final rule. Finally, this rule will not raise novel legal issues. The minerals industry may object, but the legal issues are not novel. Circular A–25 and the Departmental Manual require the collection of processing fees. The rule does implement new policy for the minerals programs.

A commenter stated that the proposed rule violates Executive Order 12866 by ignoring the ''costs and benefits'' of mineral development, such as the huge financial risk to the developer and huge benefits these minerals provide to society.

We disagree that BLM ignored the costs and benefits of this rule. We have estimated the cost of the rule, in the form of higher fees, to be approximately $7 million annually. BLM has also concluded that there would be no measurable reduction in economic activity due to these fees. BLM also noted that by instituting cost recovery, the rule ensures that the applicants bear the cost of processing applications, rather than the general public. The preamble to the proposed rule explained that waiving or reducing these fees would simply mean that United States taxpayers would bear the costs that the applicant who directly benefits was not bearing. The benefits to the taxpaying public that underlie the statutory authorizations and policy mandates for cost recovery, weighed against the costs to the applicants who benefit from the processing activities, in light of BLM's determination that the fees would cause no measurable reduction in economic activity, support this final rule.

Regulatory Flexibility Act

This 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 was not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this discussion, 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 most of the operators that BLM works with in the onshore minerals programs to be small entities. BLM notes that this rule does not apply to service industries, for which the SBA has a different definition of ''small entity.''

BLM is aware that this 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 final rule, except for mineral materials, when the total fee increases 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 the increases will have no measurable effect on these entities. We completed a threshold analysis, which is available for public review at the address stated under **ADDRESSES.** The Threshold Analysis BLM prepared for the proposed rule of July 19, 2005, has been updated to reflect changes made in this final rule. These included adjusting the fixed fees and estimated case-by-case costs for inflation, and incorporating more current firm and receipt data published by the U.S. Bureau of Census, U.S. Minerals Management Service, and BLM into the analysis.

In the area of mineral materials, the fee increases only apply to exclusive mineral materials sales. The fee increases do not apply to nonexclusive sale applications (community pits and common use areas) or to free use permit applications. The fee increases are estimated to be 12.82 percent of the reported production value for exclusive mineral materials sales. (In the analysis conducted for the proposed rule, we reported the fee increases for exclusive

mineral materials sales to be 25.65 percent of the reported production data for 1997. For the revised analysis for the final rule, we were able to obtain 2002 production data. This dramatic reduction to 12.82 percent is due to the significant increase in mineral materials production value coming from Federal lands. In 1997, mineral material production value from Federal lands was approximately $3.6 million. For 2002, the reported production value was over $7.4 million.) Without further analysis, this percentage might 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 fee increases is that mineral materials are sold for fair market value. To the extent the fees in the final rule 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 potentially resulting in no effect on operators, including small entities, on Federal lands.

We note that in all areas, most of the fees are charged only once and, 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 reflect the new or increased costs.

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).

One commenter asserted that BLM's Threshold Analysis should have looked at Internal Revenue Service (IRS) data to determine the profit margin for different mineral sectors, which could be used to determine the ability of small entities to pay the new fees and thus whether the rule would have a significant impact on small entities. The commenter requested that BLM withdraw the proposed rule and re-conduct its Threshold Analysis.

In response to this comment, between the publication of the proposed rule and the publication of this final rule, BLM reviewed the most recent IRS tax return information for corporations operating within the mining sector. The IRS data was not broken down by number of employees and thus could not be exactly correlated with the SBA definition of small entities. The data could, however, be analyzed on the basis of reported assets, and we therefore evaluated that data and compared the fee increases to reported net income by groupings based on dollar value of assets.

The analysis we originally performed, based on a comparison of fee increases to receipts, showed that, for all minerals areas except mineral materials, the fee increases in this rule are less than 1% of receipts from Federal lands. The more recent review, based on similar IRS data, corroborates our conclusion that fees will not have a significant impact on a substantial number of small entities. The complete Threshold Analysis is available for public review at the address stated under **ADDRESSES**. Some commenters expressed their opposition to the proposed rule because they asserted that it would place an unfair regulatory and financial burden on small miners. Some commenters asserted that BLM's conclusion that the proposed rule would not have a significant economic impact on a substantial number of small entities was based on an inadequate, incomplete, and flawed Threshold Analysis, and therefore a Regulatory Flexibility Analysis is required.

We have analyzed the impact of this rule on small miners involved in the exploration and development of energy and mineral resources on Federal lands based on the Small Business Administration's (SBA) guidance, including SBA's definition of small entities. In the analysis we first identified number of firms and reported receipts by firm size (based on number of employees) for entities involved in the exploration and extraction of energy and mineral resources in the United States. This data enabled us to identify the number of firms that qualify as small entities under the SBA definition and the receipts of those firms. This national data was obtained from the most recent industrial statistical data available from the U.S. Census Bureau (*http://www.census.gov/csd/susb*).

Next, we identified receipts generated from energy and mineral extraction from Federal lands. Receipt data for leasable resources (oil, gas, geothermal, coal, and other non-energy resources) was obtained from the U.S. Department of the Interior, Minerals Management Service, Minerals Revenue 2000, Report of Receipts from Federal and Indian Leases (*http://www.mrm.mms.gov/Stats/mr.htm*), and Reported Royalty Revenue Statistics for Fiscal Years 2001 through 2004. Mineral materials sales data was obtained from the U.S. Department of the Interior, Bureau of Land Management, Public Land Statistics, 2002, Disposition of Mineral Materials (*http://www.blm.gov/natacq/pls02/*). BLM does not systematically collect production or production value information for mining activity authorized under the Mining Law of 1872. Thus, we relied on estimates of production value for locatable minerals in our analysis.

Based on the national numbers of entities involved in the mining sector and the number of those that would be classified as small entities by SBA, we projected the percentage of revenue that would be attributable to small entities operating on Federal lands. To measure the annual total fee increase of the fees we relied on the increases in the fixed fees, estimated increases for the case-by-case fees, and projections of the annual number of filings of each type of application. Finally, we compared these total fee increases to the receipt information for small mining entities operating on Federal lands.

Based on this analysis, we concluded that the impact of this rule will not be disproportionately borne by small entities, including small miners, and the impact of fees on small entities, as defined by the SBA, will not have a significant impact on a substantial number of small businesses. In addition, the economic impact of the rule is not expected to be significant. We estimate the cost of the rule, in the form of higher fees, will be approximately $7 million annually. Because BLM has determined and certified that the rule will not significantly affect a substantial number of small entities, it is not necessary to conduct a Regulatory Flexibility Analysis.

One commenter urged BLM to establish limits on fees based on the size of the company.

BLM's Regulatory Flexibility Analysis examined the impact of fees on small businesses as defined by the SBA and concluded that they will not have a significant impact on a substantial number of small businesses. Therefore, BLM sees no need to institute separate fees based on the size of the company. However, the fees with the highest increases are generally those determined on a case-by-case basis. If an entity proposes an operation that will be subject to a case-by-case fee, the applicant will have the opportunity to request that BLM consider a lower fee based on the applicable FLPMA factors. In addition, for fees established on a case-by-case basis, the applicant may appeal BLM's decision concerning the

fee amount if the applicant thinks it is unreasonable.

A commenter opposed BLM's statement in the preamble that ''[t]he 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.'' (70 FR 41544) The comment stated that this indicates that BLM still does not understand the requirements of the RFA and SBRFA, and questioned the validity of the RFA.

The statement cited in the comment was not part of BLM's Regulatory Flexibility Act Threshold Analysis, but was included in the preamble to the 2005 proposed rule. The statement was intended to express the logical assumption that patent applications containing fewer claims will most likely require less time for BLM to conduct the mineral examination, resulting in lower mineral examination costs.

A commenter observed that the Threshold Analysis states that ''significance must be determined on a case-by-case basis. Significance should not be viewed in absolute terms, but should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' The commenter submitted that BLM ignored this statement in preparing its RFA Threshold Analysis and reached the incorrect conclusion that a Regulatory Flexibility Analysis is not required. The commenter believes BLM's use of production value to measure ''significance'' leads to a flawed analysis, because all the fees in the proposed rule would be imposed and collected many years before a small entity would realize production value from a mine. Thus, according to the commenter, production value is an inappropriate measure of significance, and using production value as a ''proxy'' for a small entity's ability to pay skews the analysis toward a finding of ''no significant impact.''

The Threshold Analysis prepared by BLM to assess the significance of the rule on small entities does not rely on absolute terms or values. We did estimate the fee increases in absolute terms. However, we also compared those absolute fee increases to the firms' reported production values. By viewing the fee increases in relation to reported production values, by entity size, we were able to arrive at a measure of the relative significance of the effect of the fee increases on different size business entities.

We believe that production value is a reasonable measure of the significance of the impact on small miners. Revenue generated from the production of discovered resources is ultimately the source of income for any entity to cover all of its costs, including processing fees. While the commenter is correct that many fees must be paid well in advance of production, in this regard fees are no different from other costs that an entity incurs well in advance of production, such as exploration costs and many capital costs.

A commenter stated that many individual miners or companies have significantly fewer than 500 employees, and that BLM did not analyze the impact of its proposed rule on what amounts to a significant population of the U.S. mining community.

As discussed above, the Threshold Analysis differentiated between receipt information reported for entities with fewer than 500 employees and those entities with 500 or more employees. This is the SBA definition of a small entity, which is the definition that BLM is required to use in its analysis. At the recommendation of a commenter, we also reviewed IRS net income information in the revised analysis. However, as discussed earlier, the additional analysis is based on entities' assets, not number of employees as required by SBA, because of the way the IRS data was broken down. However, the subgroup of entities with less than $500,000 in assets is likely to be the smallest of those entities that would be classified as small entities by SBA. The analysis of this subgroup corroborated our conclusion that fees will not have a significant impact on a substantial number of small entities.

A commenter suggested that BLM needs to include copper, silver, lead, zinc, bentonite, and other locatable minerals in its Threshold Analysis.

In our analysis, we included all locatable minerals. We did not differentiate between industrial locatable minerals and metallic locatable minerals, or by specific mineral or commodity. The commenter may have been confused because we used an example that mentioned gold. All firms exploring and developing locatable minerals will be subject to the same fees, regardless of the mineral located.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The rule:

- Will not have an annual effect on the economy greater than $100 million;
- Will not result in major cost or price increases for consumers, industries, government agencies, or regions;
- Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

BLM completed a Threshold Analysis for this rule, which is available for public review at the address stated under **ADDRESSES**.

Unfunded Mandates Reform Act

BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 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 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 (Takings)

The final 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 rule does not have significant effects on federalism, and therefore a federalism assessment is not required. The 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 direct, substantive, or significant 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 final rule does not include policies that have Tribal implications. A key factor is whether the rule has substantial direct

effects on one or more Indian Tribes. 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.

A few commenters expressed concern that the rule will unduly burden the judicial system contrary to Executive Order 12988. They said there would be an increase in IBLA appeals based on the increased case-by-case fees, such as fees associated with validity exams.

Executive Order 12988 does not apply to administrative appeals to the IBLA. Moreover, BLM does not believe that the rule will result in a significant increased burden on the judicial system. Although there is the possibility that appeals to IBLA will increase, especially during early implementation of the final rule, the potential number of administrative appeals does not justify removing case-by-case fees from the rule.

Paperwork Reduction Act

This rule does not contain information collection requirements that 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;

1004–0034, 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;

1004–0169, Use and Occupancy;

1004–0185, Oil and Gas Exploration, Leasing, and Drainage Operations; and

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. BLM will file change notices with OMB to reflect the new or changed fees established by the final rule.

National Environmental Policy Act

BLM has determined that this 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 NEPA, pursuant to 516 Departmental Manual (DM) 2.3A and 516 DM 2, Appendix 1, Item 1.10.

In addition, the 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 DOI, 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 been found to have no such effect in procedures adopted by a Federal agency and therefore require neither an EA nor an EIS.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM finds that this final 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 rule.

Several commenters asserted that the proposed regulation is contrary to Executive Order 13211 because the added financial disincentives could severely affect the supply and distribution of oil and gas, coal, and other energy resources. Some commenters said the proposed rule conflicts with E.O. 13211 because implementing these fee increases would delay energy projects. Another commenter said that E.O. 13211 requires BLM to prepare statements of Adverse Energy Effects.

BLM disagrees. E.O. 13211 requires a Statement of Energy Effects for those matters identified as significant energy actions. The Order defines a significant energy action as one that is (1) both a significant regulatory action under E.O. 12866 and likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This rule meets neither of those criteria. It has not been designated by OIRA as a significant energy action. Nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy. As discussed earlier in this preamble and in greater detail in the Regulatory Flexibility Act Threshold Analysis prepared in connection with this rule, any financial disincentives from this rule will be very small. Given the relatively high economic value associated with the various energy and mineral filings affected by this rule, we do not expect that the fees in this rule will cause an entity to cease or significantly alter its operations. Nor do we expect the fees to delay energy projects. The procedures in the rule for case-by-case fees provide that projects can move forward even while a fee is being revised or appealed.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with E.O. 13352, BLM has determined that this rule is purely administrative and does not affect cooperative conservation. This rule takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources because it does not interfere with such interests. It is solely a Federal responsibility not involving state or local participation, and has no impact on public health and safety.

Authors

The principal authors of this final rule are: William Gewecke, Gordon Hansen, Paul McNutt, Roger Haskins, and Stephen Salzman of the Fluid and Solid Minerals Groups, assisted by the Regulatory Affairs Group, Bureau of Land Management, DOI, and the Office of the Solicitor, DOI.

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, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3200

Environmental protection, Geothermal energy, Government contracts, Mineral royalties, 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 practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, 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.

Dated: September 15, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and the authorities stated below BLM amends parts 3000, 3100, 3110, 3120, 3130, 3200, 3470, 3500, 3600, 3800, 3830, 3833, 3835, 3836, 3860, and 3870 of Title 43 of the Code of Federal Regulations as set forth below:

Subchapter C—Minerals Management (3000)

PART 3000—MINERALS MANAGEMENT GENERAL

■ 1. Revise the authority citation for part 3000 to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 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) *Setting fees.* 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 of 1976 (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. 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 § 3000.11.

(b) *Conditions for filing.* 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 § 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) *Periodic adjustment.* We will periodically adjust fees established in this subchapter according to change in 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) *Timing of fee applicability.* (1) For a document BLM receives before November 7, 2005, we will not charge a fixed fee or a case-by-case fee under this subchapter for processing that document, except for fees applicable under then-existing regulations.

(2) For a document BLM receives on or after November 7, 2005, you must include required fixed fees with documents you file, as provided in § 3000.12(a) of this chapter, and you are subject to case-by-case processing fees as provided in § 3000.11 of this chapter and under other provisions of this chapter.

■ 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, but we will not stop ongoing processing unless you do not pay in accordance with paragraph (b)(5) of this section.

(ii) If the fee you would pay under this paragraph (b)(4) 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.

(iii) 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 the regulations in part 4, subpart E, of this title. You may also appeal any determination BLM makes under paragraph (a) of this section that a document designated for a fixed fee will be processed as a case-by-case fee. 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.

■ 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 and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule 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, 3110, 3120, 3130):	
Noncompetitive lease application	$335
Competitive lease application	130
Assignment and transfer	75
Overriding royalty transfer, payment out of production	10
Name change, corporate merger, or transfer to heir/devisee	175
Leases consolidation	370
Lease renewal or exchange	335
Lease reinstatement, Class I	65
Leasing under right-of-way	335
Geothermal (Part 3200):	
Noncompetitive lease application	335
Competitive lease application	130
Assignment and transfer of record title or operating right	75
Name change, corporate merger or transfer to heir/devisee	175
Lease consolidation	370
Lease reinstatement	65
Coal (Parts 3400, 3470):	
License to mine application	10
Exploration license application	275
Lease or lease interest transfer	55
Leasing of Solid Minerals Other Than Coal and Oil Shale (Part 3500):	
Applications other than those listed below	30
Prospecting permit application amendment	55
Extension of prospecting permit	90
Lease renewal	430
Mining Law Administration (Parts 3800, 3830, 3850, 3860, 3870)	
Notice of Location *	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing (§ 3835.30)	10
Deferment of Assessment Work	90
Mineral Patent Adjudication	2,520 (more than 10 claims)
	1,260 (10 or fewer claims)
Adverse claim	90
Protest	55

*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 $15 under in the final rule making the total fee $170.

(b) The amount of a fixed fee is not subject to appeal to the Interior Board of Land Appeals pursuant to part 4, subpart E, of this title.

PART 3100—OIL AND GAS LEASING

■ 5. Revise the authority citation for part 3100 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 we determine 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 § 3000.12 of this chapter. * * *

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 for assignments and transfers found in the fee schedule in § 3000.12 of this chapter. Each request for a transfer to an heir or devisee, request for a change of name, or notification of a corporate merger under § 3106.8, must include payment of the processing fee for name changes, corporate mergers or transfers to heir/devisee found in the fee schedule in § 3000.12 of this chapter. Each transfer of overriding royalty or payment out of production must include payment of the processing fee for overriding royalty transfers or payments out of productions found in the fee schedule in § 3000.12 of this chapter 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 for assignments and transfers found in the fee schedule in § 3000.12 of this chapter for each such interest transferred for each lease.

■ 9. Amend § 3106.8–1(a) by removing the second 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 for transfers to heir/devisee found in the fee schedule in § 3000.12 of this chapter with your request to transfer lease rights. * * *

* * * * *

■ 10. Amend § 3106.8–2 by removing the second 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 for name change found in the fee schedule in § 3000.12 of this chapter with your notice of name change. * * *

■ 11. Amend § 3106.8–3 by removing the third 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 for corporate merger found in the fee schedule in § 3000.12 of this chapter with your notification of a corporate merger.* * *

Subpart 3107—Continuation, Extension or Renewal

■ 12. Amend § 3107.7 by removing the third 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 payment of the processing fee for lease renewal or exchange found in the fee schedule in § 3000.12 of this chapter. * * *

■ 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 for lease renewal or exchange found in the fee schedule in § 3000.12 of this chapter.

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 for lease reinstatement, Class I, found in the fee schedule in § 3000.12 of this chapter, 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 for leasing under right-of-way found in the fee schedule in § 3000.12 of this chapter. 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. Revise the authority citation for part 3110 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 payment of the first year's rental and the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter.

* * * A noncompetitive offer to lease a future interest applied for under § 3110.9 must include the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter. * * *

* * * * *

PART 3120—COMPETITIVE LEASES

■ 18. Revise the authority citation for part 3120 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 for competitive lease applications found in the fee schedule in § 3000.12 of this chapter for each parcel.

* * * * *

PART 3130—OIL AND GAS LEASING; NATIONAL PETROLEUM RESERVE, ALASKA

■ 20. Revise the authority citation for part 3130 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 applications found in the fee schedule in § 3000.12 of this chapter 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)(1) * * *

(2) An application for approval of any instrument that the regulations require you to file must include the processing fee for assignments and transfers found in the fee schedule in § 3000.12 of this chapter. Any document that the regulations in this part do not require you to file, but that you submit for record purposes, must also include the processing fee for assignments and transfers found in the fee schedule in § 3000.12 of this chapter for each lease affected. * * *

* * * * *

■ 23. Amend § 3135.1–6(a) by adding a sentence at the end to read 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 § 3000.12 of this chapter.

* * * * *

PART 3200—GEOTHERMAL RESOURCE LEASING

■ 24. Revise the authority citation for part 3200 to read as follows:

Authority: 30 U.S.C. 1001–1028; and 43 U.S.C. 1701 *et seq.*

Subpart 3204—Noncompetitive Leasing

■ 25. 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 for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter for each lease offer, and an advance rent in the amount of $1 per acre (or fraction of an acre). * * *

Subpart 3205—Competitive Leasing

■ 26. 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 for competitive lease applications found in the fee schedule in § 3000.12 of this chapter; and

* * * * *

Subpart 3210—Additional Lease Information

■ 27. 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 processing fee for lease consolidations found in the fee schedule in § 3000.12 of this chapter with your request to consolidate leases.

Subpart 3211—Fees, Rent, and Royalties

■ 28. Amend § 3211.10 by:

■ A. Revising the section heading;

■ B. Revising paragraph (b) introductory text;

■ C. Revising paragraph (b) table heading and entries (1) and (3);

■ D. In paragraph (b), redesignate the table entries (4) through (9) as (5) through (10); and add a new 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:

FEES, RENT, AND ROYALTIES

Type	Competitive leases	Noncompetitive leases
1. Lease Application Processing fee	As found in the the fee schedule in § 3000.12 of this chapter.	As found in the fee schedule in § 3000.12 of this chapter. (includes future interest leases)
*	*	*
3. Transfer of Record Title or Operating Rights	As found in the fee schedule in § 3000.12 of this chapter.	As found in the fee schedule in § 3000.12 of this chapter.
4. Transfer of Interest to Heir or Devisee, Name Change, or Notification Corporate Merger.	As found in the fee schedule in § 3000.12 of this chapter.	As found in the fee schedule in § 3000.12 of this chapter.

* * * * *

Subpart 3213—Relinquishment, Termination, Cancellation, and Expiration

■ 29. 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 for lease reinstatement found in the fee schedule in § 3000.12 of this chapter.

Subpart 3216—Transfers

■ 30. Revise § 3216.14 to read as follows:

§ 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 § 3000.12 of this chapter. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit 3 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 § 3000.12 of this chapter.
(b) Operating rights	Yes	3000–3(a)	2 executed copies	As found in the fee schedule in § 3000.12 of this chapter.
(c) Estate transfers	No	N/A	1 List of Leases	As found in the fee schedule in § 3000.12 of this chapter.
(d) Corporate mergers	No	N/A	1 List of Leases	As found in the fee schedule in § 3000.12 of this chapter.
(e) Name changes	No	N/A	1 List of Leases	As found in the fee schedule in § 3000.12 of this chapter.

Group 3400—Coal Management

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

■ 31. Revise the authority citation for part 3470 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

■ 32. 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 § 3000.12 of this chapter. 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 § 3000.12 of this chapter.

(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 § 3000.12 of this chapter.

(d) BLM will charge applicants for a royalty rate reduction a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

(e) BLM will charge applicants for logical mining unit formation or modification a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

(f) The applicant who nominates a tract for a competitive lease sale must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by the provisions below. BLM will include in the sale notice under § 3422.2(b)(9) of this chapter a statement of the total cost recovery fee paid to BLM by the applicant up to 30 days before the competitive lease sale. The cost recovery process for a competitive coal lease follows:

(1) The applicant nominating the tract for competitive leasing must pay the cost recovery amount before BLM will publish a notice of the competitive lease sale;

(2) Before the lease is issued:

(i) The successful bidder, if someone other than the applicant, must pay to BLM the cost recovery amount specified in the sale notice; and

(ii) The successful bidder must pay all processing costs BLM incurs after the date of the sale notice;

(3) If the successful bidder is someone other than the applicant, BLM will refund to the applicant the amount paid under paragraph (f)(1) of this section; and

(4) If there is no successful bidder, the applicant remains responsible for all processing fees.

(g) BLM will charge applicants for modification of a coal lease a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

§§ 3473.2–1 and 3473.2–2 [Removed]

■ 33. Remove §§ 3473.2–1 and 3473.2–2.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

■ 34. Revise the authority citation for part 3500 to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1701 *et seq.*; 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

■ 34. Amend § 3501.1(e) by adding a new first sentence to read as follows:

§ 3501.1 What is the authority for this part?

* * * * *

(e) * * * Section 304 of 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

■ 35. Add § 3504.10 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 § 3000.12 of this chapter 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 Sec. 3000.11 of this chapter.
(2) Prospecting permit application amendment	As found in the fee schedule in § 3000.12 of this chapter.
(3) Prospecting permit extension	As found in the fee schedule in § 3000.12 of this chapter.
(4) Preference rigth lease application	Case-by-case basis as described in § 3000.11 of this chapter.
(5) Successful competitive lease application	Case-by-case basis as described in § 3000.11 of this chapter, and modified by §§ 3508.14 and 3508.21.
(6) Lease renewal application	As found in the fee schedule in § 3000.12 of this chapter.
(7) Application to waive, suspend, or reduce your rental, minimum royalty, or royalty rate.	Case-by-case basis as described in § 3000.11 of this chapter.
(8) Future or fractional interest lease application	Case-by-case basis as described in § 3000.11 of this chapter.

■ 36. Amend § 3504.12 by revising the heading and paragraph (a) to read as follows:

§ 3504.12 What payments do I submit to BLM and what payments do I submit 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 U.S. 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

■ 37. Revise § 3505.12 to read as follows:

§ 3505.12 How do I obtain a prospecting permit?

Deliver 3 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 § 3000.11 of this chapter. For more information on fees and rentals, see subpart 3504 of this part.

■ 38. Amend § 3505.30 by removing the last sentence and by revising the third 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 for prospecting permit application amendments found in the fee schedule in § 3000.12 of this chapter with your amended application.

■ 39. 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.

■ 40. 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]

■ 41. Section 3505.51 is removed.

■ 42. 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 for extensions of prospecting permits found in the fee schedule in § 3000.12 of this chapter 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

■ 43. 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 § 3000.11 of this chapter.

Subpart 3508—Competitive Lease Applications

■ 44. Amend § 3508.12 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) as follows:

§ 3508.12 How do I get a competitive lease?

* * * * *

(b) Before BLM publishes a notice of lease sale, pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by §§ 3508.14 and 3508.21. If someone else is the successful bidder, BLM will refund you the amount you paid under this paragraph. If there is no successful bidder, you remain responsible for all processing fees.

* * * * *

■ 45. Amend § 3508.14 by adding a new paragraph (b)(7) to read as follows:

§ 3508.14 How will BLM publish the notice of lease sale?

* * * * *

(b) * * *

(7) If the tract being offered for competitive sale was nominated by an applicant, a statement of the total cost recovery fee paid to BLM by the applicant under § 3508.12 up to 30 days before the competitive lease sale.

■ 46. Amend § 3508.21 by removing the word ''and'' at the end of paragraph (a)(4), by removing the period and adding in its place a semi-colon at the end of paragraph (a)(5), and adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 3508.21 What happens if I am the successful bidder?

(a) * * *

(6) If you were not the applicant, pay the cost recovery fee specified in the lease sale notice; and

(7) Pay all processing costs BLM incurs after the date of the sale notice.

* * * * *

Subpart 3509—Fractional and Future Interest Lease Applications

■ 47. Amend § 3509.16 by removing the second sentence and adding a new sentence at the end 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 § 3000.11 of this chapter.

■ 48. 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.

■ 49. Amend § 3509.46 by removing the second sentence and adding a new sentence at the end 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 § 3000.11 of this chapter.

■ 50. 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

■ 51. Amend § 3511.27 by revising the last sentence to read as follows:

§ 3511.27 How do I renew my lease?

* * * Send us 3 copies of your application together with the processing fee for lease renewal found in the fee schedule in § 3000.12 of this chapter 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

■ 52. 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 § 3000.11 of this chapter.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL

■ 53. Revise the authority citation for part 3600 to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1701 *et seq.*; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

■ 54. 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 as provided in § 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.

■ 55. Amend § 3602.31 by:

■ A. Revising the section heading;

■ B. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively; and

■ C. Adding new paragraph (b) to read as follows:

§ 3602.31 What volume limitations and fees generally apply to noncompetitive mineral materials sales?

* * * * *

(b) BLM will charge the purchaser a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

* * * * *

■ 56. Amend § 3602.42 by redesignating paragraphs (b)(8) through (b)(15) as paragraphs (b)(9) through (b)(16), respectively, and adding a new paragraph (b)(8) to read as follows:

§ 3602.42 How does BLM publicize competitive mineral materials sales?

* * * * *

(b) * * *

(8) If the sale is by request, the total cost recovery fee paid to BLM by the applicant up to 21 days before the sale;

* * * * *

■ 57. Amend § 3602.43 by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and adding a new paragraph (a) to read:

§ 3602.43 How does BLM conduct competitive mineral materials sales?

(a) The applicant requesting a mineral materials sale must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by the provisions in this section and in § 3602.42(b)(8). The cost recovery process for a competitive mineral materials sale follows:

(1) The applicant requesting the sale must pay the cost recovery fee amount before BLM will publish a sale notice.

(2) Before the contract is issued:

(i) The successful bidder, if someone other than the applicant, must pay to BLM the cost recovery amount specified in the sale notice; and

(ii) The successful bidder must pay all processing costs BLM incurs after the date of the sale notice.

(3) If the successful bidder is someone other than the applicant, BLM will refund to the applicant the amount paid under paragraph (a)(1) of this section.

* * * * *

■ 58. 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 § 3000.11 of this chapter and § 3602.43.

■ 59. 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 § 3000.11 of this chapter.

Group 3800—Mining Claims Under the General Mining Laws

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

■ 60. Revise the authority citation for part 3800 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; 43 U.S.C. 1201 and 43 U.S.C. 1701 *et seq.*

■ 61. 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 § 3000.11 of this chapter whenever BLM determines that consideration of the plan of operations requires the preparation of an Environmental Impact Statement.

(b) An applicant for any action for which a mineral examination, including

a validity examination or a common variety determination, and their associated reports, is performed under § 3809.100 or § 3809.101 of this part must pay a processing fee on a case-by-case basis as described in section 3000.11 of this chapter for such examination and report.

(c) An applicant for a mineral patent under part 3860 of this chapter must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter for any validity examination and report prepared in connection with the application.

(d) An applicant for a mineral patent also is required to pay a processing fee under § 3860.1 of this chapter.

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

■ 62. Revise the authority citation for part 3830 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, 1701 *et seq.*; 44 U.S.C. 3501 *et seq.*; 115 Stat. 414.

■ 63. 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 notices of location found in the fee schedule in § 3000.12 of this chapter.	No.
	(ii) A one-time $30 location fee	No.
	(iii) An initial $125 maintenance fee	No.
(b) Amending a mining claim or site location (§ 3833.20)	The processing fee for amendment of location found in the fee schedule in § 3000.12 of this chapter.	No.
(c) Transferring a mining claim or site (§ 3833.30)	The processing fee for transfer of mining claim/site found in the fee schedule in § 3000.12 of this chapter.	No.
* * *	* * *	*
(e) Recording an annual FLPMA filing (§ 3835.30)	The processing fee for recording an annual FLPMA filing found in the fee schedule in § 3000.12 of this chapter.	No.
(f) Submitting a petition for deferment of assessment work (§ 3836.20).	The processing fee for deferment of assessment work found in the fee schedule in § 3000.12 of this chapter.	No.
* * *	* * *	*

PART 3833—RECORDING MINING CLAIMS AND SITES

■ 64. Revise the authority citation for part 3833 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*, 621–625; 43 U.S.C. 2, 1201, 1457, 1701 *et seq.*; 62 Stat. 162; 115 Stat. 414.

■ 65. 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.

* * * * *

■ 66. 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.

* * * * *

■ 67. Revise § 3833.32(c) to read as follows:

§ 3833.32 How do I transfer a mining claim or site?

* * * * *

(c) For each mining claim or site transferred, each transferee must pay the full processing fee specified in the table of service charges and fees in § 3830.21 of this chapter.

* * * * *

PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES

■ 68. Revise the authority citation for part 3835 to read as follows:

Authority: 30 U.S.C. 22, 28, 28f–28k; 43 U.S.C. 2, 1201, 1457, 1701 *et seq.*; 50 U.S.C. App. 501, 565; 115 Stat. 414.

■ 69. Revise § 3835.32(c) to read as follows:

§ 3835.32 What should I include when I submit an affidavit of assessment work?

* * * * *

(c) A processing fee for each mining claim affected. (See the table of service charges and fees in § 3830.21 of this chapter); and

* * * * *

■ 70. 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 service charges and fees in § 3830.21 of this chapter.)

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

■ 71. Revise the authority citation for part 3836 to read as follows:

Authority: 30 U.S.C. 22, 28, 28b–28e; 43 U.S.C. 2, 1201, 1457, 1701 *et seq.*; 50 U.S.C. App. 501, 565.

■ 72. Amend § 3836.23 by revising paragraph (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 service charges and fees in § 3830.21 of this chapter.)

PART 3860—MINERAL PATENT APPLICATIONS

■ 73. Revise the authority citation for part 3860 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1701 *et seq.*

■ 74. 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 § 3000.12 of this chapter to cover BLM's adjudication costs for the application.

(b) As provided at § 3800.5 of this chapter, BLM will charge a separate processing fee on a case-by-case basis as described in § 3000.11 of this chapter to cover its costs for conducting and preparing the validity examination and report.

Subpart 3862—Lode Mining Claim Patent Applications

■ 75. 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.

Subpart 3863—Placer Mining Claim Patent Applications

■ 76. 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.

Subpart 3864—Millsite Patents

■ 77. 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.

PART 3870—ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

■ 78. Add an authority citation for part 3870 to read as follows:

Authority: 30 U.S.C. 30; 43 U.S.C. 1201, 1457, 1701 *et seq.*

Subpart 3871—Adverse Claims

■ 79. Amend § 3871.1 by revising paragraph (d) as follows:

§ 3871.1 Filing of claim.

* * * * *

(d) Each adverse claim filed must include the processing fee for adverse claims found in the fee schedule in § 3000.12 of this chapter.

Subpart 3872—Protests, Contests, and Conflicts

■ 80. 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 for protests found in the fee schedule in § 3000.12 of this chapter.

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Friday,
October 7, 2005

Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 161

Navajo Partitioned Lands Grazing Permits; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 161

RIN 1076–AE46

Navajo Partitioned Lands Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department), Bureau of Indian Affairs (BIA), is amending its regulations by adding a new part to govern the grazing of livestock on the Navajo Partitioned Land (NPL) of the Navajo-Hopi Former Joint Use Area (FJUA) of the 1882 Executive Order reservation. The purpose of this regulation is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes, while recognizing the importance of livestock in the Navajo way of life.

DATES: Effective January 5, 2006.

FOR FURTHER INFORMATION CONTACT: Archibald H. Wells, Acting Deputy Bureau Director, Trust Services, Attn: Agriculture and Range, Mail Stop 4655–MIB, 1849 C Street, NW., Washington, DC 20240, Telephone 202–208–6464.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Part-by-Part Analysis
IV. Procedural Requirements

I. Background

This regulation is issued to implement the Secretary of the Department of the Interior's (Secretary) responsibilities for the NPL as mandated by the Navajo-Hopi Settlement Act of 1974, 25 U.S.C. 640d–6402–31, as amended by the Navajo-Hopi Indian Relocation Amendments Acts of 1980, 94 Stat. 929, and the Federal court decisions of *Healing* v. *Jones,* 174 F. Supp. 211 (D. Ariz. 1959) (*Healing I*), *Healing* v. *Jones,* 210 F. Supp. 126 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963) (*Healing II*), *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe* v. *Watt,* 719 F.2d 314 (9th Cir. 1983).

This regulation also incorporates the requirements of the American Indian Agricultural Resource Management Act (AIARMA) (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended. The purposes of AIARMA include carrying out the trust responsibility of the United States and promoting self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield; by authorizing the Secretary to take part in the management of Indian agricultural lands with the participation of the beneficial owners of the land in a manner consistent with the trust responsibility of the Secretary and the objectives of beneficial owners; and by providing for the development and management of Indian agricultural land. The AIARMA requires that the Secretary conduct all land management activities on Indian agricultural lands in accordance with agricultural resource management plans, integrated resources management plans, and all tribal laws and ordinances, except where such compliance would be contrary to the trust responsibility of the United States.

The proposed regulation was published in the **Federal Register** on November 12, 2003 (68 FR 64023), with a 90-day public comment period that ended on February 10, 2004. Before the proposed regulation was published, BIA received approval to publish the draft regulation from the Navajo Nation at a meeting held on June 26, 2003, in Window Rock, Arizona.

On October 27, 2004, the Navajo Hopi Land Commission, by a 6–0 vote, passed a resolution recommending concurrence in the final regulation. On February 10, 2005, the Navajo Nation Resources Committee, by a 7–0 vote, recommended concurrence, and referred the final regulation to the Navajo Nation Intergovernmental Relations Committee for final concurrence. On April 8, 2005, the Navajo Nation Intergovernmental Relations Committee, by an 8–0 vote, passed a resolution concurring in and approving the final regulation.

This regulation will become effective 90 days after date of publication in the **Federal Register.**

II. Response to Comments

The Department solicited comments from all interested parties through its publication of the Proposed Rule in the **Federal Register** on November 12, 2003 (68 FR 64023). During the comment period, BIA employees and representatives from the Navajo Nation Resources Committee, the Navajo-Hopi Land Commission Office, the Navajo Nation Department of Agriculture, and the NPL District Grazing Committee members held public meetings in Tonalea, Arizona, on December 10, 2003, and in Pinon, Arizona, on December 11, 2003. These meetings were well attended, and many NPL residents testified in both the English and Navajo languages. A certified Navajo interpreter was present at the meetings to translate comments for the court reporter so that all testimony was recorded.

The Department received a total of 63 comments, representing 53 individuals, on all parts of the proposed rule. The comments were carefully reviewed by the regulation drafting team made up of BIA employees from Washington, DC, and the Navajo Regional Office, attorneys from the Solicitor's Office, and representatives from the Navajo Nation, and depending upon their merit, the Department accepted, accepted with revision, or rejected comments made on each part of the rule. As noted in the part-by-part analysis below, certain sections of the regulation have been clarified in direct response to comments. Additionally, some language has been deleted and/or added to provide for increased clarity and precision. Substantive comments are summarized below.

III. Part-by-Part Analysis

25 CFR Part 16—Navajo Partitioned Lands Grazing Permits

The purpose of this regulation is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes, while recognizing the importance of livestock in the Navajo way of life. This regulation is an addition to the regulations of the Bureau of Indian Affairs governing the grazing of livestock on the NPL of the Navajo-Hopi FJUA of the 1882 Executive Order reservation.

The various subparts of part 161 address the purpose and scope of the NPL grazing permits; the definition of terms; the application of tribal policies and laws pertaining to permits; environmental compliance and management documents required by AIARMA; the process by which carrying capacity and stocking rates are established; permit requirements; eligibility and priority criteria for reissuance of cancelled permits; permit transfer, assignment and modification; procedures for the investigation, notification and processing of permit violations; procedures for trespass notification, enforcement, actions and penalties, damages and costs; and procedures by which the Navajo Nation provides concurrence to BIA under this part.

General Observations in Response to Comments

Several commenters expressed general support for the regulation's purpose of land restoration and resource management. However, numerous concerns and questions were raised by commenters. Some commenters found that the regulation did not clearly identify whether BIA or the Navajo Nation will oversee particular activities, or expressed concern about the difficult nature of enforcing the regulation. One commenter felt that the regulation is too ''authoritarian rather than flexible.''

We believe the regulation provides the significant flexibility in implementation as required by statute. Section 640d–9(e)(1)(A) of the Settlement Act requires that all conservation practices, including grazing control and range restoration activities be coordinated and executed with the concurrence of the Navajo Nation. Thus, conservation practices will be cooperatively developed and implemented by both BIA and the Navajo Nation. Further, this regulation provides the Navajo Nation with the opportunity to take the lead role in any part of this regulation, either by enforcing tribal laws as provided in subpart B, or through the contracting process pursuant to Public Law 93–638. The regulation therefore allows for a range of approaches in implementation. However, pursuant to AIARMA which authorizes the Secretary to carry out the trust responsibility of the United States in managing Indian agricultural lands, the Secretary retains the final authority for actions taken under this part.

Subpart A—Definitions, Authority, Purpose and Scope

Summary of Subpart

Subpart A contains key terms used throughout the regulation. The terms are consistent with those found in AIARMA. This subpart also describes the Secretary s authorities under part 161.

Comments

Numerous commenters expressed concern that the regulation does not address the importance of livestock in the Navajo culture. Another commenter was concerned that the regulation rehabilitates the environment but not human lives. We recognize the crucial role of livestock, and have revised the Summary and section 161.3 of the regulation to note the importance of livestock in the Navajo way of life, tradition and culture. The BIA and Navajo Nation were mindful of the impact that this regulation would have on the NPL residents. The regulation is intended to facilitate recovery of the NPL rangeland which in turn will result in improved conditions for NPL residents.

A number of commenters stated that additional funding is necessary in order for the regulation to achieve its goals. Two commenters inquired as to whether funding was included as part of BIA's assistance in Navajo law enforcement. While we have not made any change to the regulation because funding is an issue that is determined by Congress, the Navajo Nation stated that it would address its concerns about funding for implementation of the regulation to the Department in a forthcoming tribal resolution.

Another commenter felt that individuals should be compensated to the extent that their rights are lost due to the regulation. This regulation does not intentionally contemplate the loss of any individual rights. However, if an individual feels that his or her rights have been violated by a decision made by BIA, the decision may be appealed pursuant to 25 CFR part 2. Decisions made by the Navajo Nation under this part may be appealed to the appropriate hearing body of the Navajo Nation. Section 161.801 addresses appeals made under this part. No change was made to the regulation.

Several commenters requested clarification of terms used in the regulation. In response to these requests, section 161.1 has been revised to further define the term ''improvements,'' by including examples such as windmills, water troughs, fences, and cattleguards. Also a definition of ''other affected land users'' was added to section 161.4.

Several commenters also indicated that the District Grazing Committee should be given greater priority in decision making. The term ''Navajo Nation'' as used in this regulation includes the District Grazing Committee and such authority provided to it by the Navajo Nation. No change was made to the regulation.

One commenter questioned how the regulation would classify Shetland ponies, and one felt that the llama should not count as an animal unit. Shetland ponies will be classified as horses, and llamas kept as livestock will require a permit because such animals consume forage and are used to guard sheep. No change was made to the regulation.

One commenter felt that NPL District Rangers should play a larger role in carrying out the regulation. The role of NPL District Rangers will be determined by the Navajo Nation and BIA at the implementation stage of this regulation. No change was made to the regulation.

Another commenter stated that the Secretary should be responsible for assisting the Navajo people in improving their farming methods under section 161.1. Pursuant to AIARMA, the Secretary is authorized to increase educational and training opportunities in all aspects of agricultural and land management. Education and assistance can be addressed on a continuing basis by BIA and the Navajo Nation following finalization of this regulation. No change was made to the regulation.

One commenter was concerned that there will be two different permits used on the Navajo Reservation; *i.e.*, 25 CFR parts 167 and 161. Another commenter expressed concern that this regulation and part 167 create different standards for permit eligibility. One commenter was concerned that the regulation would force people to choose between either grazing on non-NPL Navajo lands or the NPL. In response, part 167 governs grazing on the majority of the Navajo Reservation. However, because grazing management on the NPL must comply with the requirements of the Settlement Act, a separate permitting system must be used on the NPL. Pursuant to section 161.4, contiguous areas outside of the NPL may be included under this part which may eliminate any confusion caused by two different permitting systems on contiguous parcels. The Navajo Nation will have discretion to determine whether an individual may hold permits under both parts 161 and 167. No change was made to the regulation.

Subpart B—Tribal Policies and Laws Pertaining to Permits

Summary of Subpart

This subpart is consistent with AIARMA, and makes clear that Navajo Nation laws generally apply to land under the jurisdiction of the Navajo Nation, except to the extent that those Navajo Nation laws are inconsistent with applicable Federal law. Further, unless prohibited by Federal law, BIA will recognize and comply with tribal laws regulating activities on the NPL, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

Comments

Two commenters expressed concern about conflicts between Federal law and those of the Navajo Nation. Sections 161.100 and 161.101, in compliance with section 3712(b) of AIARMA, address this concern by providing that Navajo Nation law applies so long as it

does not conflict with Federal law, and that the Navajo Nation is primarily responsible for enforcing tribal laws on the NPL. One commenter felt that the enforcement role of the Navajo Nation Resources Committee and the Navajo Nation Courts is ignored under section 161.101. However, section 161.101 provides discretion for the Navajo Nation to determine the roles of the Navajo Nation Resources Committee and Courts. No change was made to the regulation.

Subpart C—General Provisions

Summary of Subpart

This subpart lists the environmental compliance and management documents that are required by AIARMA. This subpart also discusses how carrying capacity and stocking rates are established.

Comments

Numerous commenters expressed concern that this regulation will result in the loss of livestock. One commenter felt that stocking rate adjustments should be prorated and not be made equally under section 161.204. In response, the regulation provides that livestock numbers may be reduced when stocking rates are established in order to facilitate range recovery. While the extent of such permit reductions will not be known until BIA and the Navajo Nation review the current carrying capacity of each range unit pursuant to section 161.204, both BIA and the President's Office of the Navajo Nation will explore all possible alternatives to the loss of livestock. No change was made to the regulation.

Several commenters indicated that the permit process should include more environmental studies. Sections 161.200 and 161.201, in compliance with AIARMA section 3711(b), address this concern by requiring that an agricultural resource management plan be prepared, and that actions taken by BIA under this regulation must comply with the National Environmental Policy Act, 42 U.S.C. 431 *et seq.*, applicable regulations of the Council on Environmental Quality, 40 CFR part 1500, and applicable tribal laws and provisions of the Navajo Nation Environmental Policy Act CAP–47–95, where the tribal laws and provisions do not violate a Federal or judicial decision or conflict with the Secretary's trust responsibility under Federal law. No change was made to the regulation.

One commenter questioned when specific environmental standards would be announced. The standards for environmental compliance are set forth in the statutes and regulations listed above. Compliance with these standards and regulations is an ongoing responsibility of the BIA and Navajo Nation. No change was made to the regulation.

Some commenters were concerned that the regulation did not address the manner in which current NPL livestock will be treated if stocking rates are reduced. We believe this comment refers to the removal of livestock that exceed permit stocking rates. This issue will be addressed at the implementation stage following finalization of the regulation. Sufficient time and accommodations will be made available to implement changes for individuals affected by this regulation. No change was made to the regulation.

One commenter expressed concern that livestock kept and grazed elsewhere would count towards NPL livestock limitations under section 161.204. Livestock grazed elsewhere on the Navajo Reservation will have no effect on the number of NPL grazing permits that are issued or on the stocking rates for each permit. No change was made to the regulation.

One commenter felt that private agreements should be honored when range unit boundaries are set, and another was concerned that range units would be established based on the already standing fences. Section 161.202 provides flexibility in determining range unit boundaries, and allows for agreements to be reached based on historical use. Fences may also be taken into account when establishing range unit boundaries. No change was made to the regulation.

One commenter felt that more than two horses should be allowed on a grazing unit. In response, the BIA and the Navajo Nation have determined that because cattle, sheep and goat herd sizes are relatively small, two horses are sufficient for the management of these herds. No change was made to the regulation.

One commenter felt that the regulation should discuss deferred compensation. Determinations about compensation will be made in accordance with Federal and tribal law. No change in the regulation was made.

Subpart D—Grazing Permit Requirements

Summary of Subpart

This subpart describes the general requirements for obtaining a permit, the provisions contained in a grazing permit, the restrictions placed on permits, and other permit requirements.

Comments

Several commenters raised questions regarding permit costs. The regulation does not require that rentals or fees be paid for permits because the Navajo Nation requested that the regulation not include grazing fee provisions. Several commenters were concerned about the period of permit validity and permit renewals. Under section 161.303 permits are valid for one year, and will be automatically renewed so long as the permittee remains in good standing. No change was made to the regulation.

Two commenters also indicated that the manner in which permits will be issued is unclear. We believe this question refers to the process of applying for and receiving permits. The specific steps that must be taken by a potential permittee when applying for a permit are not outlined in this regulation. However, BIA and Navajo Nation personnel will be available to answer questions about the permitting process after finalization of this regulation.

Several commenters were concerned that the language of section 161.301(a)(14) would result in permittees being held responsible for the cleanup of hazardous waste spills, or that hazardous dumping would be authorized. Due to the continuing confusion created by this language, section 161.301(a)(14) was deleted from the regulation. Section 161.301(a)(15) was redesignated as section 161.301(a)(14). Nonetheless, liability standards for hazardous waste are governed by applicable statutes and regulations, and the elimination of this language from this regulation does not alter such standards.

One commenter was concerned about the ability of a family to share a permit. Section 161.302(b) requires that a permit be issued in the name of one individual only, and section 161.302(f) requires that a permit cannot be subdivided once it has been issued. This requirement was developed to ensure that permit ownership and accountability may be efficiently tracked. It does not preclude a family from sharing in permit responsibilities, or for a permit holder from assigning his or her permit to a family member under section 161.500.

Subpart E—Reissuance of Grazing Permits

Summary of Subpart

This subpart sets forth eligibility and priority criteria for reissuance of cancelled grazing permits. This subpart makes clear that the Navajo Nation may prescribe eligibility requirements for

grazing allocations within 180 days following the effective date of these regulations. The BIA will prescribe the eligibility requirements after expiration of the 180-day period in the event that the Navajo Nation does not prescribe eligibility requirements, or in the event that the Navajo Nation does not take satisfactory action. This subpart also describes how new permits may be granted after the initial reissuance of permits, and sets forth the procedures for reissuing permits and allocating permits within each range unit.

Comments

Many commenters indicated that grazing permits of the deceased should pass to their descendants. While permits may not automatically pass to descendants under this regulation, the Navajo Nation has discretion under section 161.401 to determine who may be granted the permit of a deceased permit holder in accordance with Navajo Nation law. No change was made to the regulation.

Several commenters expressed concern that the regulation and specifically section 161.400 give priority to those over the age of 65. One commenter indicated that all enrolled Navajo Nation members over 18 should be eligible to receive permits. In response, priority under section 161.400(c)(1) was given to those aged 65 and older because persons of that age are more likely to have had their permits cancelled by the 1972 United States District Court order in *Hamilton* v. *MacDonald*, Civ. 579–PCT (1972), and are more likely to be dependent on livestock for subsistence. No change was made to the regulation.

Commenters were also concerned that those not fluent in the English language, especially the elderly, will be disadvantaged in exercising their rights under the regulation. The BIA and the Navajo Nation are committed to making the materials and processes of this regulation available in both the English and Navajo languages. No change was made to the regulation.

Commenters were also concerned that decisions regarding permit reissuance have already been made. Decisions regarding permit reissuance have not been made by either BIA or the Navajo Nation, and any previous discussions of permit reissuance were speculative and non-binding.

One commenter felt that those who previously grazed on Navajo and Hopi land should receive permits under section 161.400. Another commenter stated that priority for permit reissuance should go to those starting a business, and one commenter indicated that first priority for reissuing permits should go to those not paid for relocation. One commenter expressed concern that residents of Black Mesa, Arizona, would be left out of permit reissuance. One commenter questioned whether non-Navajos are qualified to receive permits, and another expressed concern that those outside the Joint Use Area will not be qualified to receive permits. No changes were made to the regulation in response to these comments because the Navajo Nation has the discretion to determine permit eligibility for these and other situations under sections 161.400 and 161.401. If the Navajo Nation does not prescribe eligibility criteria for permit reissuance, the criteria presented in section 161.400 will be implemented. The criteria presented in section 161.400 were developed by BIA and the Navajo Nation and are intended to restore permits to those permittees who had their permits cancelled by court order in *Hamilton* v. *MacDonald,* Civ. 579–PCT (1972). Under section 161.400, only current residents of the NPL may receive permits. This criterion was developed to ensure that current NPL residents receive permits before non-NPL residents receive them. Section 161.401 provides complete discretion to the Navajo Nation to grant permits based on its own criteria following reissuance of permits under section 161.400. No change was made to the regulation.

Another commenter felt that 180 days is insufficient time for the Navajo Nation to establish permit eligibility requirements. The Navajo Nation may receive an extension to determine eligibility criteria under section 161.400 upon request and a showing that progress is being made. No change was made to the regulation.

Subpart F—Modifying A Permit

Summary of Subpart

This subpart describes how permits may be transferred, assigned or modified.

Comments

One commenter expressed concern about the impact that outside businesses would have on grazing permits under section 161.502 if businesses were allowed to occupy grazing lands and remove those lands from a range unit. Another commenter felt that in the event that a special land use results in permit modification, the permittee should be compensated. In response, section 161.502 provides discretion to BIA and the Navajo Nations to determine whether a special land use may occupy grazing land, but does not require that special land uses be approved. Determination about special land uses will be made on a case-by-case basis by BIA and the Navajo Nation. Determinations about compensation will be made in accordance with Federal and tribal law. No change was made to the regulation.

Subpart G—Permit Violations

Summary of Subpart

This subpart sets forth the procedures for investigation, notification and processing of permit violations. This subpart also describes the process by which mediation can be used in the event of a permit violation.

Comments

One commenter expressed concern that the responsibilities for monitoring permit compliance under section 161.601 were unclear. In response to this concern, section 161.601 has been slightly modified to add ''and/or Navajo Nation'' to provide additional enforcement capabilities.

One commenter suggested that section 161.603 be deleted. This section was developed by BIA and the Navajo Nation to provide an alternative means of resolving permit violations or disputes prior to permit cancellation. No change was made to the regulation.

Subpart H—Trespass

Summary of Subpart

This subpart describes the process for trespass notification, enforcement, actions and penalties, damages and costs. This subpart is substantially similar to the general grazing regulations, 25 CFR part 166, subpart I, and is consistent with AIARMA.

Comments

Numerous commenters were concerned that the trespass provisions and penalties are too harsh and insufficiently defined. However, section 3713 of AIARMA requires the Secretary to establish civil penalties for the commission of trespass on Indian agricultural lands, and specifies what those penalties must be. The trespass provisions contained in this subpart are substantially similar to the trespass provisions contained in the general grazing regulations in 25 CFR part 166, and incorporate the requirements of AIARMA. In accordance with section 161.101, BIA has agreed that it will use the Navajo Nation Trespass Code when resolving trespass issues on the NPL. However, if a trespass issue remains unresolved under the Navajo Nation Trespass Code, the provisions of this

subpart will be applied. No change was made to the regulation.

Several commenters were concerned that a trespass may result in loss of NPL occupancy under section 161.715. This is a concern to some NPL residents because the issue of authorized occupancy on the NPL is somewhat unclear in some cases due the particular history of the area. In response, we slightly modified section 161.715(a) to eliminate loss of occupancy as a consequence of failure to pay penalties, damages or costs.

Subpart I—Concurrence/Appeals/ Amendments

Summary of Subpart

This subpart sets forth the procedures for the Navajo Nation to provide concurrence to BIA under this part. This subpart also states that decisions made by BIA under this part may be appealed, and that decisions made by the Navajo Nation under this part may be appealed to the appropriate hearing body of the Navajo Nation.

Comments

Some commenters were concerned with the possibility that BIA may implement proposals without the Navajo Nation's concurrence under section 161.800(b)(5). In response, section 161.800 provides a detailed procedure by which the Navajo Nation provides concurrence to BIA conservation practices, including grazing control and range restoration activities as required by section 640d–9(e)(1)(A) of the Settlement Act. If however, this process does not result in Navajo Nation concurrence, BIA is authorized to act by AIARMA, which authorizes the Secretary to carry out the trust responsibility of the United States in managing Indian agricultural lands. Every attempt will be made to resolve issues of concern prior to the implementation of section 161.800(b)(5). No change was made to the regulation.

One commenter indicated that the citation in section 161.800(a) should be ''*Hopi* v. *Watt*'' rather than the ''Settlement Act.'' We slightly modified the regulation to include the specific citation for the Settlement Act for clarity.

Another commenter felt that the Navajo-Hopi Land Commission is best suited for recommending amendments under section 161.802. This section requires the Resources Committee to incorporate the recommendation of the Navajo-Hopi Land Commission in approving amendments to this part. No change was made to the regulation.

IV. Procedural Requirements

A. Review Under Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

The rule describes how BIA will administer grazing permits on trust land. Thus, the impact of the rule is confined to the Federal Government and individual Indian and the Navajo Nation, and does not impose a compliance burden on the economy generally. Accordingly, it has been determined that this rule is not a ''significant regulatory action'' under any of the preceding criteria.

B. Review Under the Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended, whenever an agency is required to publish a notice of rule making for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities. Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act, and consequently, no regulatory flexibility analysis has been done.

This rule does 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 because it concerns only the Navajo Nation. Accordingly, this regulation will not have an economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under 5 U.S.C. 804(2), SBREFA, a rule is major if OMB finds that it results in:

a. An annual effect on the economy of $100 million or more;

b. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is not a major rule as defined by section 804 of the SBREFA. This rule is uniquely confined to the Federal Government, individual Indians and the Navajo Nation, thus, it will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule provides regulatory guidance for grazing permits on trust lands owned by individual Indians and the Navajo Nation.

D. Review Under the Unfunded Mandates Reform Act

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). The impact of this rule is confined to grazing permits on land held in trust for the Navajo Nation. Accordingly, this proposed rule will not result in the expenditure of $100 million or more in any one year.

E. Review Under Executive Order 12630

This rule does not have significant ''takings'' implications. Policies that have taking implications do not include actions affecting properties that are held in trust by the United States. The NPL grazing regulations provide specific regulatory guidance on trust lands.

F. Review Under Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 that speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This

rule is restricted to 25 CFR 161, NPL Grazing Permits on lands held in trust for individual Indians and tribes. Mineral development on lands held in trust for individual Indians and the Navajo Nation are regulated under the Indian Mineral Development Act. Regulations for mineral development are provided under a separate part in 25 CFR 211, 212 and 225. This proposed implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

G. Review Under Executive Order 12612

This rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States. While this proposed rule will impact tribal governments, there is no federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of the Executive Order 12988, Civil Justice Reform, 61 FR 4729, February 7, 1996, imposes on executive agencies the general duty to adhere to the following requirements:

(1) Eliminate drafting errors and ambiguity;

(2) Write regulations to minimize litigation; and

(3) Provide a clear legal standard for effective conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to insure that the regulations:

(1) Clearly specifies the preemptive effect, if any;

(2) Clearly specifies any effect on existing federal law or regulation;

(3) Provides a clear legal standard for affecting conduct while promoting simplification and burden reduction;

(4) Specifies the retroactive affect if any;

(5) Adequately defines key terms; and

(6) Addresses other important issues affecting clarity and general draftsmanship.

Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of the applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet on one or more of them. This rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

I. Review Under the National Environmental Policy Act (NEPA)

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the NEPA of 1969, 42 U.S.C. 4321, *et seq.,* because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under this rule will be subject at the time of the action itself to the NEPA process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

J. Review Under Executive Order 13175

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Department has determined that because this rule will uniquely affect tribal governments, it will follow Department and Administrative protocols in consulting with tribal governments on rulemaking. Consequently, tribal governments were notified through the proposed rulemaking published in the **Federal Register** and through BIA field offices, of the ramifications of this rule. This enabled tribal officials and the affected tribal constituency throughout the NPL to have meaningful and timely input in the development of this rule. This will reinforce good intergovernmental relations with the Navajo Nation and better inform, educate and advise the Navajo Nation on compliance requirements of this rule. We consulted with representatives of the Navajo Nation during the formulation of this rule. Representatives from the Navajo-Hopi Land Commission and Navajo Nation Natural Resources Committee met in consultation several times from November 2002 to June of 2003 to draft the proposed regulations. The comments received from these consultations were taken into consideration in the formulation of this rule. We also consulted with the Navajo Nation in the formulation of this rule.

K. Review Under the Paperwork Reduction Act

This rule requires an information collection from 10 or more parties, and therefore was subject to review under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The information collection regulates grazing permits and the use of the Navajo Partitioned Lands. The information collection will also help protect the lands from overgrazing and aid in restoring lands that have been overgrazed. The information collection involves 5,370 responses with an hourly annual burden of 1227 hours for an average burden of approximately 14 minutes. The respondents are not required to keep records but many do as part of their business. Responses are given in order to obtain or retain a benefit, namely, acquiring or keeping a grazing permit as authorized by the Navajo-Hopi Settlement Act of 1974 as amended, by federal court decisions (*Healing* v. *Jones, 174 F.* Supp. 211 (D. Ariz. 1959) (*Healing I), Healing* v. *Jones,* 210 F. Supp. 126 (D. Ariz. 1962), and *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe* v. *Watt,* 719 F. 2d 314 (9th Cir. 1983), and the American Indian Agricultural Resource Management Act (AIARMA), (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*) as amended. Interior submitted a request for approval of the information request which was approved. The OMB Control Number is 1076–0162 and expires January 31, 2007.

Comments on this information collection can be made at any time and sent to the Information Collection Clearance Officer at 625 Herndon Parkway, Herndon, VA 20170. Please note that comments about the burden are separate from comments on the rule. If you wish to withhold personal information, such as your name, you must state this prominently at the beginning of your comments. We will honor your request to the extent that the law allows.

The table showing the burden of the information collection is included below for your information.

TABLE OF BURDEN FOR 25 CFR 161

CFR section	Number of respondents	Number of annual responses	Hourly burden per response (hours)	Total annual hourly burden
161.102	700	700	.....	.....
161.206	700	700	½	350
161.301	700	700	.....	.....
161.302	700	700	⅓	233
161.304	700	700	.....	.....
161.402	700	700	⅓	233
161.500	70	70	⅓	23
161.502	70	70	.....	.....
161.604	35	35	½	17.5
161.606	35	35	½	17.5
161.703	35	35	½	17.5
161.704	35	35	½	17.5
161.708	10	10	½	5
161.717	10	10	1	10
161.800	700	700	¼	175
161.801	85	85	½	42.5
161.802	85	85	1	85
Totals	700	5,370	.....	1,226.5

TABLE OF BURDEN FOR 25 CFR 161

CFR section	Salary: $5.00 × total hourly burden = total hourly burden cost	Federal burden per response (hours)	Total Federal annual burden hours	Salary: $18.52 × total hourly burden = total Federal burden cost
161.102	.....	½	350	$6,482
161.206	$1,750	¼	175	3,241
161.301	.....	¼	175	3,241
161.302	1,165	¼	175	3,241
161.304	.....	¼	175	3,241
161.402	1,165	1	700	12,964
161.500	115	1	70	1,296
161.502	.....	¼	17.5	324
161.604	87	1	35	648
161.606	87	1	35	648
161.703	87	1	35	648
161.704	88	1	35	648
161.708	25	1	10	185
161.717	50	2	20	370
161.800	875	¼	212.5	3,936
161.801	213	1	85	1,575
161.802	425	½	42.5	787
Totals	6,132	.....	2,347.5	43,475

List of Subjects in 25 CFR Part 161

Grazing lands, Indians—lands, Livestock.

Dated: July 29, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

■ For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, is adding part 161 to chapter I of title 25 of the Code of Federal Regulations as follows.

PART 161—NAVAJO PARTITIONED LANDS GRAZING PERMITS

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Sec.

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Subpart I—Concurrence/Appeals/Amendments

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Authority: 25 U.S.C. 2; 5 U.S.C. 301; 25 U.S.C. 640d *et seq.*

Subpart A—Definitions, Authority, Purpose, and Scope

§ 161.1 What definitions do I need to know?

Agricultural Act means the American Indians Agricultural Resource Management Act (AIARMA) of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).

Agricultural resource management plan means a 10-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by BIA and Indian tribal governments.

Allocation means the number of animal units authorized in each grazing permit.

Animal Unit (AU) means one adult cow and her 6-month-old calf or the equivalent thereof based on comparable forage consumption. Thus as defined in the following:

(1) One adult sheep or goat is equivalent to one-fifth (0.20) of an AU;

(2) One adult horse, mule, or burro is equivalent to one and one quarter (1.25) AU; or

(3) One adult llama is equivalent to three-fifths (0.60) of an AU.

Appeal means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request.

Appeal Bond means a bond posted upon filing of an appeal that provides a security or guaranty if an appeal creates a delay in implementing our decision that could cause a significant and measurable financial loss to another party.

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Bond means security for the performance of certain permit obligations, as furnished by the permittee, or a guaranty of such performance as furnished by a third-party surety.

Business day means Monday through Friday, excluding federally or tribally recognized holidays.

Carrying capacity means the number of livestock and/or wildlife, which may be sustained on a management unit compatible with management objectives for the unit.

Concurrence means the written agreement of the Navajo Nation with a policy, action, decision or finding submitted for consideration by BIA.

Conservation practice refers to any management measure taken to maintain or improve the condition, productivity, sustainability, or usability of targeted resources.

Customary Use Area refers to an area to which an individual traditionally confined his or her traditional grazing use and occupancy and/or an area traditionally inhabited by his or her ancestors.

Day means a calendar day, unless otherwise specified.

Enumeration means the list of persons living on and identified improvements located within the Former Joint Use Area obtained through interviews conducted by BIA in 1974 and 1975.

Former Joint Use Area means the area that was divided between the Navajo Nation and the Hopi Tribe by the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona. This area was established by the United States District Court for the District of Arizona in *Healing* v. *Jones,* 210 F. Supp. 125

(1962), aff'd. 373 U.S. 758 (1963) and is located:

(1) Inside the Executive Order area (Executive Order of December 16, 1882); and

(2) Outside Land Management District 6.

Grazing Committee means the District Grazing Committee established by the Navajo Nation Council, that is responsible for enforcing and implementing tribal grazing regulations on the Navajo Partitioned Lands.

Grazing Permit means a revocable privilege granted in writing and limited to entering on and utilizing forage by domestic livestock on a specified range unit. The term as used herein shall include authorizations issued to enable the crossing or trailing of domestic livestock within an assigned range unit.

Historical Land Use see Customary Use Area.

Improvement means any structure or excavation to facilitate management of the range for livestock, such as: Fences, cattle guards, spring developments, windmills, stock ponds, and corrals.

Livestock means horses, cattle, sheep, goats, mules, burros, donkeys, and llamas.

Management Unit is a subdivision of a geographic area where unique resource conditions, goals, concerns, or opportunities require specific and separate management planning.

Navajo Nation means all offices/entities/programs under the direct jurisdiction of the Navajo Nation Government.

Navajo Partitioned Lands (NPL) means that portion of the Former Joint Use Area awarded to the Navajo Nation under the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona, and now a separate administrative entity within the Navajo Indian Reservation.

Non-Concurrence means the official written denial of approval by the Navajo Nation of a policy, action, decision, or finding submitted for consideration by BIA.

Range management plan is a statement of management objectives for grazing, farming, or other agriculture management including contract stipulations defining required uses, operations, and improvements.

Range Unit means a tract of land designated as a separate management subdivision for the administration of grazing.

Resident means a person who lives on the Navajo Partitioned Lands.

Resources Committee means the oversight committee for the Division of Natural Resources within the Navajo Nation Government. The Resources Committee of the Navajo Nation Council to whom authority is delegated to exercise the powers of the Navajo Nation with regards to the range development and grazing management of the Navajo Partitioned Lands.

Secretary means the Secretary of the Interior or his or her designated representative.

Settlement Act means the Navajo Hopi Settlement Act of December 22, 1974 (88 Stat. 1712, 25 U.S.C. 64d *et seq.*, as amended).

Sheep Unit means an adult ewe with un-weaned lamb. It is also the basic unit in which forage allocations are expressed.

Special land use means all land usage for purposes other than for grazing withdrawn in accordance with Navajo Nation laws, Federal laws, and BIA policies and procedures, such as but not limited to: Housing permits, farm leases, governmental facilities, rights-of-way, schools, parks, business leases, etc.

Stocking rate means the maximum number of sheep units, or animal units authorized to graze on a particular pasture, management unit, or range unit during a specified period of time.

Trespass means any unauthorized occupancy, grazing, use of, or action on the Navajo Partitioned Lands.

§ 161.2 What are the Secretary's authorities under this part?

(a) Under Section 640d–9(e) of the Settlement Act, lands partitioned under the Settlement Act are subject to the jurisdiction of the tribe to whom partitioned. The laws of the tribe apply to the partitioned lands as in paragraphs (a)(1) and (a)(2) of this section.

(1) Effective October 6, 1980:

(i) All conservation practices on the Navajo Partitioned Lands, including control and range restoration activities, must be coordinated and executed with the concurrence of the Navajo Nation; and

(ii) All grazing and range restoration matters on the Navajo Reservation lands must be administered by BIA, under applicable laws and regulations.

(2) Effective April 18, 1981, the Navajo Nation has jurisdiction and authority over any lands partitioned to it and over all persons on these lands. This jurisdiction and authority apply:

(i) To the same extent as is applicable to those other portions of the Navajo reservation; and

(ii) Notwithstanding any provision of law to the contrary, except where there is a conflict with the laws and regulations referred to in paragraph (a) of this section.

(b) Under the Agricultural Act, the Secretary is authorized to:

(1) Carry out the trust responsibility of the United States and promote Indian tribal self-determination by providing for management of Indian agricultural lands and renewable resources consistent with tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) Take part in managing Indian agricultural lands, with the participation of the land's beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(3) Provide for the development and management of Indian agricultural lands; and

(4) Improve the expertise and technical abilities of Indian tribes and their members by increasing the educational and training opportunities available to Indian people and communities in the practical, technical, and professional aspects of agricultural and land management.

§ 161.3 What is the purpose of this part?

The purpose of this part is to describe the goals and objectives of grazing management on the Navajo Partitioned Lands:

(a) To respect and recognize the importance that livestock and land have in sustaining Navajo tradition and culture.

(b) Provide resources to rehabilitate range resources in the preservation of forage, soil, and water on the Navajo Partitioned Lands;

(c) Monitor the recovery of those resources where they have deteriorated;

(d) Protect, conserve, utilize, and maintain the highest productive potential on the Navajo Partitioned Lands through the application of sound conservation practices and techniques. These practices and techniques will be applied to planning, development, inventorying, classification, and management of agricultural resources;

(e) Increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians, through the development of agricultural resources on the Navajo Partitioned Lands;

(f) Manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, recreation and to regulate water runoff and minimize soil erosion;

(g) Enable the Navajo Nation to maximize the potential benefits available to its members from their lands by providing technical assistance, training, and education in conservation

practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products, and other applicable subject areas;

(h) Develop the Navajo Partitioned Lands to promote self-sustaining communities; and

(i) Assist the Navajo Nation with permitting the Navajo Partitioned Lands, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

§ 161.4 To what lands does this part apply?

The grazing regulations in this part apply to the Navajo Partitioned Lands within the boundaries of the Navajo Indian Reservation held in trust by the United States for the Navajo Nation. Contiguous areas outside of the Navajo Partitioned Lands may be included under this part for management purposes by BIA in consultation with the affected permittees and other affected land users, and with the concurrence of the Resources Committee. Other affected land users include those holding approved assignments, permits, leases, and rights of way for activities such as: home sites, farm plots, roads, utilities, businesses, and schools.

§ 161.5 Can BIA waive the application of this part?

Yes. If a provision of this part conflicts with the objectives of the agricultural resource management plan provided for in § 161.200, or with a tribal law, BIA may waive the application of this part unless the waiver would either:

(a) Constitute a violation of a federal statute or judicial decision; or

(b) Conflict with BIA's general trust responsibility under federal law.

§ 161.6 Are there any other restrictions on information given to BIA?

Information that the BIA collects in connection with permits for NPL in sections 161.102, 161.206, 161.301, 161.302, 161.304, 161.402, 161.500, 161.502, 161.604, 161.606, 161.703, 161.704, 161.708, 161.717, 161.800, 161.801, and 161.802 have been reviewed and approved by the Office of Management and Budget. The OMB Control Number assigned is 1076–0162. Please note that a federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Tribal Policies and Laws Pertaining to Permits

§ 161.100 Do tribal laws apply to grazing permits?

Navajo Nation laws generally apply to land under the jurisdiction of the Navajo Nation, except to the extent that those Navajo Nation laws are inconsistent with this part or other applicable federal law. This part may be superseded or modified by Navajo Nation laws with Secretarial approval, however, so long as:

(a) The Navajo Nation laws are consistent with the enacting Navajo Nation's governing documents;

(b) The Navajo Nation has notified BIA of the superseding or modifying effect of the Navajo Nation laws;

(c) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with the Secretary's general trust responsibility under federal law; and

(d) The superseding or modifying of the regulation applies only to Navajo Partitioned Lands.

§ 161.101 How will tribal laws be enforced on the Navajo Partitioned Lands?

(a) Unless prohibited by federal law, BIA will recognize and comply with tribal laws regulating activities on the Navajo Partitioned Lands, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the Navajo Nation is primarily responsible for enforcing tribal laws pertaining to the Navajo Partitioned Lands, BIA will:

(1) Assist in the enforcement of Navajo Nation laws;

(2) Provide notice of Navajo Nation laws to persons or entities undertaking activities on the Navajo Partitioned Lands; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as the appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR part 2, subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of (BIA) actions by the tribal court.

(c) Where the provisions in this subpart are inconsistent with a Navajo Nation law, but the provisions cannot be superseded or modified by the Navajo Nation laws under § 161.5, BIA may waive the provisions under part 1 of 25 CFR, so long as the new waiver does not violate a federal statute or judicial decision or conflict with the Secretary's trust responsibility under federal law.

§ 161.102 What notifications are required that tribal laws apply to grazing permits on the Navajo Partitioned Lands?

(a) The Navajo Nation must provide BIA with an official copy of any tribal law or tribal policy that relates to this part. The Navajo Nation must notify BIA of the content and effective dates of tribal laws.

(b) BIA will then notify affected permittees of the effect of the Navajo Nation law on their grazing permits. BIA will:

(1) Provide individual written notice; or

(2) Post public notice. This notice will be posted at the tribal community building, U.S. Post Office, announced on local radio station, and/or published in the local newspaper nearest to the permitted Navajo Partitioned Lands where activities are occurring.

Subpart C—General Provisions

§ 161.200 Is an Indian agricultural resource management plan required?

(a) Yes, Navajo Partitioned Lands must be managed in accordance with the goals and objectives in the agricultural resource management plan developed by the Navajo Nation, or by BIA in close consultation with the Navajo Nation, under the Agricultural Act.

(b) The 10-year agricultural resource management and monitoring plan must be developed through public meetings and completed within 3 years of the initiation of the planning activity. The plan must be based on the public meeting records and existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the tribe and its members and provide identified resource management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the provisions in this subpart are inconsistent with the Navajo Nation's agricultural resource management plan, the Secretary may waive the provisions under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with the Secretary's trust responsibility under federal law.

§ 161.201 Is environmental compliance required?

Actions taken by BIA under this part must comply with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, applicable provisions of the Council on Environmental Quality, 40 CFR part 1500, and applicable tribal laws and provisions of the Navajo Nation Environmental Policy Act CAP–47–95, where the tribal laws and provisions do not violate a federal or judicial decision or conflict with the Secretary's trust responsibility under federal law.

§ 161.202 How are range units established?

(a) BIA, with the concurrence of the Navajo Nation, will establish range units on the Navajo Partitioned Lands to provide unified areas for which range management plans can be developed to improve and maintain soil and forage resources. Physical land features, watersheds, drainage patterns, vegetation, soil, resident concentration, problem areas, historical land use patterns, chapter boundaries, special land uses and comprehensive land use planning will be considered in the determination of range unit boundaries.

(b) BIA may modify range unit boundaries with the concurrence of the Navajo Nation. This may include small and/or isolated portions of Navajo Partitioned Lands contiguous to Navajo tribal lands in order to develop more efficient land management.

§ 161.203 Are range management plans required?

Yes. BIA will:

(a) Consult with the Navajo Nation in planning conservation practices, including grazing control and range restoration activities for the Navajo Partitioned Lands.

(b) Develop range management plans with the concurrence of the Navajo Nation.

(c) Approve the range management plans, after concurrence with the Navajo Nation, and the implementation of the plan may begin immediately. The plan will address, but is not limited to, the following issues:

(1) Goals for improving vegetative productivity and diversity;

(2) Stocking rates;

(3) Grazing schedules;

(4) Wildlife management;

(5) Needs assessment for range and livestock improvements;

(6) Schedule for operation and maintenance of existing range improvements and development for cooperative funded projects;

(7) Cooperation in the implementation of range studies;

(8) Control of livestock diseases and parasites;

(9) Fencing or other structures necessary to implement any of the other provisions in the range management plan;

(10) Special land uses; and

(11) Water development and management.

§ 161.204 How are carrying capacities and stocking rates established?

(a) BIA, with the concurrence of the Navajo Nation, will prescribe, review and adjust the carrying capacity of each range unit by determining the number of livestock, and/or wildlife, that can be grazed on the Navajo Partitioned Lands without inducing damage to vegetation or related resources on each range unit and the season or seasons of use to achieve the objectives of the agricultural resource management plan and range unit management plan.

(b) BIA, with the concurrence of the Navajo Nation, will establish the stocking rate of each range or management unit. The stocking rate will be based on forage production, range utilization, the application of land management practices, and range improvements in place to achieve uniformity of grazing under sustained yield management principles on each range or management unit.

(c) BIA will review the carrying capacity of the grazing units on a continuing basis and, in consultation with the Grazing Committee and affected permittees, adjust the stocking rate for each range or management unit as conditions warrant.

(d) Any adjustments in stocking rates will be applied equally to each permittee within the management unit requiring adjustment.

§ 161.205 How are range improvements treated?

(a) Improvements placed on the Navajo Partitioned Lands will be considered affixed to the land unless specifically exempted in the permit. No improvement may be constructed or removed from Navajo Partitioned Lands without the written consent of BIA and the Navajo Nation.

(b) Before undertaking an improvement, BIA, Navajo Nation and permittee will negotiate who will complete and maintain improvements. The improvement agreement will be reflected in the permit.

§ 161.206 What must a permittee do to protect livestock from exposure to disease?

In accordance with applicable law, permittees must:

(a) Vaccinate livestock;

(b) Treat all livestock exposed to or infected with contagious or infectious diseases; and

(c) Restrict the movement of exposed or infected livestock.

§ 161. 207 What livestock are authorized to graze?

The following livestock are authorized to graze on the Navajo Partitioned Lands: horses, cattle, sheep, goats, mules, burros, donkeys, and llamas.

Subpart D—Permit Requirements

§ 161.300 When is a permit needed to authorize grazing use?

Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by the Navajo Nation, must obtain a permit under this part before using Navajo Partitioned Land for grazing purposes.

§ 161.301 What will a grazing permit contain?

(a) All grazing permits will contain the following provisions:

(1) Name of permit holder;

(2) Range management plan requirements;

(3) Applicable stocking rate;

(4) Range unit number and description of the permitted area;

(5) Animal identification requirements (*i.e.*, brand, microchip, freeze brand, earmark, tattoo, etc.);

(6) Term of permit (including beginning and ending dates of the term allowed, as well as an option to renew, or extend);

(7) A provision stating that the permittee agrees that he or she will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose;

(8) A provision stating that the permit authorizes no other privilege than grazing use;

(9) A provision stating that no person is allowed to hold a grazing permit in more than one range unit of the Navajo Partitioned Lands, unless the customary use area extends beyond the range unit boundary;

(10) A provision reserving a right of entry by BIA and the Navajo Nation for range survey, inventory and inspection or compliance purposes;

(11) A provision prohibiting the creation of a nuisance, any illegal activity, and negligent use or waste of resources;

(12) A provision stating how trespass proceeds are to be distributed;

(13) A provision stating whether mediation will be used in the event of a permit violation; and

(14) A provision stating that the permit cannot be subdivided once it has been issued.

(b) Grazing permits will contain any other provision that in the discretion of BIA with the concurrence of the Navajo Nation is necessary to protect the land and/or resources.

(c) Grazing permits containing any special land use authorized under § 161.503 of this part must be included on the permit.

§ 161.302 What restrictions are placed on grazing permits?

Only a grazing permit issued under this part authorizes the grazing of livestock within the Navajo Partitioned Lands. Grazing permits are subject to the following restrictions:

(a) Grazing permits should not be issued for less than 2 animal units (10 sheep units) or exceed 70 animal units (350 sheep units). However, all grazing permits issued before the adoption of this regulation will be honored and reissued with an adjusted stocking rate if the permittee meets the eligibility and priority criteria found in § 161.400 of this part, and only if the carrying capacity and stocking rate as determined under §§ 161.204 and 161.403 allows.

(b) A grazing permit will be issued in the name of one individual.

(c) Only two horses will be permitted on a grazing permit.

(d) Grazing permits may contain additional conditions authorized by Federal law or Navajo Nation law.

(e) A state/tribal brand only identifies the owner of the livestock, but does not authorize the grazing of any livestock within the Navajo Partitioned Lands.

(f) A permit cannot be subdivided once it has been issued.

§ 161.303 How long is a permit valid?

After its initial issuance, each grazing permit is valid for one year beginning on the following January 1. All permits will be automatically renewed annually if the permittee is in compliance with all applicable laws including tallies and permit requirements.

§ 161.304 Must a permit be recorded?

A permit must be recorded by BIA following approval under this subpart.

§ 161.305 When is a decision by BIA regarding a permit effective?

BIA approval of a permit will be effective immediately upon signature, notwithstanding any appeal, which may be filed under part 2 of this title. Copies of the approved permit will be provided to the permittee and made available to the Navajo Nation upon request.

§ 161.306 When are permits effective?

Unless otherwise provided in the permit, a permit will be effective on the date on which BIA approves the permit.

§ 161.307 When may a permittee commence grazing on Navajo Partitioned Land?

The permittee may graze on Navajo Partitioned Land on the date specified in the permit as the beginning date of the term, but not before BIA approves the permit.

§ 161.308 Must a permittee comply with standards of conduct if granted a permit?

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in Navajo Nation laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, provisions, and other legal requirements. Permittee must also pay all applicable penalties that may be assessed for non-compliance.

(c) Fulfill all financial permit obligations owed to the Navajo Nation and the United States.

(d) Conduct only those activities authorized by the permit.

Subpart E—Reissuance of Grazing Permits

§ 161.400 What are the criteria for reissuing grazing permits?

(a) The Navajo Nation may prescribe eligibility requirements for grazing allocations within 180 days following the effective date of this part. BIA will prescribe the eligibility requirements after expiration of the 180-day period if the Navajo Nation does not prescribe eligibility requirements, or if satisfactory action is not taken by the Navajo Nation.

(b) With the written concurrence of the Navajo Nation, BIA will prescribe the following eligibility requirements, where only those applicants who meet the following criteria are eligible to receive permits to graze livestock:

(1) Those who had grazing permits on Navajo Partitioned Lands under 25 CFR part 167 (formerly part 152), and whose permits were canceled on October 14, 1973;

(2) Those who are listed in the 1974 and 1975 Former Joint Use Area enumeration;

(3) Those who are current residents on Navajo Partitioned Lands; and

(4) Those who have a customary use area on Navajo Partitioned Lands.

(c) Permits re-issued to applicants under this section may be granted by BIA based on the following priority criteria:

(1) The first priority will go to individuals currently the age of 65 or older; and

(2) The second priority will go to individuals under the age of 65.

(d) Upon the recommendation of the NPL District Grazing Committee and Resources Committee, BIA or Navajo Nation will have authority to waive one of the eligibility or priority criteria.

§ 161.401 Will new permits be granted after the initial reissuance of permits?

(a) Following the initial reissuance of permits under § 161.400, the Navajo Nation can grant new permits, subject to BIA approval, if:

(1) Additional permits become available; and

(2) The carrying capacity and stocking rates as determined under §§ 161.204 and 161.403 allow.

(b) The Navajo Nation must inform BIA if it grants any permits under paragraph (a) of this section.

§ 161.402 What are the procedures for reissuing permits?

BIA, with the concurrence of the Navajo Nation, will reissue grazing permits only to individuals that meet the eligibility requirements in § 161.400. Responsibilities for reissuance of grazing permits are as follows:

(a) BIA will develop a complete list consisting of all former permittees whose permits were cancelled and the number of animal units previously authorized in prior grazing permits. This list will be provided to the Grazing Committee and Resources Committee for their review. BIA will also provide the Grazing Committee and Resources Committee with the current carrying capacity and stocking rate for each range unit within the Navajo Partitioned Lands, as determined under § 161.204.

(b) Within 90 days of receipt, the Grazing Committee will review the list developed under § 161.402(a), and make recommendations to the Resources Committee for the granting of grazing permits according to the eligibility and priority criteria in § 161.400.

(c) If the Grazing Committee fails to make its recommendation to the Resources Committee within 90 days after receiving the list of potential permittees, BIA will submit its recommendations to the Resources Committee.

(d) The Resources Committee will review and concur with the list of proposed permit grantees, and then forward a final list to BIA for the

reissuance of grazing permits. If the Resources Committee does not concur, the procedures outlined in § 161.800 will govern.

(e) The final determination list of eligible permittees will be published. Permits will not be issued sooner than 90 days following publication of the final list.

§ 161.403 How are grazing permits allocated within each range unit?

(a) Initial allocation of the number of animal units authorized in each grazing permit will be determined by considering the number of animal units previously authorized in prior grazing permits and the current authorized stocking rate on a given range unit.

(b) Grazing permit allocations may vary from range unit to range unit depending on the stocking rate of each unit, the range management plan, and the number of eligible grazing permittees in the unit.

Subpart F—Modifying A Permit

§ 161.500 May permits be transferred, assigned or modified?

(a) Grazing permits may be transferred, assigned, or modified only as provided in this section. Permits may only be transferred or assigned as a single permit under Navajo Nation procedures and with the approval of BIA. Permittees must reside within the same range unit as the original permittee.

(b) Permits may be transferred, assigned, or modified with the written consent of the permittee, District Grazing Committee and/or Resources Committee and approved by BIA.

(c) BIA must record each transfer, assignment, or modification that it approves under a permit.

§ 161.501 When will a permit modification be effective?

BIA approval of a transfer, assignment, or modification under a permit will be effective immediately, notwithstanding any appeal, which may be filed under part 2 of this title. Copies of approved documents will be provided to the permittee and made available to the Navajo Nation upon request.

§ 161.502 Will a special land use require permit modification?

Yes. When the Navajo Nation and BIA approve a special land use, the grazing permit will be modified to reflect the change in available forage. If a special land use is inconsistent with grazing activities authorized in the permit, the special land use area will be withdrawn from the permit, and grazing cannot take place on that part of the range unit.

Subpart G—Permit Violations

§ 161.600 What permit violations are addressed by this subpart?

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart H.

§ 161.601 How will BIA monitor permit compliance?

Unless the permit provides otherwise, BIA and/or Navajo Nation may enter the range unit at any reasonable time, without prior notice, to protect the interests of the Navajo Nation and ensure that the permittee is in compliance with the operating requirements of the permit.

§ 161.602 Will my permit be canceled for non-use?

(a) If a grazing permit is not used by the permittee for a 2-year period, BIA may cancel the permit upon the recommendation of the Grazing Committee and with the concurrence of the Resources Committee under § 161.606(c). Non-use consists of, but is not limited to, absence of livestock on the range unit, and/or abandonment of a permittee's grazing permit.

(b) Unused grazing permits or portions of grazing permits that are set aside for range recovery will not be cancelled for non-use.

§ 161.603 Can mediation be used in the event of a permit violation or dispute?

A permit may provide for permit disputes or violations to be resolved with the District Grazing Committee through mediation.

(a) The District Grazing Committee will conduct the mediation before the Navajo Nation's appropriate hearing body, before BIA invokes any cancellation remedies.

(b) Conducting the mediation may substitute for permit cancellation. However, BIA retains the authority to cancel the permit under § 161.606.

(c) The Navajo Nation's appropriate hearing body decision will be final, unless it is appealed to the Navajo Nation Supreme Court on a question of law. BIA will defer to any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to BIA under § 161.606.

§ 161.604 What happens if a permit violation occurs?

(a) If the Resources Committee notifies BIA that a specific permit violation has occurred, BIA will initiate an appropriate investigation within 5 business days of that notification.

(b) Unless otherwise provided under tribal law, when BIA has reason to believe that a permit violation has occurred, BIA or the authorized tribal representative will provide written notice to the permittee within 5 business days.

§ 161.605 What will a written notice of a permit violation contain?

The written notice of a permit violation will provide the permittee with 10 days from the receipt of the written notice to:

(a) Cure the permit violation and notify BIA that the violation is cured;

(b) Explain why BIA should not cancel the permit;

(c) Request in writing additional time to complete corrective actions. If additional time is granted, BIA may require that certain actions be taken immediately; or

(d) Request mediation under § 161.603.

§ 161.606 What will BIA do if the permittee doesn't cure a violation on time?

(a) If the permittee does not cure a violation within the required time period, or if the violation is not referred to District Grazing Committee for mediation, BIA will consult with the Navajo Nation, as appropriate, and determine whether:

(1) The permit may be canceled by BIA under paragraph (c) of this section and §§ 161.607 through 161.608;

(2) BIA may invoke any other remedies available to BIA under the permit;

(3) The Navajo Nation may invoke any remedies available to them under the permit; or

(4) The permittee may be granted additional time in which to cure the violation.

(b) If BIA grants a permittee a time extension to cure a violation, the permittee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time from the date on which the extension is granted.

(c) If BIA cancels the permit, BIA will send the permittee and the District Grazing Committee a written notice of cancellation within 5 business days of the decision. BIA will also provide actual or constructive notice of the cancellation to the Navajo Nation, as appropriate. The written notice of cancellation will:

(1) Explain the grounds for cancellation;

(2) Notify the permittee of the amount of any unpaid fees and other financial obligations due under the permit;

(3) Notify the permittee of his or her right to appeal under 25 CFR part 2 of

this title, as modified by § 161.607, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the permittee to cease grazing livestock on the next anniversary date of the grazing permit or 180 days following the receipt of the written notice of cancellation, whichever is sooner.

§ 161.607 What appeal bond provisions apply to permit cancellation decisions?

(a) The appeal bond provisions in § 2.5 of part 2 of this title will not apply to appeals from permit cancellation decision. Instead, when BIA decides to cancel a permit, BIA may require the permittee to post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this title.

(b) An appeal bond should be set in an amount necessary to protect the Navajo Nation against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the permit cancellation decision.

§ 161.608 When will a permit cancellation be effective?

A cancellation decision involving a permit will not be effective for 30 days after the permittee receives a written notice of cancellation from BIA. The cancellation decision will remain ineffective if the permittee files an appeal under § 161.607 and part 2 of this title, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the permittee must continue to comply with the other terms of the permit. If an appeal is not filed in accordance with § 161.607 and part 2 of this title, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from BIA.

§ 161.609 Can BIA take emergency action if the rangeland is threatened?

Yes, if a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Navajo Nation land during the term of a permit, BIA will take appropriate emergency action. Emergency action may include trespass proceedings under subpart H, or judicial action seeking immediate cessation of the activity resulting in or threatening harm. Reasonable efforts will be made to notify the Navajo Nation, either before or after the emergency action is taken.

§ 161.610 What will BIA do if livestock is not removed when a permit expires or is cancelled?

If the livestock is not removed after the expiration or cancellation of a permit, BIA will treat the unauthorized use as a trespass. BIA may remove the livestock on behalf of the Navajo Nation, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under subpart H.

Subpart H—Trespass

§ 161.700 What is trespass?

Under this part, trespass is any unauthorized use of, or action on, Navajo partitioned grazing lands.

§ 161.701 What is BIA's trespass policy?

BIA will:

(a) Investigate accidental, willful, and/or incidental trespass on Navajo Partitioned Lands;

(b) Respond to alleged trespass in a prompt, efficient manner;

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Navajo Partitioned Lands, and enforcement costs incurred as a consequence of the trespass; and

(d) Ensure, to the extent possible, that damage to Navajo Partitioned Lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

§ 161.702 Who will enforce this subpart?

(a) BIA enforces the provisions of this subpart. If the Navajo Nation adopts the provisions of this subpart, the Navajo Nation will have concurrent jurisdiction to enforce this subpart. Additionally, if the Navajo Nation so requests, BIA will defer to tribal prosecution of trespass on Navajo Partitioned Lands.

(b) Nothing in this subpart will be construed to diminish the sovereign authority of the Navajo Nation with respect to trespass.

Notification

§ 161.703 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when BIA has reason to believe that a trespass on Navajo Partitioned Lands has occurred, BIA or the authorized tribal representative will provide written notice within 5 business days to:

(1) The alleged trespasser;

(2) The possessor of trespass property; and

(3) Any known lien holder.

(b) The written notice under paragraph (a) of this section will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of ownership of unauthorized property (*e.g.*, brands in the State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

(6) Potential consequences and penalties for failure to take corrective action; and

(7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by BIA under paragraph (b)(4) of this section.

(c) If BIA determines that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(d) Trespass notices under this subpart are not subject to appeal under part 2 of this title.

§ 161.704 What can a permittee do if they receive a trespass notice?

The trespasser will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact BIA in writing to explain why the trespass notice is in error. The trespasser may contact BIA by telephone but any explanation of trespass must be provided in writing. If BIA determines that a trespass notice was issued in error, the notice will be withdrawn.

§ 161.705 How long will a written trespass notice remain in effect?

A written trespass notice will remain in effect for the same action identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

Actions

§ 161.706 What actions does BIA take against trespassers?

If the trespasser fails to take the corrective action as specified, BIA may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. BIA may keep the property seized for use as evidence.

(b) Assess penalties, damages, and costs under § 161.712.

§ 161.707 When will BIA impound unauthorized livestock or other property?

BIA will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after 5 days of providing notice of impoundment if the trespasser failed to correct the trespass.

§ 161.708 How are trespassers notified of impoundments?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, BIA will send written notice of its intent to impound unauthorized livestock or other property to:

(1) The unauthorized livestock or property owner or representative; and

(2) Any known lien holder of the unauthorized livestock or other property.

(b) If BIA determines that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, a public notice of intent to impound will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After BIA has given notice as described in § 161.707, unauthorized livestock or other property will be impounded without any further notice.

§ 161.709 What happens after unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, BIA will provide notice that the impounded property will be sold as follows:

(a) BIA will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed before the sale.

(b) BIA will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least 5 days after the publication and posting of notice.

§ 161.710 How can impounded livestock or other property be redeemed?

Impounded livestock or other property may be redeemed by submitting proof of ownership and paying all penalties, damages, and costs under § 161.712 and completing all corrective actions identified by BIA under § 161.704.

§ 161.711 How will BIA sell impounded livestock or other property?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property before the time set by the sale, by submitting proof of ownership and settling all obligations under §§ 161.704 and 161.712, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) BIA will give the purchaser a bill of sale or other written receipt evidencing the sale.

Penalties, Damages, and Costs

§ 161.712 What are the penalties, damages, and costs payable by trespassers?

Trespassers on Navajo Partitioned Lands must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Navajo Partitioned Lands and/or property;

(c) The costs associated with enforcement of the provisions, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 161.707; and

(e) All other penalties authorized by law.

§ 161.713 How will BIA determine the amount of damages to Navajo Partitioned Lands?

(a) BIA will determine the damages by considering the costs of rehabilitation and re-vegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

(b) BIA will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of the products or property.

(c) BIA will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

§ 161.714 How will BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

§ 161.715 What will BIA do if a trespasser fails to pay penalties, damages and costs?

This section applies if a trespasser fails to pay the assessed penalties, damages, and costs as directed. Unless otherwise provided by applicable Navajo Nation law, BIA will:

(a) Refuse to issue the permittee a permit for any use of Navajo Partitioned Lands; and

(b) Forward the case for appropriate legal action.

§ 161.716 How are the proceeds from trespass distributed?

Unless otherwise provided by Navajo Nation law:

(a) BIA will treat any amounts recovered under § 161.712 as proceeds from the sale of agricultural property from the Navajo Partitioned Lands upon which the trespass occurred.

(b) Proceeds recovered under § 161.712 may be distributed to:

(1) Repair damages of the Navajo Partitioned Lands and property; or

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit.

(c) Reimburse for costs associated with the enforcement.

(d) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, BIA will return it to the trespasser or, where the owner of the impounded property cannot be identified within 180 days, the net proceeds of the sale will be deposited into the appropriate Navajo Nation account or transferred to the Navajo Nation under applicable tribal law.

§ 161.717 What happens if BIA does not collect enough money to satisfy the penalty?

BIA will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within 5 business days from the date of receipt, BIA will forward the case for appropriate legal action. BIA may send a copy of the notice to the Navajo Nation, permittee, and any known lien holders.

Subpart I—Concurrence/Appeals/Amendments

§ 161.800 How does the Navajo Nation provide concurrence to BIA?

(a) Actions taken by BIA under this part require concurrence of the Navajo Nation under section 640d–9(e)(1)(A) of the Settlement Act.

(b) For any action requiring the concurrence of the Resources Committee, the following procedures will apply:

(1) Unless a longer time is specified in a particular section, or unless BIA grants an extension of time, the Resources Committee will have 45 days to review and concur with the proposed action;

(2) If the Resources Committee concurs in writing with all or part of BIA proposed action, the action or a portion of it may be immediately implemented;

(3) If the Resources Committee does not concur with all or part of the proposed action within the time prescribed in paragraph (b)(1) of this section, BIA will submit to the Resources Committee a written declaration of non-concurrence. BIA will then notify the Resources Committee in writing of a formal hearing to be held not sooner than 30 days from the date of the non-concurrence declaration;

(4) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. BIA will take minutes of the hearing. Following the hearing, BIA may amend, alter, or otherwise change the proposed action. If, following a hearing, BIA alters or amends portions of the proposed plan of action, BIA will submit the altered or amended portions of the plan to the Resources Committee for its concurrence; and

(5) If the Resources Committee fails or refuses to give its concurrence to the proposal, BIA may implement the proposal only after issuing a written order, based upon findings of fact, that the proposed action is necessary to protect the land under the Settlement Act and the Agricultural Act.

§ 161.801 May decisions under this part be appealed?

(a) Appeals of BIA decisions issued under this part may be taken in accordance with procedures in part 2 of 25 CFR.

(b) All appeals of decisions by the Grazing Committee and Resources Committee will be forwarded to the Navajo Nation's Office of Hearings and Appeals.

§ 161.802 How will the Navajo Nation recommend amendments to this part?

The Resources Committee will have final authority on behalf of the Navajo Nation to approve amendments to the Navajo Partitioned Lands grazing provisions, upon the recommendation of the Grazing Committee and the Navajo-Hopi Land Commission, and the concurrence of BIA.

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Federal Register

Friday,
October 7, 2005

Part VI

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of Georgia; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–17]

Notice of Entering Into a Compact With the Government of Georgia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation is publishing a detailed summary and text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of Georgia. Representatives of the United States Government and the Government of Georgia executed the Compact documents on September 12, 2005.

Dated: September 29, 2005.

John C. Mantini,

Acting General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of Georgia

I. Introduction

Despite positive developments since the Rose Revolution, Georgia has had difficulty in building an integrated national economy, reducing poverty, and stimulating economic growth in the regions outside of the capital, Tbilisi. These regions, home to more than 40 percent of the country's total population, have been particularly affected by declining economic conditions, with poverty rising nearly 10 percent between 1996 and 2003. This makes them home to the poorest and most vulnerable segments of Georgia s population. In some regions, more than 50 percent of rural households live below the official poverty line.

Based on the results of an extensive consultative process and consideration of other donor programs, the Government of Georgia focused its Millennium Challenge Account (MCA) Program on two impediments to poverty reduction and economic development in the regions outside Tbilisi: a lack of reliable infrastructure and the slow development of enterprises, particularly in agribusiness. The Program will work to achieve two main objectives, as follows:

- Rehabilitate key regional infrastructure, thus improving transportation for regional trade, ensuring a reliable supply of energy, and regional and municipal service delivery.
- Develop regional enterprises by funding investment and technical assistance and by increasing productivity in farms, agribusinesses and other enterprises to increase jobs and rural income.

The five-year, $295.3 million MCA Compact will help Georgia achieve these objectives, as outlined below.

II. Program Activities, Costs and Performance

1. Regional Infrastructure Rehabilitation Project

Dilapidated infrastructure, especially the poor condition of roads, unreliable gas and electricity supply, and deteriorating municipal services, was consistently indicated as a major impediment to economic growth during Georgia's consultative process. Georgia recognizes the importance of adequate and reliable infrastructure for manufacturing, commerce, improved health services and economic development in general.

The Regional Infrastructure Rehabilitation Project is designed to address chronic infrastructure challenges, with a particular focus on rehabilitating key regional transport routes, natural gas transport and distribution, and regional and municipal services. Activities under this project include:

- Samtskhe-Javakheti Road Rehabilitation activity ($102.2 million) for the rehabilitation and construction of approximately 245 kilometers of a main road traversing the isolated Samtskhe-Javakheti region, including technical assistance for a road master plan, operations and maintenance planning and contracting.
- Energy Rehabilitation activity ($49. 5 million) for the rehabilitation of the North-South Gas Pipeline that fuels electric power generation and provides commercial and residential gas and heating services to the entire country, and for the provision of advisory services to support implementation of Georgia's energy sector strategy.
- Regional Infrastructure Development activity ($60.0 million) to fund regional and municipal physical infrastructure for water supply, sanitation, irrigation, municipal gasification, roads and solid waste in the regions outside Tbilisi.

2. Enterprise Development Project

Although Georgia has witnessed a significant economic expansion in recent years, growth has been concentrated in and around the capital city, Tbilisi, while economic conditions in the regions remain stagnant. Small and medium enterprises (SMEs) could be a powerful driver for economic growth in these areas. However, the performance of SMEs has been disappointing. Of particular concern is the agriculture sector, which accounts for 16 percent of Georgia's economic output and an even larger share of employment. Georgia's diverse climactic zones and rich natural resources provide the potential for future development of the agriculture and agribusiness sectors, particularly in the regions. With increased quantity and quality, Georgian agricultural products could better compete with imported food products, thereby improving the living standards of the rural poor. Yet businesses face problems with poor technology, processing, marketing, management skills, and credit access.

The Enterprise Development Project is designed to address two of the key constraints faced by SMEs in agribusiness and other sectors in the regions, namely the need for additional long-term risk capital and the need for improved skills and capacity in enterprises to recognize and take advantage of market opportunities. Activities under this project include:

- Georgia Regional Development Fund activity ($32.5 million) for a professionally and independently managed investment fund to provide long-term risk capital and technical assistance to SMEs, primarily in the regions outside Tbilisi, and for activities to identify and encourage legal and policy reforms needed to improve the investment environment.
- Agribusiness Development activity ($15.0 million) for technical assistance and grants to farmers and agribusinesses that supply products to the domestic market and the provision of services for disseminating information on regional market prices and volumes.

3. Measuring Outcome and Impact

The Monitoring and Evaluation (M&E) Plan provides the methodological approach, management structures, tasks and timelines, and performance indicators for monitoring progress toward achieving the Compact goal, project objectives, activity outcomes and sub-activity outputs. It also provides the framework for evaluating the impact of the program on beneficiaries, disaggregated by gender and age, where appropriate. The M&E Plan will be complemented by an Activity Monitoring Plan to track activity and sub-activity outputs and process benchmarks.

The overall objective of Georgia's MCA Program is to increase economic growth and reduce poverty in the regions of Georgia, with a particular emphasis on the Samtskhe-Javakheti region. The Program's success will be measured by the incremental increase in financial benefits from each activity, as well as reductions in both the poverty incidence and the poverty gap in the Samtske-Javakheti region.

Within five years, it is estimated that the Program will benefit nearly half a million Georgians and could indirectly impact the lives of a quarter of the population. The Program is also expected to reduce the incidence of poverty in the Samtskhe-Javakheti region by 12 percent. Other benefits include an expected increase of about $37 million in annual income to households and $27 million in business revenue nationwide through the Enterprise Development Project, as well as a reduction in technical losses from the gas pipeline from five percent to approximately two percent, with a significantly reduced risk that a major pipeline accident could cut off critical winter heat to hundreds of thousands of households.

4. Program Administration and Control

The MCA program will be administered by MCG, an independent legal entity ultimately accountable for the success of the Program. A Supervisory Board consisting of members of Government, parliament, the private sector, and civil society will oversee MCG's professional management unit. The management unit will also be advised by a Stakeholders' Committee consisting of representatives from municipal government, the private sector and civil society. MCC will retain approval rights at a number of key decision points during implementation, including key procurements, project budgets, major re-disbursements and key personnel decisions, in addition to its observer status on the MCG Supervisory Board.

For the Road Rehabilitation activity, an international project management firm will work in conjunction with the Road Department of the Ministry of Economic Development in Georgia. For the Energy Rehabilitation activity, a project management consultant with experience in rehabilitating pipelines will manage the pipeline rehabilitation work, in conjunction with the Georgia Gas International Company (GGIC). The Municipal Development Fund, the project implementation unit for an existing World Bank project, will implement the Regional Infrastructure Development activity, with support from the World Bank. Independent project managers selected through open and transparent international tenders will manage each of the remaining projects. A professional firm with substantial prior experience conducting non-asset based financing and investment in transitional economies or similar business environments will manage the Georgia Regional Development Fund activity. The Agribusiness Development activity will be managed by a development organization selected according to detailed selection criteria developed by MCG, with MCC support.

Fiscal and procurement management will be managed by an internationally recognized, private sector accounting firm chosen in a competitive process. The Fiscal/Procurement Agent will provide professional services for (1) funds control, disbursement documentation and management, cash management and accounting; and (2) the planning, management and supervision of the procurement processes contemplated under the MCA Program. World Bank procurement guidelines, as modified by MCC, will serve as the basis of a procurement agreement that will govern all procurements under the Compact.

III. Assessment

1. Economic Analysis

Georgia's MCA Program has an overall economic rate of return (ERR) of 17 percent, calculated as a weighted average of each component. The base case return on the Samtskhe-Javakheti Road activity is estimated to be 20 percent, based on enhanced agricultural surplus and reduced vehicle operating costs. The base case return on the Energy Rehabilitation activity is estimated to be 11 percent. By rehabilitating the North-South Gas Pipeline, it was assumed that Georgia could avoid additional expenditures on gas purchases and reap returns from selling carbon credits for the reduction of greenhouse gas emissions under the United Nations Framework Convention on Climate Change. The base case return on the Regional Infrastructure Development activity is estimated to be 12 percent, on the assumption that improvements in regional and municipal services resulting from improved infrastructure would ease bottlenecks that constrain economic activity, perpetuate market fragmentation, impose numerous transaction costs on business, and lower productivity. The base case return on the Georgia Regional Development Fund activity was calculated to be 24 percent. This ERR captures economic benefits that include anticipated net profit, wages, taxes and payments to local suppliers from the enterprises in which the Fund is expected to invest. The base case return on the Agribusiness Development activity is estimated to be 12 percent. The activity's efforts to identify, introduce, and anchor appropriate innovations in primary agriculture and agribusiness is expected to (1) mitigate problems of incomplete information, credit constraints, and risk perceptions and management, leading in turn to increased productivity, profitability, and incomes, and (2) facilitate and increase meaningful coordination among stakeholders in key agricultural value chains, permitting them to take advantage of larger, more integrated vertical economies.

2. Consultative Process

In developing the MCA Program, Georgia engaged in a broad, meaningful and participatory consultative process that was unique in its recent history. When Georgia was notified of MCA eligibility in May 2004, the government formed a Millennium Challenge working group, representing key Government ministries, parliament, civil society, NGOs and private business, to discuss and agree on the priority areas for MCA support. This working group identified infrastructure rehabilitation and investment in selected industry sectors as priority areas, initiated a broad outreach program, and solicited feedback from the general public. The working group conducted five regional forums, initiated extensive media coverage, and conducted roundtables as part of the consultative process. Its outreach effort resulted in more than 500 specific proposals being submitted to the government, many of them reiterating the need for infrastructure rehabilitation and promotion of agriculture development.

More recently, MCG has hired a public outreach officer and has begun holding weekly outreach events to keep stakeholders and citizens informed. Regular updates of meetings and events are placed on the MCG website. Prior to initiating formal negotiations with MCC in June 2005, MCG held several all-day forums for stakeholders, NGOs, civil society and donor organizations to review and elicit additional feedback on each of the proposed activities.

3. Demonstration of Government Commitment

The MCA Program has received a high degree of financial and other support from Georgia's President and Prime

Minister, the Ministers of Economy, Energy, and Agriculture, and members of Parliament. Continued high-level Government involvement is assured with the governance structure of the Supervisory Board of MCG, chaired by the Prime Minister, and composed of high-level cabinet and parliament members and a representative from the President's administration.

4. Sustainability

In the Regional Infrastructure Rehabilitation Project, the key issue for sustainability across all the Project Activities will be the ability of national and local authorities to provide long term maintenance on capital investments. These concerns have been addressed in the design of each Project activity through the provision of technical assistance, where necessary, to aid local institutions in planning and budgeting for the maintenance of roads and municipal infrastructure and to enhance their ability to sustain a supportive policy environment in the energy sector.

For the Road, Georgia committed to funding road maintenance in an amount appropriate for the existing road network. For the Energy Rehabilitation activity, Georgia committed to certain measures to address past liabilities and current collection problems of the GGIC, the pipeline owner and operator, to help ensure improved cash flow for pipeline maintenance once rehabilitation is complete. It has also committed not to sell, transfer or pledge the Pipeline and/or a controlling interest in GGIC during the Compact's five-year term without prior consent from MCC. For the Regional Infrastructure Development activity, the operations manual requires that all proposals for investment be submitted with a plan for funding operations and maintenance (based on a combination of user charges and local and national Government budget support). The Government of Georgia will, in certain cases, provide a commitment letter evidencing financial support in whole or in part for certain projects in certain cities.

In the Enterprise Development Project, neither the Georgia Regional Development Fund (GRDF) activity nor the Agribusiness Development activity (ADA) is intended to be fully sustainable beyond Compact completion. When the Compact ends, the GRDF will enter a five-year ''wind down'' phase of asset management and liquidation, with its distributions used to support approved charitable, educational or social development programs in Georgia. The ADA will cease direct operations when the Compact ends. Nonetheless, both Activities are expected to enhance business expertise and build successful companies. This contributes to sustainability at the individual enterprise level and strengthens market mechanisms that will remain long after the Compact concludes. In addition, the Activities are expected to increase the level of financial investment in the regions, thereby perpetuating competitive economic growth.

5. Environmental and Social Impacts

The Road Rehabilitation activity is a ''Category A'' project. One section consists of a significant rehabilitation that will upgrade a lightly traveled seasonal road for inter-regional cargo traffic and other transport, which may introduce potentially significant negative impacts following construction. In addition, there are two new road sections, including one that will pass an environmentally-sensitive wetland area. MCC has provided 609(g) funding for the development of a full Environmental and Social Impact Assessment.

The Energy Rehabilitation activity is a ''Category B'' project. It is expected to impact the environment positively through a significant reduction in greenhouse gas emissions and an increase in energy reliability that should reduce use of less clean and less safe alternative fuels, such as biomass and kerosene. Nevertheless, the works would present both an occupational and a public health risk if safety precautions are not followed, and some resettlement may be required for public safety and rehabilitation needs where encroachment onto the pipeline right-of-way has occurred. The Compact requires an environmental audit of GGIC, a focused project Environmental Assessment to include a resettlement plan framework, and an Environmental Management Plan that incorporates health and safety procedures.

The Regional Infrastructure Development activity is a ''Category B'' project although it may fund ''Category A'' activities, In addition to the requirement that all funding from the activity be consistent with World Bank safeguards and MCC environmental guidelines, the Compact requires that the Municipal Development Fund, which will be the implementing entity and currently implements a similar World Bank project, include an environmental and social impact assessment expert on staff.

Due to the nature of the GRDF, it is not possible to assess potential environmental and social impacts at this point. The Compact requires that GRDF investments comply with MCC environmental guidelines. To help compliance the GRDF manager will be required to develop investment guidelines and an environmental review process and monitoring check-list. The ADA is a ''Category C'' project. It is not likely to have adverse environmental or social impacts. The Compact will specify the environmental review criteria for the ADA and describe the environmental sustainability principles to be used for agricultural and agribusiness technical assistance.

6. Donor Coordination

The MCA Program complements efforts by other donors currently active in Georgia, The MCA Program envisions direct collaboration with the World Bank's Municipal Development Fund for the implementation of the Infrastructure Facility. Its proposed infrastructure rehabilitation activities will complement efforts by the World Bank, EBRD, USAID, KfW and other donors that are currently active in road transport, energy, and municipal services.

The Compact's proposed Enterprise Development activities would complement the efforts of the World Bank, EBRD, UNDP, USAID, USDA, FAO, IFAD DFID, KfW and other donors that are currently active in agriculture, financing and business development.

IV. Summary and Conclusion

The Georgia Program focuses on the rehabilitation of critical regional infrastructure and the provision of grants, long-term capital and technical assistance to spur the development of enterprises, particularly in agribusiness. The Program enjoys broad support from civil society and is well coordinated with the goals of the Government of Georgia and of other donors.

The Regional Infrastructure Rehabilitation Project has the potential to improve living conditions and the business environment by dramatically improving basic services in the regions outside Tbilisi. In addition, the Samtskhe-Javakheti Road is intended to integrate more fully an isolated ethnic minority population into the greater Georgian economy and society. The Enterprise Development Project complements these efforts by significantly expanding the reach of advanced training in agricultural production, processing, and agribusiness and increasing the availability of longer term risk capital to entrepreneurs.

This Program will have a positive impact on economic growth and will

contribute to the reduction of poverty in Georgia.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of Georgia

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Millennium Challenge Compact

This Millennium Challenge Compact (the ''Compact'') is made between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''MCC''), and the Government of Georgia (the ''Government'') (referred to herein individually as a ''Party'' and collectively, the ''Parties''). A compendium of capitalized terms defined herein is included in Exhibit A attached hereto.

Recitals

Whereas, MCC, acting through its Board of Directors, has selected Georgia as eligible to present to MCC a proposal for the use of 2004 and 2005 Millennium Challenge Account (''MCA'') assistance to help facilitate poverty reduction through economic growth in Georgia;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which was submitted to MCC on September 24, 2004 (the ''Proposal'');

Whereas, the Proposal focused on, among other things, rehabilitation of key regional infrastructure and development of enterprises in the regions of Georgia;

Whereas, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes proposed activities and projects that will advance the progress of Georgia towards achieving economic growth and poverty reduction;

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Georgia's progress towards economic growth and poverty reduction (the ''Program''); and

Whereas, the Government has established Millennium Challenge Georgia Fund, established pursuant to Presidential Decree No 561, dated December 3, 2004, and Ministry of Finance Order No. 796, dated December 8, 2004 (''MCA-Georgia''), to continue the consultative process and implement the Program;

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

Article I. Purpose and Term

Section 1.1 Objectives. The overall objective of this Compact is increased economic growth and poverty reduction in the regions of Georgia outside of Tbilisi (''Program Objective''), which is key to economic growth and poverty reduction in Georgia (''Compact Goal''). The Parties have identified the following project-level objectives (each a ''Project Objective'' and together the ''Project Objectives'') to advance the Program Objective, each of which is described in more detail in the Annexes attached hereto:

(a) Rehabilitation of key regional infrastructure (the ''Key Regional Infrastructure Rehabilitated Objective''); and

(b) Development of enterprises in regions (the ''Enterprises in Regions Developed Objective'').

(The Program Objective and the individual Project Objectives are referred to herein collectively as the ''Objectives'' and each individually as an ''Objective''). The Government expects to achieve, and shall use its best efforts to ensure the achievement of, these Objectives during the Compact Term.

Section 1.2 Projects. The Annexes attached hereto describe the specific projects and the policy reforms and other activities related thereto (each, a ''Project'') that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives.

Section 1.3 Entry into Force; Compact Term. This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that each Party has completed its domestic requirements for entry into force of this Compact and that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (such date, the ''Entry into Force''). This Compact shall remain in force for five (5) years from the date of the entry into force of this Compact, unless earlier terminated in accordance with Section 5.4 (the ''Compact Term'').

Article II. Funding and Resources

Section 2.1 MCC Funding.

(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Two Hundred Ninety-Five Million Three Hundred Thousand United States Dollars (USD $295,300,000) (''MCC Funding'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives.

(i) Subject to Sections 2.1(a)(ii), 2.2.(b) and 5.4, the allocation of the MCC Funding within the Program and among and within the Projects shall be as generally described in *Annex II* or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the Program or Project activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (1) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (2) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an ''MCC Disbursement'') to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a ''Re-Disbursement''), shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue or earn (collectively, ''Accrued Interest'') shall be held in a Permitted Account and accrue or be earned in accordance with the requirements for the earning and treatment of Accrued Interest as specified in Annex I or any relevant Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) Conversion; Exchange Rate. The Government shall ensure that all MCC Funding in the Permitted Account(s) into which MCC Disbursements are made is held in the currency of the United States of America (''United States Dollars'') prior to Re-Disbursement; provided, that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of Georgia prior to Re-Disbursement in accordance with the requirements of Annex I and any relevant Supplemental Agreement. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of Georgia for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I, including the rate and manner set forth in Annex I, and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties.

(e) Guidance. From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

Section 2.2 Government Resources.

(a) The Government shall provide or cause to be provided such Government funds and other resources, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate to effectively carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other Georgian governmental authority at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation of its respective budget, of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for the reduction. In the event that MCC independently determines upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may (i) reduce, in its sole discretion, the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the activity for which funds were reduced or reallocated or (ii) otherwise suspend or terminate MCC Funding in accordance with Section 5.4(b).

(c) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of Georgia on a multi-year basis.

Section 2.3 Limitations on the Use or Treatment of MCC Funding.

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, find or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading ''Child Survival and Health Programs Fund'' of division E of Public Law 108–7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial

displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken or funded in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time (the ''Environmental Guidelines''), including any definition of ''likely to cause a significant environmental, health, or safety hazard'' as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes. As required by applicable United States law and consistent with the applicable requirement of Georgian law that international cooperation assistance shall be exempt from taxes, all Program Assets, MCC Funding and Accrued Interest shall be free from any taxes imposed under laws currently or hereafter in effect in Georgia during the Compact Term. This exemption shall apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each a ''Tax'' and collectively, ''Taxes''), including:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Georgia, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Georgia, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 2.3(e), the term ''national'' refers to organizations established under the laws of Georgia, other than MCA-Georgia or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws of Georgia;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of Georgia and who are present in Georgia for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of Georgia, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) Taxes or duties levied on the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

(ii) This Section 2.3(e) shall apply, but is not limited to (A) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (B) any supplies, equipment, materials, property or other goods (referred to herein collectively as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, Georgia by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (C) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (D) any employee of such organizations (the uses set forth in clauses (A) through (D) are collectively referred to herein as ''Exempt Uses'').

(iii) If a Tax has been levied and paid contrary to the requirements of this Section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government shall refund promptly to MCC to an account designated by MCC the amount of such Tax in the currency of Georgia, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing according to procedures agreed by the Parties, whether by MCC or otherwise, of such levy and tax payment; *provided*, *however*, the Government shall apply national funds to satisfy its obligations under this Section 2.3(e)(iii) and no MCC Funding, Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding (''Program Assets'') may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) The Parties shall memorialize in a mutually acceptable Supplemental Agreement or other suitable document the mechanisms for implementing this Section 2.3(e), including (1) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (2) a mechanism for ensuring the tax-free importation, use, and re-exportation of goods, services, or the personal belongings of individuals (including all Providers) described in paragraph (i)(2)

of this Section 2.3(e), and (3) any other appropriate Government action to facilitate the administration of this Section 2.3(e).

(v) The Government shall ensure that the tax exemptions provided by this Section 2.3(e) shall apply throughout the Compact Term.

(f) Alteration. The Government shall ensure that neither MCC Funding nor Accrued Interest or Program Assets shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in Georgia that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest or Program Asset.

(g) Liens or Encumbrances. The Government shall ensure that no MCC Funding, Accrued Interest, nor Program Assets shall be subject to any lien (each a ''Lien,'' attachment, enforcement of judgment, pledge, or encumbrance of any kind, except with the prior approval of MCC in accordance with Section 3(c) of Annex I, and in the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien and shall promptly pay any amounts owed to obtain such release; provided, however, the Government shall apply national funds to satisfy its obligations under this Section 2.3(g) and no MCC Funding, Accrued Interest, nor Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.3(g).

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding shall be subject to such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding, unless otherwise agreed by the Parties in writing, shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification.

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in Section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, sub-contractors, grantees and sub-grantees of any Provider. The term ''Provider'' shall mean (i) MCA-Georgia and any Government Affiliate or Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least USD$50,000 in the aggregate of MCC Funding (other than employees of MCA-Georgia) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify, or ensure that such Provider notifies, MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible.

Section 2.5 Refunds; Violation.

(a) Notwithstanding the availability to MCC, or exercise by MCC of, any other remedies, including under international law, this Compact, or any Supplemental Agreement:

(i) If any amount of MCC Funding or Accrued Interest, or any Program Asset, is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified, whether by MCC or otherwise, of such prohibited use; *provided, however*, the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest, nor Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of this Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund, to MCC to such account(s) designated by MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; provided, that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion; *provided, further*, that any refund of MCC Funding or Accrued Interest shall be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

Article III. Implementation

Section 3.1 Implementation Framework. This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

Section 3.2 Government Responsibilities.

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in Georgia, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the ''Government Responsibilities''). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agreed in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of de minimis value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement between the Parties (including any Government Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement between the Parties) or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, except as expressly provided herein or with the prior written consent of MCC; provided, however, the Government may designate MCA-Georgia or, with the prior written consent of MCC, such other mutually acceptable persons or entities, to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties (referred to herein collectively as ''Designated Rights and Responsibilities''), in accordance with the terms and conditions set forth in this Compact or such Supplemental Agreement (each, a ''Permitted Designee''). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government, or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, in accordance with this Section 3.2(c), then the Government shall (i) cause such person or entity to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) ensure that such person or entity does not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any other person or entity and (iii) cause such person or entity to certify to MCC in writing that it will so perform such Designated Rights and Responsibilities and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate or any Permitted Designee including MCA-Georgia in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of MCA-Georgia is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision or any judicial decision which MCA-Georgia, with the agreement of MCC, decides not to appeal, and (ii) the authority of MCA-Georgia shall not be expanded, restricted, or otherwise modified, except in accordance with this Compact, the Governance Agreement, the Governing Documents or any other Supplemental Agreement of the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents and approvals to enable them and their personnel to fully perform under such agreements.

Section 3.3 Government Deliveries. The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all Government deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.4 Government Assurances. The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or otherwise communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, correct and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (1) alter in any material respect the information delivered, (2) likely have a material adverse effect on the Government's ability to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact, or (3) have likely adversely affected MCC's determination to enter into this Compact or any

Supplemental Agreement between the Parties.

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources.

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound.

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods, services or works to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in Georgia or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.5 Implementation Letters; Supplemental Agreements.

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an ''Implementation Letter''). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (i) the Government (or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC and/or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designee or (iii) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force of this Compact (each, a ''Supplemental Agreement''). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

Section 3.6 Procurement; Awards of Assistance.

(a) The Government shall ensure that the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact shall be consistent with the procurement guidelines (the ''Procurement Guidelines'') reflected in a Supplemental Agreement between the Parties (the ''Procurement Agreement'') which Procurement Guidelines shall include the following requirements:

(i) Internationally accepted procurement rules with open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods, services and works acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) No goods, services or works may be funded in whole or in part (directly or indirectly) by MCC Funding which are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that MCA-Georgia and any other Permitted Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish MCC evidence of the adoption of the Procurement Guidelines by MCA-Georgia no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this Section 3.6 into all Supplemental Agreements between the Government or any Government Affiliate or Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

Section 3.7 Policy Performance; Policy Reforms. In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003, as amended (the ''Act''), and the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time (''MCA Eligibility Criteria'').

Section 3.8 Records and Information; Access; Audits; Reviews.

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this Section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under Section 3.12.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt, acceptance and use of goods, services and works acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact,

the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice (''Compact Records''). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Georgia. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Access. The Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, at all reasonable times the opportunity to audit, review, evaluate or inspect activities funded in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. The Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, or select, or cause to be selected, an auditor named on the approved list of auditors in accordance with the Guidelines for Financial Audits Contracted by Foreign Recipients (the ''Audit Guidelines'') issued by the Inspector General of the United States Agency for International Development (the ''Inspector General''), and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Guidelines. An audit shall be completed no later than 90 days after the first anniversary of the Entry into Force of this Compact and no later than 90 days after each anniversary of the Entry into Force of this Compact thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC, no later than twenty (20) days prior to the date of its adoption, in form and substance satisfactory to MCC, a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCA-Georgia, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first anniversary of the Entry into Force of this Compact or prior to the end of the first period to be audited.

(iv) Covered Provider. A ''Covered Provider'' is (1) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $300,000 or more of MCC Funding in any MCA-Georgia fiscal year or any other non-United States person or entity that receives (directly or indirectly) USD $300,000 or more of MCC Funding from any Provider in such other party's fiscal year or (2) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $500,000 or more of MCC Funding in any MCA-Georgia fiscal year or any other United States person or entity that receives(directly or indirectly) USD $500,000 or more of MCC Funding from any provider in any such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.8, other than audits arranged for by MCC, no later than 90 days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements of this Section 3.8.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, any Permitted

Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a ''Government Party''), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to finance the costs of any Audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such Audits, reviews or evaluations from financial sources other than MCC Funding.

Section 3.9 Insurance. The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets and shall obtain or cause to be obtained such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MCA-Georgia shall be named as the insured party on any such insurance and the beneficiary of any such guarantee, including performance bonds. MCC shall be named as additional insured on any such insurance or other guarantee, to the extent permissible under applicable laws. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services or works; *provided, however*, at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Georgia and acceptable to MCC or otherwise as directed by MCC. To the extent MCA-Georgia is held liable under any indemnification or other similar provision of any agreement between MCA-Georgia, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MCA-Georgia any such obligation; *provided, further*, the Government shall apply national funds to satisfy its obligations under this Section 3.9 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 3.9.

Section 3.10 Domestic Requirements. The Government shall proceed in a timely manner to seek any required ratification of this Compact or similar domestic requirement, which process the Government shall initiate promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this Section 3.10 shall provisionally apply prior to the Entry into Force.

Section 3.11 No Conflict. The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.12 Reports. The Government shall provide, or cause to be provided, to MCC at least on each anniversary of the Entry Into Force and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) The name of each entity to which MCC Funding has been provided;

(b) The amount of MCC Funding provided to such entity;

(c) A description of the Program and each Project funded in furtherance of this Compact, including:

(i) A statement of whether the Program or any Project was solicited or unsolicited; and

(ii) A detailed description of the objectives and measures for results of the Program or Project;

(d) The progress made by Georgia toward achieving the Compact Goal and Objectives;

(e) A description of the extent to which MCC Funding has been effective in helping Georgia to achieve the Compact Goal and Objectives;

(f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;

(g) A description of the coordination of MCC Funding with assistance provided by other donor countries;

(h) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any audit plan, or any component of the Implementation Plan; and

(j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

Article IV. Conditions Precedent; Deliveries

Section 4.1 Conditions Prior to the Entry into Force and Deliveries. As conditions precedent to the Entry into Force, the Parties shall satisfy the conditions set forth in this Section 4.1.

(a) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(b) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute one or more term sheets that set forth the material and principal terms and conditions of each of the Supplemental Agreements identified in Exhibit B attached hereto (the ''Supplemental Agreement Term Sheets'').

(c) The Government (or mutually acceptable Government Affiliate) and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(d) The Government shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative executing any document under this Compact, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(e) The Government shall deliver a letter signed and dated by the Principal Representative of the Government certifying:

(i) That the Government has completed all of its domestic requirements for this Compact to be fully enforceable under Georgian law; and

(ii) That attached thereto are true, correct and complete copies of any decree, legislation, regulation or other governmental document relating to its domestic requirements for this Compact to enter into force, which MCC may post

on its website or otherwise make publicly available.

(f) The Government shall have amended the Charter of MCA-Georgia to the satisfaction of MCC to provide for, among other things, waiver of control by the state controlling body over the operations and management of MCA-Georgia.

(g) MCC shall deliver a letter signed and dated by the Principal Representative of MCC certifying that MCC has completed its domestic requirements for this Compact to enter into force.

(h) MCC shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative executing any document under this Compact such written statement to be signed by a duly authorized officer of MCC other than the Principal Representative or any such Additional Representative.

Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements. Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

Article V. Final Clauses

Section 5.1 Communications. Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be: (a) in writing; (b) in English; and (c) deemed duly given: (i) upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation, Attention: Vice President for Country Programs (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Email: *VPCountryPrograms@mcc.gov* (Vice President for Country Programs); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

To the Government:

Office of the Prime Minister, Attention: Prime Minister, 7 Pavle Ingorokva Str., Tbilisi, 0134 Tbilisi Georgia, Tel: (995–32) 92–22–43, Fax: (995–32) 92–10–69

With a copy to:

Chief Executive Officer, Millennium Challenge Georgia Fund, 4 Sanapiro St.,Tbilisi, 0105 Georgia, Tel: (995–32) 93–91–12; 93–91–13; 93–91–33, Fax: (995–32) 93–91–44, Email: *lashanidze@mcg.ge*.

Notwithstanding the foregoing, any audit report delivered pursuant to Section 3.8, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This Section 5.1 shall not apply to the exchange of letters contemplated in Section 1.3 or any amendments under Section 5.3.

Section 5.2 Representatives. Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Compact, the Government shall be represented by the individual holding the position of, or acting as, Prime Minister of Georgia, and MCC shall be represented by the individual holding the position of, or acting as, Vice President for Country Programs (each, a ''Principal Representative''), each of whom, by written notice, may designate one or more additional representatives (each, an ''Additional Representative'') for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 5.3 Amendments. The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties and subject to the domestic approval requirements to which this Compact was subject.

Section 5.4 Termination; Suspension.

(a) Subject to Section 2.5 and paragraphs (e) through (h) of this Section 5.4, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including Section 2.1, or any Supplemental Agreement between the Parties, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion that:

(i) Any use or proposed use of MCC Funding or Program Assets or continued implementation of the Compact would be in violation of applicable law or U.S. Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render Georgia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of Georgia on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document or other evidence reveals that actual expenditures for the Program or any Project or any Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed Financial Plan or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (1) materially reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein; (2) fails to contribute or provide the amount, level, type and quality of resources

required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact; or (3) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds; (viii)If the Government, any Provider, or any other third party receiving MCC Funding or using Program Assets, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied (directly or indirectly) to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred that: (1) Materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (2) makes it improbable that the Objectives will be achieved during the Compact Term; (3) materially and adversely affects the Program Assets or any Permitted Account; or (4) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, Permitted Designee or Provider, or any officer, director, employee, agent, representative, Affiliate, contractor, grantee, subcontractor or sub-grantee thereof;

(xi) The Government or any Permitted Designee or Provider has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government or any Permitted Designee or Provider is a party;

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent or any other requirements or conditions in connection with MCC Disbursement as set out in and in accordance with any Supplemental Agreement between the Parties; or (xiii) Any MCC Funding, Accrued Interest or Program Asset becomes subject to a Lien without the prior approval of MCC, and the Government fails to (i) obtain the release of such Lien and (ii) pay solely with national funds (and not with MCC Funding, Accrued Interest or Program Assets) any amounts owed to obtain such release, all within 30 days after the imposition of such Lien.

(c) MCC may reinstate any suspended or terminated MCC Funding under this Compact or any Supplemental Agreement if MCC determines, in its sole discretion, that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority to suspend or terminate this Compact or any MCC Funding under this Section 5.4 includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Funding shall terminate upon expiration or termination of the Compact Term; *provided, however,* reasonable expenditures for goods, services and works that are properly incurred under or in furtherance of this Compact before expiration or termination of the Compact Term may be paid from MCC Funding, provided that the request for such payment is properly submitted within sixty (60) days after such expiration or termination.

(f) Except for payments which the Parties are committed to make under noncancelable commitments entered into with third parties before such suspension or termination, the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, shall suspend, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to Program Assets be transferred to MCC if such Program Assets are in a deliverable state; *provided,* for any Program Asset(s) partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a U.S. Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset(s).

(h) Prior to the expiration of this Compact or upon the termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Georgia, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement nor otherwise committed in accordance with Section 5.4(e), or (iii) any other matter related to the winding up of the Program and this Compact.

Section 5.5 Privileges and Immunities. MCC is an agency of the Government of the United States of America and its personnel assigned to Georgia will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in Georgia, shall enjoy the privileges and immunities that are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in Georgia.

Section 5.6 Attachments. Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the ''Attachments'') is incorporated herein by reference and shall constitute an integral part of this Compact.

Section 5.7 Inconsistencies.

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

(i) Articles I through V; and

(ii) Any Attachments.

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement between the Parties, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement between such parties shall take precedence over a previously executed Supplemental Agreement between such parties. In the event of any inconsistency between a Supplemental Agreement between the Parties and any component of the Implementation Plan, the terms of the relevant Supplemental Agreement shall prevail.

Section 5.8 Indemnification. The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an ''MCC Indemnified Party'') harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (i) are (directly or indirectly) suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (ii) arise from or as a result of the negligence or willful misconduct of the Government, any Government Affiliate, or any Permitted Designee, (directly or indirectly) connected with, any activities (including acts or omissions) undertaken in furtherance of this Compact; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 5.8.

Section 5.9 Headings. The Section and Subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

Section 5.10 Interpretation; Definitions.

(a) Any reference to the term ''including'' in this Compact shall be deemed to mean ''including without limitation'' except as expressly provided otherwise.

(b) Any reference to activities undertaken ''in furtherance of this Compact'' or similar language shall include activities undertaken by the Government, any Government Affiliate or Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to ''day'' or ''days'' shall be calendar days unless provided otherwise.

(d) The term ''U.S. Government'' shall, for the purposes of this Compact, mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

(e) The term ''Affiliate'' of a party is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence.

(f) The term ''Government Affiliate'' is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government.

(g) References to any Affiliate or Government Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

(h) Any references to ''Supplemental Agreement between the Parties'' shall mean any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Section 5.11 Signatures. Other than a signature to this Compact or an amendment to this Compact pursuant to Section 5.3, a signature delivered by facsimile or electronic mail in accordance with Section 5.1 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 5.12 Designation. MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement between the Parties.

Section 5.13 Survival. Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in force: Sections 2.2, 2.3, 2.5, 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 (for one year), 3.12, 5.1, 5.2, 5.4(d), 5.4(e) (for sixty days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this Section 5.13, 5.14, and 5.15.

Section 5.14 Consultation. Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, either Party may terminate this Compact pursuant to Section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 5.15 MCC Status. MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact, is immune from any action or proceeding arising under or relating to this Compact and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of Georgia.

Section 5.16 Language. This Compact is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

Section 5.17 Publicity; Information and Marking. The Government shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the MCA-Georgia Website, identifying Program activity sites, and marking Program Assets; provided, any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this Section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the MCA-Georgia Website.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 12th day of September, 2005 and this Compact shall enter into force in accordance with Section 1.3.

Done at New York, NY in the English language.

For the United States of America, acting through the Millennium Challenge Corporation, Name: Charles O. Sethness, Title: Vice President.

For the Government of Georgia, Name: Salome Zourabichvili, Title: Minister of Foreign Affairs of Georgia.

Exhibit A—Compendium of Defined Terms

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A.

Accrued Interest is any interest or other earnings on MCC Funding that accrues or are earned.

Act means the Millennium Challenge Act of 2003, as amended.

ADA means the Agribusiness Development Activity, a Project Activity under the Enterprise Development Project described in Section 2(b) of Schedule 2 of Annex I.

ADA Manager means the manager who will be selected to set up and manage the Agribusiness Development Activity.

Additional Representative is a representative as may be designated by a Principal Representative, by written notice, for all purposes other than signing amendments to this Compact.

Affiliate means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Agreed Standards shall have the meaning set forth in Section 6(a)(ii)(4)(A) of Schedule 1 of Annex I.

Attachments are any annex, schedule, exhibit, table, appendix or other attachment expressly attached to this Compact.

Audit Guidelines means the ''Guidelines for Financial Audits Contracted by Foreign Recipients'' issued by the Inspector General of the United States Agency for International Development.

Auditor means the auditor(s) as defined in, and engaged pursuant to, Section 3(h) of Annex I and as required by Section 3.8(d) of the Compact.

Auditor/Reviewer Agreement is an agreement between MCA-Georgia and each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer.

Bank(s) means each individually and collectively, any bank holding an account referenced in Section 4(d) of Annex I.

Bank Agreement means an agreement between MCA-Georgia and a Bank, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account.

Beneficiaries means the intended beneficiaries identified in accordance with Annex I.

Chair means the Chair of the Supervisory Board.

Chief Executive Officer means the Chief Executive Officer of MCA–Georgia.

Civil Observer is a representative of civil society nominated by the Stakeholders' Committee (as described in Section 3(d)(ii)(2)(B)(ii) of Annex I) to serve as a non-voting Observer on the Supervisory Board.

Compact means the Millennium Challenge Compact made between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Georgia.

Compact Goal means advancing economic growth and poverty reduction in Georgia.

Compact Records shall have the meaning set forth in Section 3.8(b).

Compact Reports are any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties.

Compact Term means the term for which this Compact shall remain in force, which shall be the five (5) year period from the Entry into Force, unless earlier terminated in accordance with Section 5.4.

Covered Provider shall have the meaning set forth in Section 3.8(d)(iv).

Designated Rights and Responsibilities shall have the meaning set forth in Section 3.2(c).

Detailed Financial Plan means the financial plans that detail the annual and quarterly budget and projected cash requirements for the Program (including administrative costs) and each Project, projected both on a commitment and cash requirement basis.

Disbursement Agreement is a Supplemental Agreement that MCC, the Government (or a mutually acceptable Government Affiliate and MCA–Georgia shall enter into that (i) further specifies the terms and conditions of any MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA–Georgia.

EBRD means European Bank for Reconstruction and Development.

Eligible Governmental Entity means each regional government, local government, local self-government, municipal utility or the central government (to the extent that it owns or operates assets in the Regions) that

will receive RID Grants under a sub-activity of the Regional Infrastructure Development Activity as described in Section 2(c)(i) of Schedule 2 of Annex I.

*Energy Advisors*means the firm(s) that will be engaged to support the Ministry of Energy under a sub-activity of the Energy Rehabilitation Activity described in Section 2(b) of Schedule 1of Annex I.

Energy Rehabilitation Activity is the Project Activity related to energy rehabilitation described in Section 2(b) of Schedule 1 of Annex I.

Enterprise Development Project is the project described in Schedule 2 of Annex I, that the Parties intend to implement in furtherance of the Enterprises in Regions Developed Objective.

Enterprises in Regions Developed Objective is the Project Objective of the Enterprise Development Project.

Entry into Force means the entry into force of this Compact, which shall be on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC.

Environmental Guidelines means the environmental guidelines delivered by MCC to the Government or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time.

ESI Manager means the environmental and social impact manager described in Section 5 of Schedule 1 of Annex 1.

Evaluation Component means the component of the M&E Plan that specifies a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability.

Exempt Uses shall have the meaning set forth in Section 2.3(e)(ii).

Final Evaluation shall have the meaning set forth in Section 3(a) of Annex III.

Final Fund Documents shall have the meaning set forth in Section 2(a)(i) of Schedule 2 of Annex I.

Financial Plan means collectively, the Multi-Year Financial Plan and each Detailed Financial Plan, each amendment, supplement or other change thereto.

Financial Plan Annex means Annex II of this Compact, which summarizes the Multi-Year Financial Plan for the Program.

Fiscal Accountability Plan shall have the meaning set forth in Section 4(c) of Annex I.

Fiscal Agent shall have the mean set forth in Section 3(g) of Annex I.

Fiscal Agent Agreement is an agreement between MCA-Georgia and each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent.

GEL means Georgian Lari.

Georgia Regional Development Fund is an independently managed investment fund that will be created under the Investment Fund Activity of the Enterprise Development Project.

GGIC means Georgia Gas International Corporation.

Governance Regulations means the governance regulations promulgated in furtherance of the Compact and applicable law, which shall be in a form and substance satisfactory to MCC and which specify how MCA-Georgia shall be organized and what its roles and responsibilities are.

Government means the Government of Georgia.

Government Affiliate is an Affiliate, ministry, bureau, department, agency, government, corporation or any other entity chartered or established by the Government. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Government Board Members are the government members identified in Section 3(d)(ii)(2)(A)(i–ii) of Annex I serving as voting members on the Supervisory Board, and any replacements thereof in accordance with Section 3(d)(ii)(2)(A) of Annex I.

Government Party means the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents.

Government Responsibilities shall have the meaning set forth in Section 3.2(a).

GRDF means the Georgia Regional Development Fund as described in Section 2 of Schedule 2 of Annex I.

GRDF Governing Board means the governing board of the GRDF.

IFAD means the International Fund for Agricultural Development.

IFC means the International Finance Corporation.

Implementation Letter is a letter that may be issued by MCC from time to time to furnish additional information or guidance to assist the Government in the implementation of this Compact.

Implementation Plan is a detailed plan for the implementation of the Program and each Project, which will be memorialized in one or more documents and shall consist of: (i) a Financial Plan, (ii) a Fiscal Accountability Plan, (iii) a Procurement Plan, (iv) Program and Project Work Plans, and (v) an M&E Plan.

Implementing Entity means a Government agency, nongovernmental organization or other public-or private-sector entity or persons to which MCA–Georgia may provide MCC funding (directly or indirectly) through an Outside Project Manager, to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact.

Implementing Entity Agreement is an agreement between MCA-Georgia (or the appropriate Outside Project Manager) and an Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity.

Indicative Term Sheet is a term sheet containing the indicative proposed terms of the GRDF as described in Section 2 of Schedule 2 of Annex I.

Indicator Baseline means the value of an Indicator for a Project Activity and Objective prior to it being affected by the Program.

Indicators means the quantitative, objective and reliable data that the M&E Plan will use to measure the results of the Program.

Inspector General means the Inspector General of the United States Agency for International Development.

Investment Committee is a committee of the GRDF as described in Section 2 of Schedule 2 of Annex I.

Investment Manager is the manager that will manage the GRDF as described in Section 2 of Schedule 2 of Annex I.

Investment Period means the investment period of the GRDF, which shall run for five years from the Entry into Force, subject to an earlier termination upon termination of the Compact as described in Section 2 of Schedule 2 of Annex I.

Key Regional Infrastructure Rehabilitated Objective is the Project Objective of the Regional Infrastructure Rehabilitation Project.

KfW means Kreditanstalt fur Wiederaufbau.

Lien means any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind.

Local Account is an interest-bearing local currency of Georgia account at the commercial bank to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency.

M&E Annex means Annex III of this Compact, which generally describes the components of the M&E Plan for the Program.

M&E Plan means the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact.

Management Team means the management team of MCA-Georgia to have overall management responsibility for the implementation of this Compact and further described in Section 3(d)(iii) of Annex I.

Material Agreement shall have the meaning set forth in Section 3(c)(i)(3) of Annex I.

Material Re-Disbursement means any Re-Disbursement that requires MCC approval under applicable law, the Governance Regulations, the Procurement Agreement, Procurement Guidelines, or any Supplemental Agreement.

Material Terms of Reference means any terms of reference for the procurement of goods, services or works that require MCC approval under applicable law, the Governance Regulations, the Procurement Agreement, Procurement Guidelines, or any Supplemental Agreement.

MCA means the 2004 and 2005 Millennium Challenge Account.

MCA–Georgia shall have the meaning set forth in the Recitals.

MCA–Georgia Website means the website operated by MCA-Georgia.

MCA Eligibility Criteria means the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time.

MCC means the Millennium Challenge Corporation.

MCC Disbursement means the disbursement of MCC Funding by MCC to a Permitted Account or through such other mechanism agreed by the Parties as defined in and in accordance with Section 2.1(b)(i) of this Compact.

MCC Disbursement Request means the applicable request that the Government and MCA-Georgia will jointly submit for an MCC Disbursement as may be specified in the Disbursement Agreement.

MCC Funding shall have the meaning set forth in Section 2.1(a).

MCC Indemnified Party means MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative.

MCC Representative is a representative designated by MCC to serve as an Observer on the Supervisory Board.

MDDPII means the World Bank's Municipal Development and Decentralization Project II.

MDF means the Municipal Development Fund, an entity that will implement the Regional Infrastructure Development Activity and further described in Section 2(c)(iv) of Schedule 1 of Annex I.

Monitoring Component means the component of the M&E Plan that specifies how progress toward the Objectives and Project Activity Outcomes will be monitored.

Multi-Year Financial Plan means the multi-year financial plan for the Program and for each Project, which is summarized in Annex II.

Multi-Year Financial Plan Summary means a multi-year Financial plan summary attached to this Compact as Exhibit A of Annex II.

Non-Transfer Condition shall have the meaning set forth in Section 6(a)(ii)(3) of Schedule 1 of Annex I.

Objective(s) are the following objectives of this Compact that have been identified by the Parties, each of which is (i) key to advancing the Compact Goal and (ii) described in more detail in the Annexes attached hereto: (a) the Key Regional Infrastructure Rehabilitated Objective and (b) the Enterprises in Regions Developed Objective.

Objective Indicator means the Indicator for each Objective that will measure the final results of the Projects in order to monitor their success in meeting each of the Objectives. A table of Objective Indicator definitions is set forth at Section 2(b)(i) of Annex III.

Observers means the non-voting observers of the Supervisory Board.

OPIC means the Overseas Private Investment Corporation.

Outside Project Manager means the qualified persons or entities engaged by MCA-Georgia, to serve as outside project managers in accordance with Section 3(e) of Annex I.

Parliament Board Member is the member of Parliament identified in Section 3(d)(ii)(2)(A)(iii) of Annex I serving as voting members on the Supervisory Board, and any replacements thereof in accordance with Section 3(d)(ii)(A) of Annex I.

Parties means the United States, acting through MCC, and the Government.

Party means (i) the United States, acting through MCC or (ii) the Government.

Permitted Account(s) shall have the meaning set forth in Section 4(d) of Annex I.

Permitted Designee shall have the meaning set forth in Section 3.2(c).

Permitted SMEs shall have the meaning set forth in Section 2(a)(i)(3) of Schedule 2 of Annex I.

Pipeline means the north-south gas pipeline which is Georgia's main trunkline for the transmission of natural gas.

Pledge means any pledge of any MCC Funding or any Program Assets, or any guarantee (directly or indirectly) of any indebtedness.

Portfolio Company TA Facility means the Portfolio Company Technical Assistance Facility and further described in Section 2(a)(ii) of Schedule 2 of Annex I.

Principal Representative means (i) for the Government, the individual holding the position of, or acting as, the Prime Minister of Georgia, and (ii) for MCC, the individual holding the position of, or acting as, the Vice President for Country Programs.

Procurement Agent(s) are the procurement agents that MCA–Georgia will engage to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA–Georgia, any Outside Project Manager or Implementing Entity.

Procurement Agent Agreement is the agreement that MCA–Georgia enters into with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent.

Procurement Agreement is a Supplemental Agreement between the Parties, which includes the Procurement Guidelines, and governs the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact.

Procurement Guidelines shall have the meaning set forth in Section 3.6(a).

Procurement Plan means a procurement plan adopted by MCA–Georgia, which plan shall forecast the upcoming six month procurement activities and be updated every six months.

Program means a program, to be implemented under this Compact, using MCC Funding to advance Georgia's progress towards economic growth and poverty reduction.

Program Annex means Annex I to this Compact, which generally describes the Program that MCC Funding will support

in Georgia during the Compact Term and the results to be achieved from the investment of MCC Funding.

Program Assets means (i) MCC Funding, (ii) Accrued Interest, or (iii) any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part by MCC Funding.

Program Objective means the overall objective of this Compact, which is to increase economic growth and poverty reduction in the regions of Georgia outside of Tbilisi, which is key to advancing the Compact Goal.

Project(s) are the Regional Infrastructure Rehabilitation Project and the Enterprise Development Project, and the policy reforms and other activities related thereto that the Government will carry out, or cause to be carried out in furtherance of this Compact to achieve the Objectives and the Compact Goal.

Project Activity means the activities that will be undertaken in furtherance of each Project.

Project Activity Outcome means the outcomes of each Project Activity, which are described in more detail in Annex III.

Project Activity Outcome Indicator is an indicator that will measure the intermediate results achieved under each of the Project Activities, each of which is described in more detail Annex III.

Project Objective(s) means the project-level objectives that will advance the program objective, each of which is described in more detail in Annex III.

Project Road means each of several sub-activities of the Road Rehabilitation Activity described in Section 2(a) of Schedule 1 of Annex I.

Proposal is the proposal for use of MCA assistance submitted to MCC by the Government on September 24, 2004.

Provider shall have the meaning set forth in Section 2.4(b).

PRSP is the Poverty Reduction Strategy that Georgia developed in 2003 that describes the macroeconomic, structural and social policies and programs needed to boost economic growth and reduce rates of extreme poverty.

RDMED means the Road Department of the Ministry of Economic Development.

Re-Disbursement is the release of MCC Funding from a Permitted Account.

Regional Infrastructure Development Activity is the Project Activity described in Section 2(c) of Schedule 1 of Annex I under the Regional Infrastructure Rehabilitation Project.

Regional Infrastructure Rehabilitation Project is the Project described in Schedule 1 of Annex I, that the Parties intend to implement in furtherance of the Key Regional Infrastructure Rehabilitated Objective.

Regions means regions outside the capital city of Tbilisi.

Reviewer shall have the meaning set forth in Section 3(h) of Annex I.

RID Grants are the grants that will be made to Eligible Governmental Entities under a sub-activity of the Regional Infrastructure Development Activity, as described in Section 2(c)(i) of Schedule 1 of Annex I.

RID Operations Manual is an operations manual of the Regional Infrastructure Development Activity and further described in Section 2(c)(iii) of Schedule 1 of Annex I.

RID Projects are projects of the Regional Infrastructure Development Activity and described in Section 2(c)(i) of Schedule 1 to Annex I.

Road Rehabilitation Activity is the Samtskhe-Javakheti Road Project Activity described in Section 2(a) of Schedule 1 of Annex I.

Rural Enterprise Grants are grants that will be given to groups of farmers and to private enterprises under the Agribusiness Development Activity as described in Section 2(b)(iii) of Schedule 2 of Annex I.

Service Providers are third-party consultants and other service providers.

SMEs means small and medium enterprises.

Special Account means a single, completely separate U.S. Dollar interest-bearing account at a commercial bank to receive MCC Disbursements.

Stakeholders' Committee means the committee of MCA-Georgia to provide feedback on Program activities to the Supervisory Board and the Management Team and further described in Section 3(d)(iv) of Annex I.

Strategic Vision means the Government's Strategic Vision and Urgent Financing priorities, 2004–2006.

Supervisory Board means the independent board of directors of MCA-Georgia to oversee MCA-Georgia's responsibilities and obligations under this Compact and further described in Section 3(d)(ii) of Annex I.

Supplemental Agreement shall have the meaning set forth in Section 3.5(b).

Supplemental Agreement Between the Parties means any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Supplemental Agreement Term Sheets means one or more term sheets that the Government (or mutually acceptable Government Affiliate) and MCC shall execute that set forth the material and principal terms and conditions of each of the Supplemental Agreements identified in Exhibit B attached hereto.

Target means one or more expected results that specify the expected value and the expected time by which that result will be achieved.

Tax(es) shall have the meaning set forth in Section 2.3(e)(i).

UNDP means the United Nations Development Programme.

USAID means the United States Agency for International Development.

USDA means the United States Department of Agriculture.

U.S. Government shall mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

United States Dollars (USD) means the currency of the United States of America.

Voting Members are the voting members on the Supervisory Board described in Section 3(d)(ii)(2) of Annex I.

Work Plans means work plans for the overall administration of the Program and for each Project.

Exhibit B—List of Certain Supplemental Agreements

1. Governance Agreement.
2. Form of Fiscal Agent Agreement.
3. Form of Implementing Entity Agreement.
4. Form of Bank Agreement.

Annex I—Program Description

This Annex I to the Compact (the ''Program Annex'') generally describes the Program that MCC Funding will support in Georgia during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Projects described herein, MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Georgia shall enter into a Supplemental Agreement that (i) further specifies the terms and conditions of such MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA-Georgia (the ''Disbursement Agreement'').

Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Each

capitalized term in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of the Compact.

1. Background; Consultative Process

(a) Background and Georgia Development Strategy. Since the collapse of the Soviet Union, Georgia has faced regional instability, civil conflict, deterioration of infrastructure, decline of enterprises and investments, and a decrease in human productivity. Since the Rose Revolution in November 2003, the Government has taken decisive steps to promote stability, good government and private enterprise development. Georgia is working to build a stronger, more integrated national economy and to stimulate economic growth in the regions outside the capital city of Tbilisi (the ''Regions''), where poor infrastructure and a poor business environment represent major obstacles to development. Rural Georgia has been affected by rising poverty and weak economic growth. More than 2 million people, or about 40% of the country's total population, live in the Regions, and poverty in rural Georgia grew by 16% per year, rising from 13.4% in 1997 to 20.9% in 2000. In some parts of the Regions, more than 50% of rural households live below the official poverty line.

Georgia's 2003 Poverty Reduction Strategy Paper (''PRSP'') describes the macroeconomic, structural and social policies and programs needed to boost economic growth and reduce rates of extreme poverty. Among its priorities, the PRSP specifically targets the development of priority sectors of the economy, namely energy, transport, communications, agriculture and tourism. These sectors are vital to the functioning of a sound economy. The PRSP notes that poverty in the Regions is closely tied to the lack of financial resources and the underdevelopment of infrastructure, which together reduce the ability of the poor to access jobs and services such as energy, healthcare, and education. In June 2004, the Government presented its Strategic Vision and Urgent Financing Priorities, 2004–2006 (''Strategic Vision'') to the Donor's Conference in Brussels. The Strategic Vision reinforces the priorities set out in the PRSP, with five main areas of action. Of particular note among them are efforts to rehabilitate the energy sector, stimulate private sector development, and promote sustainable development in the Regions through a focus on infrastructure, trade and transport and agriculture.

The PRSP and the Strategic Vision served as the foundation from which the Government launched a broad consultative effort to develop the MCC Proposal.

(b) Consultative Process. Building on the PRSP process, the consultative process for developing the MCC Proposal involved several steps. Shortly after being informed of its eligibility for MCA funding, the Government developed a list of priority areas for economic development and began soliciting feedback from a wide variety of civil society actors. MCA-Georgia organized eight community roundtable sessions, including one in each of Georgia's five regions, one with the country's business community, and two with a cross-section of non-governmental organizations (NGOs). MCA-Georgia also sponsored public comment boxes, television advertisements, radio and television talk show programs, brochures and a documentary film. This public outreach generated 2,100 calls, 1,500 web hits, 500 walk-ins, and 400 e-mails and ultimately resulted in 531 specific proposals and more than 140 written inquiries. Following initial outreach, MCA-Georgia staff prioritized specific proposals on the basis of their likely economic impact, role in reducing poverty and connection to policy reform goals. MCA-Georgia found a strong consensus in favor of interventions in agriculture and food processing, infrastructure and tourism, areas around which an initial Proposal was then developed. MCA-Georgia posted an abridged proposal on its website, appointed a public outreach officer and continued to hold public outreach sessions. In March 2005, MCA-Georgia held a public meeting for small and medium enterprises with the Georgian Federation of Businesses, then reached out in April to explain its proposal for the Samtskhe-Javakheti road, gas supply pipeline, and the regional infrastructure development facility directly to stakeholders in those project activities.

2. Overview

(a) Program Objectives. The Program involves a series of specific and complementary interventions that the Parties expect will achieve the Program Objective of increased economic growth and poverty reduction in the regions of Georgia and the Project Objectives of rehabilitating key regional infrastructure and developing enterprises in the Regions.

(b) Projects. The Parties have identified, for each Objective, Projects that they intend for the Government to implement, or cause to be implemented, using MCC Funding, each of which is described in the Schedules to this Program Annex. The Schedules to this Program Annex identify the activities that will be undertaken in furtherance of each Project (each, a ''Project Activity''). Notwithstanding anything to the contrary in this Compact, the Parties may agree to amend, terminate or suspend these Projects or Project Activities or create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; provided, however, any such amendment of a Project or Project Activity or creation of a new project is (i) consistent with the Objectives; (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; (iii) does not cause the Government's responsibilities or contribution of resources to be less than specified in Section 2.2 of this Compact or elsewhere in this Compact; and (iv) does not extend the Compact Term.

(c) Beneficiaries. The intended beneficiaries of each Project are described in the respective Schedule to this Program Annex to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of the implementation of the Program. The Parties shall agree upon the description of the intended beneficiaries of the Program, including publishing such description on the website operated by MCA-Georgia.

(d) Civil Society. Civil society will participate in overseeing the implementation of the Program through its representation through an Observer to the Supervisory Board and through the role of the Stakeholders' Committee, as provided in Section 3(d) of this Program Annex. In addition, the Work Plans and/or Procurement Plans for each Project shall note the extent to which civil society will have a role in the implementation of a particular Project Activity.

(e) Monitoring and Evaluation. Annex III of this Compact generally describes the plan to measure and evaluate progress toward achievement of the Objectives of this Compact (the ''M&E Plan''). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued payment of MCC Funding under this Compact will be contingent on successful achievement of targets set forth in the M&E Plan.

3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring, evaluation and fiscal accountability for the use of MCC Funding is summarized below and in the Schedules attached to this Program Annex, or as may otherwise be agreed in writing by the Parties.

(a) General. The elements of the implementation framework will be further described in relevant Supplemental Agreements and in a detailed plan for the implementation of the Program and each Project (the ''Implementation Plan''), which will be memorialized in one or more documents and shall consist of a Financial Plan, a Fiscal Accountability Plan, a Procurement Plan, Program and Project Work Plans, and an M&E Plan. MCA-Georgia shall adopt each component of the Implementation Plan in accordance with the requirements and timeframe as may be specified in this Program Annex, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. MCA-Georgia may amend the Implementation Plan or any component thereof without amending this Compact, provided any material amendment of the Implementation Plan or any component thereof has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties. By such time as may be specified in the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time, MCA-Georgia shall adopt one or more work plans for the overall administration of the Program and for each Project (collectively, the ''Work Plans''). The Work Plan(s) shall set forth the details of each activity to be undertaken or funded by MCC Funding as well as the allocation of roles and responsibilities for specific Project activities, or other programmatic guidelines, performance requirements, targets, or other expectations for a Project.

(b) Government. The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities and other obligations or responsibilities of the Government under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions, procedural changes and contractual arrangements as may be necessary or appropriate to achieve the Objectives, to successfully implement the Program, and to establish a legal entity, in a form mutually agreeable to the Parties, MCA-Georgia, which shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government. The Government shall ensure that MCA-Georgia is duly authorized and sufficiently organized, staffed and empowered to fully carry out the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, MCA-Georgia shall be organized, and have such roles and responsibilities, as described in Section 3(d) of this Program Annex and as provided in the Governance Agreement and any Governing Documents and in applicable law and in governance regulations promulgated in furtherance thereof (''Governance Regulations''), which shall be in a form and substance satisfactory to MCC; provided, however, the Government may, subject to MCC approval, carry out any of the roles and responsibilities designated to be carried out by MCA-Georgia and described in Section 3(d) of this Program Annex or elsewhere in this Program Annex, applicable law, the Governance Regulations, or any Supplemental Agreement prior to and during the initial period of the establishment and staffing of MCA-Georgia, but in no event longer than the earlier of (i) the formation of the Supervisory Board and the engagement of each of the Officers and (ii) six months from the Entry into Force, unless otherwise agreed by the Parties in writing.

(c) MCC.

(i) Notwithstanding Section 3.1 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

(1) MCC Disbursements;

(2) The Financial Plan and any amendments and supplements thereto;

(3) Agreements (i) between the Government and MCA-Georgia, (ii) between the Government, MCA-Georgia or other Government Affiliate, on the one hand, and any Provider or Affiliate of a Provider, on the other hand, which require such MCC approval under applicable law, the Governance Regulations, the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement, or (iii) in which the Government, MCA-Georgia or other Government Affiliate appoints, hires or engages any of the following in furtherance of this Compact:

(A) Auditor;

(B) Fiscal Agent;

(C) Bank;

(D) Procurement Agent;

(E) Outside Project Manager;

(F) Implementing Entity; and

(G) Director, Observer, Officer and/or other key employee or contractor of MCA-Georgia, including any compensation for such person.

(Any agreement described in clause (i) through (iii) of this Section 3(c)(i)(3) and any amendments and supplements thereto, each, a ''Material Agreement'');

(4) Any modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(5) Any agreement that is (i) not at arm's length or (ii) with a party related to the Government, including MCA-Georgia, or any of their respective Affiliates;

(6) Any Re-Disbursement (each, a ''Material Re-Disbursement'') that requires such MCC approval under applicable law, the Governance Regulations, the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement;

(7) Terms of reference for the procurement of goods, services or works that require such MCC approval under applicable law, the Governance Regulations, the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement (each, a ''Material Terms of Reference'');

(8) The Implementation Plan, including each component plan thereto, and any material amendments and supplements to the Implementation Plan or any component thereto;

(9) Any pledge of any MCC Funding or any Program Assets or any guarantee (directly or indirectly) of any indebtedness (each, a ''Pledge'');

(10) Any decree, legislation, contractual arrangement or other document establishing or governing MCA-Georgia, including the Governance Regulations, and any disposition (in whole or in part), liquidation, dissolution, winding up, reorganization or other change of (A) MCA-Georgia, including any revocation or modification of, or supplement to, any decree, legislation, contractual arrangement or other document establishing MCA-Georgia, or (B) any subsidiary or Affiliate of MCA-Georgia;

(11) Any change in character or location of any Permitted Account;

(12) Formation or acquisition of any subsidiary (direct or indirect) or other Affiliate of MCA-Georgia;

(13) Any (A) change of a Director, Observer, Officer or other key employee or contractor of MCA-Georgia, or in the composition of the Supervisory Board, including approval of the nominee for Chair, or (B) filling of any vacant seat of the Chair, a Director or an Observer or vacant position of an Officer or other key employee or contractor of MCA-Georgia;

(14) The management information system to be developed and maintained by the Management Team of MCA-Georgia, and any material modifications to such system;

(15) Any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing; and

(16) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, the Governance Regulations, the Procurement Agreement, Procurement Guidelines, the Disbursement Agreement, or any other Supplemental Agreement between the Parties.

The Chair of the Supervisory Board (the ''Chair'') and/or the Chief Executive Officer of MCA-Georgia (the ''Chief Executive Officer'') or other designated officer, as provided in applicable law and the Governance Regulations, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the ''Compact Reports'').

(ii) MCC shall have the authority to exercise its approval rights set forth in this Section 3(c) in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Supervisory Board. MCC retains the right to revoke its approval of a matter if MCC concludes that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government or MCA-Georgia.

(d) MCA-Georgia.

(i) General. Unless otherwise agreed by the Parties in writing, MCA-Georgia shall be responsible for the oversight and management of the implementation of this Compact. MCA-Georgia shall be governed by the terms and conditions set forth in applicable law and in the Governance Regulations based on the following principles:

(1) The Government shall ensure that MCA-Georgia shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. MCA-Georgia shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC; and

(2) Unless otherwise agreed by the Parties in writing, MCA-Georgia shall consist of (A) an independent board of directors (the ''Supervisory Board'') to oversee MCA-Georgia's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities), (B) a management team (the ''Management Team'') to have overall management responsibility for the implementation of this Compact, and (C) a Stakeholders' Committee to provide feedback on Program activities to the Supervisory Board and the Management Team.

(ii) Supervisory Board.

(1) Formation. The Government shall ensure that the Supervisory Board shall be formed, constituted, governed, maintained and operated in accordance with applicable law and the terms and conditions set forth in this Section 3(d), the Governance Regulations and relevant Supplemental Agreements. As a condition for Entry into Force, the Government shall have amended the charter of MCA-Georgia, to the satisfaction of MCC, to provide for waiver of the control of the State Controlling Body over the management and operations of MCA-Georgia. The charter of MCA-Georgia shall also be amended to reflect the composition of the Supervisory Board.

(2) Composition. Unless otherwise agreed by the Parties in writing, the Supervisory Board shall consist of (i) eight (8) voting members (the ''Voting Members''), (ii) the Chief Executive of MCA-Georgia, who shall be a non-voting member, and (iii) two (2) non-voting observers (the ''Observers''), each of which must be acceptable to MCC, taking into consideration appropriate gender and ethnic representation.

(A) The Voting Members shall be as follows:

(i) Three (3) members of the executive branch of Government representing Ministries of the Government (one of whom shall be the Prime Minister);

(ii) One (1) member who shall be the head of the President's administration (together with the three members listed in (i) above, the ''Government Board Members'');

(iii) Two (2) members of Parliament (''Parliament Board Member'');

(iv) One (1) representative of a civil society organization; and

(v) One (1) representative from the business sector.

The following provisions apply to the Voting Members:

a. The Voting Members may, by a majority vote, expand the Supervisory Board with the approval of MCC;

b. Each Government Board Member may be replaced by another government official, subject to approval by the Government and MCC;

c. Subject to the Governance Agreement, the Parties contemplate that the Prime Minister shall initially fill the seat of Chair; and

d. Each Government Board Member position shall be filled by the individual then holding the office identified and such individuals shall serve in their capacity as the applicable Government official and not in their personal capacity. In the event that a Government Board Member or a Parliament Board Member is unable to participate in a meeting of the Supervisory Board such member's principal deputy or equivalent (or in the case of a Parliament Board Member, another member of Parliament) may participate in the member's stead.

(B) The Observers shall be:

(i) A representative (the ''MCC Representative'') appointed by MCC; and

(ii) One representative of civil society nominated by the Stakeholders' Committee (the ''Civil Observer''). The initial Civil Observer shall serve for a period of one year from the date of the first Supervisory Board meeting after the Entry into Force, and on each anniversary thereof, the Stakeholders' Committee shall appoint another of its members to serve as a Civil Observer for the subsequent year. The Civil Observer may nominate an alternate from among the Stakeholders' Committee to attend one or more meetings of the Supervisory Board in the event that the Civil Observer is unable to attend.

The following provision applies to the Observers:

a. Each Observer shall have the right to attend all meetings of the Supervisory Board, participate in discussions of the Supervisory Board, and receive all information and documents provided to the Supervisory Board, together with any other rights of access to records, employees or facilities as would be granted to a member of the Supervisory Board under the Governance Agreement and any Governing Document.

(3) Role and Responsibilities.

(A) The Supervisory Board shall oversee the overall implementation of the Program and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken, and certain agreements and other documents may be executed and delivered, by MCA-Georgia only upon the approval and authorization of the Supervisory

Board as provided under applicable law and in the Governance Regulations, including each MCC Disbursement Request, selection or termination of certain Providers, any component of the Implementation Plan, certain Re-Disbursements and certain terms of reference.

(C) The Chair shall certify the approval by the Supervisory Board of all Compact Reports or any other documents or reports from time to time delivered to MCC by MCA-Georgia (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, accurate and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities, and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement, the Supervisory Board shall have the exclusive authority for all actions defined for the Supervisory Board under applicable law and in the Governance Regulations and which are expressly designated therein as responsibilities that cannot be delegated further.

(4) Meetings. The Supervisory Board shall hold at least quarterly meetings as well as such other periodic meetings or subcommittee meetings as may be necessary from time to time.

(5) Indemnification of Civil Observer; MCC Representative. The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and protections are provided, acceptable to MCC, to ensure that Civil Observers shall not be held personally liable for the actions or omissions of the Supervisory Board. Pursuant to Section 5.5 and Section 5.8 of this Compact, the Government and MCA-Georgia shall hold harmless the MCC Representative for any liability or action arising out of the MCC Representative's role as a non-voting observer on the Supervisory Board. The Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to the Compact, the MCC Representative is not subject to the jurisdiction of the courts or other body of Georgia.

(iii) Management Team. Unless otherwise agreed in writing by the Parties, the Management Team shall report, through the Chief Executive Officer or other Officer as designated in the Governance Agreement, directly to the Supervisory Board and to the Stakeholders' Committee, and shall have the composition, roles and responsibilities described below and set forth more particularly in the Governance Agreement and any Governing Document.

(1) Composition. The Government shall ensure that the Management Team shall be composed of qualified experts from the public or private sectors, including such offices and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities as set forth in the Governance Agreement, any Governing Document, and from time to time in any Supplemental Agreement between the Parties, including without limitation the following: (i) Chief Executive Officer, (ii) a deputy director, (iii) five project directors, (iv) an environment and social impact director, (v) chief financial officer, (vi) a procurement director, (vii) a public outreach director, (viii) a monitoring and evaluation director, and (ix) a general counsel. The Management Team will be supported by an office manager and appropriate administrative and support personnel.

(2) Appointment of Management Team. Unless otherwise specified in the Governance Agreement or any Governing Documents, the Management Team shall be selected and hired by the Chief Executive Officer after an open and competitive recruitment and selection process, which appointment shall be subject to the approval of the Supervisory Board and MCC.

(3) Role and Responsibilities.

(A) The Management Team shall assist the Supervisory Board in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Supervisory Board and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement) for the overall management of the implementation of the Program.

(B) The Management Team shall report to and meet with, on a quarterly basis, the Stakeholders' Committee, and shall include a report on the feedback provided by the Stakeholders' Committee and the ways in which that feedback has informed the activities of MCA-Georgia in the next following quarterly report to the Supervisory Board.

(C) Without limiting the foregoing general responsibilities or the generality of Designated Rights and Responsibilities that the Government may designate MCA-Georgia, the Management Team shall develop the components of the Implementation Plan, oversee the implementation of the Projects, manage and coordinate monitoring and evaluation, maintain internal accounting records, conduct and oversee certain procurements, and such other responsibilities as set out in the Governance Agreement or delegated to the Management Team by the Supervisory Board from time to time.

(D) Appropriate Officers shall have the authority to contract on behalf of MCA-Georgia under any procurement under the Program.

(E) The Management Team shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, MCC Disbursement Requests, Compact Reports, certain human resources decisions, and certain procurement actions, as provided in the Governance Agreement.

(iv) Stakeholders' Committee.

(1) Composition. The Government shall ensure the establishment of a stakeholders' committee (the ''Stakeholders Committee'') consisting of at least eight (8) members, taking into consideration appropriate gender and ethnic representation, unless otherwise agreed by the Parties, and comprised of the following individuals:

(A) Three (3) representatives of civil societies, (one of whom shall come from an organization in the Samtske-Javakheti region and one of whom shall come from an environmental organization) identified through a process that provides widespread notice of the formation of the Stakeholders' Committee;

(B) The head of the Agrarian Committee of Parliament;

(C) The head of the Road Department of the Ministry of Economic Development;

(D) One (1) senior representative from the Ministry of the Environment; and

(E) Two (2) senior representatives of the business community, one of which should have experience in agribusiness and one of which should have experience in the financial sector. Each Stakeholders' Committee member may appoint an alternate, approved by majority vote of the other members, to serve when he or she is unable to participate in a meeting of the Stakeholders' Committee.

(2) Formation. The Government shall take all action necessary and appropriate actions to ensure the Stakeholders' Committee is established consistent with this Schedule and as otherwise specified in the Governance Agreement or otherwise agreed in writing by the Parties. The composition of the Stakeholders' Committee may be adjusted by agreement of the Parties from time to time to ensure, among other things, a cross-section

representative of the intended beneficiaries. The number of members of the Stakeholders' Committee may be increased, but in no event to more than twelve (12) members, upon the majority vote of the then existing members and the vacancies created by such increase shall be filled by the majority vote of the then existing members, subject to the approval of MCA-Georgia and MCC.

(3) Role and Responsibilities.

(A) The Stakeholders' Committee shall be a mechanism to provide representatives of the private sector, civil society and local and regional governments the opportunity to provide advice and input to MCA-Georgia regarding the implementation of the Compact.

(B) During quarterly meetings of the Stakeholders' Committee, the Management Team shall present an update on the implementation of this Compact and progress towards achievement of the Objectives. The Management Team shall provide copies of the M&E Plan, the Implementation Plan, and reports on the Projects and Project Activities. The Stakeholders' Committee will have an opportunity to regularly provide to the Chief Executive Officer and to the Supervisory Board its views and recommendations. The Supervisory Board may, in response to the Stakeholders' Committee, require the Management Team to provide such other information and documents as the Supervisory Board deems advisable.

(C) The Management Team shall include in its quarterly reports to the Supervisory Board, a report on the Stakeholders' Committee meetings that occurred during the period covered by such report.

(D) The Stakeholders' Committee shall appoint one of their members to be the secretary to, among other things, take official minutes of the meetings of the Stakeholders' Committee.

(4) Meetings. The Stakeholders' Committee shall hold quarterly meetings of the full Stakeholders' Committee as well as such other periodic meetings of the Stakeholders' Committee or subcommittees thereof designated along sectoral, regional, or other lines, as may be necessary or appropriate from time to time.

(5) Accessibility; Transparency. Stakeholders' Committee members will be accessible to the beneficiaries they represent to receive the beneficiaries' comments or suggestions regarding the Program. The minutes of all meetings of the Stakeholders' Committee and any subcommittees shall be made public on the MCA-Georgia Web site in a timely manner.

(e) Outside Project Manager. MCA-Georgia shall have the authority to engage qualified entities to serve as outside project managers (each, an ''Outside Project Manager'') in the event that it is advisable to do so for the proper and efficient day-to-day management of a Project; provided, however, that the appointment or engagement of any Outside Project Manager after a competitive selection process shall be subject to approval by the Supervisory Board and MCC prior to such appointment or engagement. Upon Supervisory Board approval, MCA-Georgia may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects; and provided, further, that the Management Team shall remain accountable for those duties and responsibilities and all reports delivered by the Outside Project Manager notwithstanding any such delegation, assignment or contract and the Outside Project Manager shall be subject to the oversight of the Fiscal Agent and Procurement Agent. The Supervisory Board may determine that it is advisable to engage one or more Outside Project Managers and instruct MCA-Georgia and, where appropriate, a Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager. The key provisions relating to Outside Project Managers for certain of the Project Activities are set out in the Schedule to this Annex.

(f) Implementing Entities. Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, MCA-Georgia may provide MCC Funding, (directly or indirectly) through an Outside Project Manager, to one or more Government Affiliates or to one or more nongovernmental or other public- or private-sector entities or persons to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact (each, an ''Implementing Entity''). The Government shall ensure that MCA-Georgia (or the appropriate Outside Project Manager) enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity (the ''Implementing Entity Agreement''). An Implementing Entity shall report directly to MCA-Georgia or the Outside Project Manager, as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties. The key provisions relating to Implementing Entity Agreements for certain of the Project Activities are set out in the Schedules to this Annex.

(g) Fiscal Agent. The Government shall ensure that MCA-Georgia engages one or more fiscal agents (each, a ''Fiscal Agent''), who shall be responsible for, among other things, (i) ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement and other relevant Supplemental Agreements, (ii) instructing a Bank to make Re-Disbursements from a Permitted Account, following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for MCC Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding financial transactions, and (v) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefore) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement or any other relevant Supplemental Agreements. Upon the written request of MCC, the Government shall ensure that MCA-Georgia terminates a Fiscal Agent, without any liability to MCC, and the Government shall ensure that MCA-Georgia engages a new Fiscal Agent, subject to the approval by the Supervisory Board and MCC. The Government shall ensure that MCA-Georgia enters into an agreement with each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent (''Fiscal Agent Agreement'').

(h) Auditors and Reviewers. The Government shall ensure that MCA-Georgia carries out the Government's audit responsibilities as provided in Sections 3.8(d), (e) and (f), including engaging one or more auditors (each, an ''Auditor'') required by Section 3.8(d). As requested by MCC in writing from time to time, the Government shall ensure that MCA-Georgia shall also engage an independent (i) reviewer to conduct reviews of performance and compliance under this Compact pursuant to Section 3.8(f), which reviewer shall have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct

environmental audits, and (3) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a ''Reviewer''). MCA-Georgia shall select the Auditor(s) or Reviewers in accordance with the Governance Regulations or relevant Supplemental Agreement. The Government shall ensure that MCA-Georgia enters into an agreement with each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the ''Auditor/Reviewer Agreement''). In the case of a financial audit required by Section 3.8(f), such Auditor/Reviewer Agreement shall be effective no later than 120 days prior to the end of the relevant fiscal year or other period to be audited; provided, however, if MCC requires concurrent audits of financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than a date agreed by the Parties.

(i) Procurement Agent. If requested by MCC, the Government shall ensure that MCA-Georgia engages one or more procurement agents (each, a ''Procurement Agent'') to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Georgia, any Outside Project Manager or Implementing Entity. The role and responsibilities of such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that MCA-Georgia enters into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the ''Procurement Agent Agreement''). Any Procurement Agent shall adhere to the procurement standards set forth in the Procurement Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan (the ''Procurement Plan'') adopted by MCA-Georgia, which plan shall forecast the upcoming six month procurement activities and be updated every six months.

4. Finances and Fiscal Accountability

(a) Financial Plan.

(i) Financial Plan. The multi-year financial plan for the Program and for each Project (the ''Multi-Year Financial Plan'') is summarized in Annex II to this Compact.

(ii) Detailed Financial Plan. During the Compact Term, the Government shall ensure that MCA-Georgia delivers to MCC for approval timely financial plans that detail the annual and quarterly budget and projected cash requirements for the Program (including administrative costs) and each Project, projected both on a commitment and cash requirement basis (each, a ''Detailed Financial Plan''). Each Detailed Financial Plan shall be delivered by such time as specified in the Disbursement Agreement or as may otherwise be agreed by the Parties. The Multi-Year Financial Plan and each Detailed Financial Plan and each amendment, supplement or other change thereto are collectively, the ''Financial Plan.''

(iii) Expenditures. No financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request submitted for any activity or expenditure, unless the expense is provided for in the Detailed Financial Plan and unless uncommitted funds exist in the balance of the Detailed Financial Plan for the relevant period or unless the Parties otherwise agree in writing.

(iv) Modifications to Financial Plan. Notwithstanding anything to the contrary in this Compact, MCA-Georgia may amend or supplement the Financial Plan or any component thereof without amending this Compact, provided any material amendment or supplement has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

(b) Disbursement and Re-Disbursement. The Disbursement Agreement (and disbursement schedules thereto), as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment or waiver of any such terms and conditions. The Government and MCA-Georgia shall jointly submit the applicable request for an MCC Disbursement (the ''MCC Disbursement Request'') as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, MCA-Georgia and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with the Governance Regulations and Disbursement Agreement; provided, however, unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein or in the Governance Regulations and Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) Fiscal Accountability Plan. By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, MCA-Georgia shall adopt as part of the Implementation Plan a fiscal accountability plan that identifies the principles and mechanisms to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods and services for the accomplishment of the Objectives (the ''Fiscal Accountability Plan''). The Fiscal Accountability Plan shall set forth, among other things, requirements with respect to the following matters: (i) Funds control and documentation; (ii) separation of duties and internal controls; (iii) accounting standards and systems; (iv) content and timing of reports; (v) policies concerning public availability of all financial information; (vi) cash management practices; (vii) procurement and contracting practices, including timely payment to vendors; (viii) the role of independent auditors; and (ix) the roles of fiscal agents and procurement agents.

(d) Permitted Accounts. The Government shall establish, or cause to be established, such accounts (each, a ''Permitted Account,'' and collectively ''Permitted Accounts'') as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate U.S. Dollar interest-bearing account (the ''Special Account'') at a commercial bank that is procured through a competitive process to receive MCC Disbursements;

(ii) If necessary, an interest-bearing local currency of Georgia account (the ''Local Account'') at the commercial bank to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency; and

(iii) Such other interest-bearing accounts to receive MCC Disbursements in such banks as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the respective Bank Agreement or otherwise. MCC shall have the right, among other things, to view any Permitted Account statements and activity directly on-line or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that MCA-Georgia enters into an agreement with each Bank, respectively, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account, respectively (each, a ''Bank Agreement''). For purposes of this Compact, any bank holding an account referenced in Section 4(d) of this Program Annex are each a ''Bank'' and, are collectively referred to as the ''Banks.''

(e) Currency Exchange. The Bank shall convert MCC Funding to the currency of Georgia at a rate to which the Parties mutually agree with the Bank in the Bank Agreement.

5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and Projects. Without limiting the generality of the foregoing, in an effort to achieve the goals of transparency and accountability, the Government shall ensure that MCA-Georgia:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MCA-Georgia;

(b) Considers as a factor in its decision-making the recommendations of the Observers;

(c) Develops and maintains a website (the ''MCA-Georgia Website'') in a timely, accurate and appropriately comprehensive manner, such MCA-Georgia Website to include postings of information and documents in English and Georgian and other languages where relevant; and

(d) Posts on the MCA-Georgia Website and otherwise makes publicly available from time to time the following documents or information:

(i) The Compact and all Compact Reports;

(ii) All minutes of the meetings of the Supervisory Board and Stakeholders' Committee;

(iii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iv) All relevant Environmental Impact Assessments and supporting documents;

(v) The Compact and all Compact Reports;

(vi) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vii) Disbursement Agreement, as amended from time to time;

(viii) All procurement agreements (including policies, standard documents, procurement plans, and required procedures), requests for proposals, and notices of awarded contracts; and

(ix) A copy of any legislation and other documents related to the formation, organization and governance of MCA-Georgia, including the Governance Regulations, and any amendments thereto.

Schedule 1 to Annex I—Regional Infrastructure Rehabilitation Project

This Schedule 1 describes and summarizes the key elements of a regional infrastructure rehabilitation Project that the Parties intend to implement in furtherance of the Key Regional Infrastructure Rehabilitated Objective (the ''Regional Infrastructure Rehabilitation Project''). Additional details regarding the implementation of the Regional Infrastructure Rehabilitation Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Dilapidated infrastructure, especially the poor condition of the roads, unreliable gas and electricity supply, and deteriorating municipal services, has been consistently identified through the consultative process as a major impediment to economic growth in Georgia. The Government recognizes the importance of adequate and reliable infrastructure services to support manufacturing and commerce, for improved health and the direct impacts on well-being; hence, for economic development more generally.

(a) Samtskhe-Javakheti Road

The Samtskhe-Javakheti region is one of the poorest regions of Georgia, with a per capita income significantly below the national average and a high dependency on subsistence agriculture. In southern Georgia, deterioration of the roads has cut the region of Samtskhe-Javakheti off from the rest of the country. With high costs to transport produce out of the region, regional farmers are unable to compete with farmers from other regions. Moreover, the poor road infrastructure also creates significant obstacles to importing high quality agricultural inputs and other goods. Rehabilitation of roads in the Samtskhe-Javakheti area is expected to foster economic development in Samtskhe-Javakheti through (i) increasing exports of agricultural products from the region; (ii) increasing social, political and economic integration of the local population in Samtskhe-Javakheti, including ethnic minorities, with the rest of Georgia; (iii) expanding international trade, by providing a more direct transport link from Tbilisi and eastern and southern Georgia to Turkey and by rehabilitating the existing road from Ninotsminda to Armenia; (iv) developing the tourism potential of Vardzia, a World Heritage site; and (v) complementing other road development projects.

(b) Energy Rehabilitation

Georgia's main trunkline for the transmission of natural gas is the north-south gas pipeline system (the ''Pipeline''). The Pipeline receives gas at Georgia's northern border with Russia, transports gas to Georgian wholesale customers and transits gas to Armenia. In order to secure additional sources of supply for domestic use in Georgia, plans are also underway for the Pipeline to transport gas from Azerbaijan.

Following the break-up of the Soviet Union and with the decline of the Georgian economy, the Pipeline has not been properly maintained. As a consequence, over the past five years, gas losses have amounted to 5% to 9% annually. In addition, the Pipeline suffers from several flaws that put it in jeopardy of catastrophic failure, potentially cutting off the main source of heating for some 300,000 households and over 5,000 businesses in 46 cities

and 230 villages throughout the country, as well as the source of fuel to generate approximately 30% to 35% of the electricity consumed in the country. The pipeline operating company, Georgia Gas International Corporation (''GGIC''), has incurred substantial commercial losses to a point where maintenance is no longer financially possible. The Pipeline has degraded to such an extent that it no longer provides an acceptable level of supply security for Georgia, hindering further economic development. The Pipeline requires a comprehensive rehabilitation program.

The Pipeline plays an important but only a partial role in the country's overall energy balance. In order to support the Ministry of Energy to further develop and implement its energy sector strategy, the Government requires immediate and expert advice in a number of areas.

(c) Regional Infrastructure Development. In the Regions, many governing bodies have been unable to deliver safe, reliable, affordable and accessible public and utility services. It is estimated that more than half the water and sewage systems are beyond their service lives, and similar problems face other services. Local and municipal governments need funding for improvements in regional infrastructure, particularly in water supply, sanitation, irrigation, municipal gasification, roads and solid waste.

2. Summary of Project Activities

The objective of the Regional Infrastructure Rehabilitation Project is to rehabilitate key regional infrastructure. The Regional Infrastructure Rehabilitation Project includes three Project Activities.

- Samtskhe-Javakheti Road Project Activity (the ''Road Rehabilitation Activity''). The objective of the Road Rehabilitation Activity is improved transportation for regional trade. The Activity will rehabilitate or construct approximately 245 km of the main road that traverses the Samtskhe-Javakehti region and provide technical assistance for development of a road master plan, maintenance planning and contracting.
- Energy Rehabilitation Project Activity (the ''Energy Rehabilitation Activity''). The objective of the Energy Rehabilitation Activity is increased reliability of energy supply and reduced losses. The Activity will rehabilitate the Pipeline and provide advisory service to the Government to support the Ministry of Energy to further develop and implement its energy sector strategy.
- Regional Infrastructure Development Project Activity (the ''Regional Infrastructure Development Activity''). The objective of the Regional Infrastructure Development Activity is improved regional and municipal service delivery. The Activity will provide grants to fund regional and municipal physical infrastructure such as water supply, sanitation, irrigation, municipal gasification, roads and solid waste.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks at the Regional Infrastructure Rehabilitation Project level and at each Project Activity level that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Regional Infrastructure Rehabilitation Project and each Project Activity will be assessed and reported at regular intervals to be specified in the M&E Plan or otherwise agreed by the Parties from time to time. The Parties expect that additional benchmarks will be identified during implementation of each Project Activity. Estimated amounts of MCC Funding for each Project Activity within the Regional Infrastructure Rehabilitation Project are identified in Annex II of this Compact. Conditions precedent to each Project Activity and sequencing of the Project Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements.

(a) Road Rehabilitation Activity.

(i) Sub-Activities. MCC Funding will be used to:

(1) Rehabilitate or construct, as applicable, the road sections set out below (the ''Project Road''), as well as (i) Rehabilitate and improve existing bridges along the Project Road alignment, (ii) improve existing drainage facilities along the road alignment, (iii) provide road safety features, and (iv) provide local access and ancillary structures:

(A) Teleti-Koda-Tsalka;

(B) Tsalka—Ninotsminda;

(C) Akhalkalaki—Ninotsminda—the Armenian border, and connection to the Turkish border; and

(D) Khertvisi to Vardzia.

(2) Provide technical assistance to the Road Department of the Ministry of Economic Development (''RDMED'') for the formulation of a road master plan to prioritize investments in the road sector and for maintenance planning and contracting.

(ii) Outside Project Manager. MCC Funding will be used to engage, through a competitive international tender process acceptable to MCC, a project management firm as an Outside Project Manager to manage and supervise the Road Rehabilitation Activity.

(b) Activity: Energy Rehabilitation.

(i) Sub-Activities. MCC Funding will be used to:

(1) Rehabilitate the Pipeline by:

(A) Inspecting the Pipeline to identify weaknesses and defects and formulate a prioritized rehabilitation plan addressing the security and integrity of the Pipeline;

(B) Repairing the most urgent defects on a priority basis to bring the Pipeline back to an acceptable level of technical integrity for the required throughput capacity; and

(C) Repairing leaks in the Pipeline to reduce technical losses.

(2) Engage one or more firms (the ''Energy Advisors'') to support the Ministry of Energy to further develop and implement its energy sector strategy, including, but not limited to, providing technical and feasibility studies essential for investment in regional transmission, gas-fired generation, and hydropower.

(ii) Outside Project Manager. MCC Funding will be used to engage, through a competitive international tender process acceptable to MCC, a project management firm as an Outside Project Manager to manage and supervise the rehabilitation of the Pipeline.

(c) Regional Infrastructure Development Activity.

(i) Sub-Activities. MCC Funding will be used to make grants (''RID Grants'') to regional governments, local governments, local self-government units, municipal utilities and the central government (to the extent that it owns or operates assets in the Regions) (each an ''Eligible Governmental Entity'') for the following types of projects (''RID Projects''):

(1) For investment to improve and/or develop regional and/or municipal public infrastructure (including through cooperation with international and/or regional financial institutions) primarily in the water supply, sanitation, irrigation, municipal gasification, roads and solid waste sectors. Other sectors may be considered on a case-by-case basis; and

(2) For technical assistance to ensure sustainability of newly improved or installed infrastructure facilities by (A) addressing issues including tariff design, tariff collection, metering and general utility operations training in order to ensure adequate funding for operation and maintenance of the installed/rehabilitated infrastructure; and (B) building technical capacity of owners of the new or rehabilitated infrastructure assets.

(ii) RID Grant Size. MCC Funding for each RID Grant will be allocated in an amount not to exceed USD $7,000,000, with the exception of RID Grants for

technical assistance for which the maximum amount may not exceed USD $500,000, except as may be otherwise agreed by MCC. With the exception of grants for technical assistance, the minimum amount of each RID Grant will be USD $500,000. Pooling of similar and contiguous projects will be allowed to meet the minimum allowable grant value. In instances where MCC Funding is used in parallel with other international and regional financial institutions, the MCC Funding portion shall not exceed the lesser of 35% of the total cost, or USD $7,000,000 per project.

(iii) RID Project Selection Criteria. To be eligible for MCC Funding, each proposal for a RID Grant must:

(1) Be submitted by an Eligible Governmental Entity and clearly show contribution to the economic and social development in the Regions;

(2) Be a priority for the Eligible Governmental Entity, the targeted area and the local population, as evidenced by citizen input through public hearings and/or other appropriate mechanisms for identifying needs and priorities;

(3) Be restricted to rehabilitation and repair of existing service infrastructure and/or development of new infrastructure required for service delivery. No funding will be provided for commercial enterprises, land acquisition, working capital or other operating budget support, or operations and maintenance;

(4) Outline a technically feasible, least cost approach to addressing a specific problem or need;

(5) Be projected to have a minimum real economic rate of return of not less than 15% or yield benefits that, using an agreed evaluation methodology acceptable to MCC, can be quantified or otherwise identified with an acceptable degree of certainty, as in the case of technical assistance projects;

(6) Be supported by an operations and maintenance plan and budget for a period of at least five years after completion of such RID Project;

(7) Be accompanied by a funding plan demonstrating that the ongoing costs of operations and maintenance for the proposed RID Project will be met:

(A) In whole or in part from user fees or similar charges generated by the proposed RID Project; and/or

(B) In whole or in part by the sponsoring Eligible Governmental Entity from its budget; and/or

(C) In whole or in part by the Government from its budget as set out in a commitment letter from the Government to the Eligible Governmental Entity or other satisfactory documentation.

The Eligible Governmental Entity may apply for technical assistance to assist it to satisfy this criterion;

(8) Be in full compliance with all relevant provisions of Georgian law and regulations, including environmental legislation;

(9) Be in compliance with MCC Environmental Guidelines;

(10) Be in compliance with MCC limitations on the use of funding; and

(11) Be in compliance with the operations manual (the ''RID Operations Manual'') acceptable to MCC.

(iv) Implementing Entity Arrangement. The Municipal Development Fund (''MDF''), the entity currently serving as the project implementation unit for the World Bank's Municipal Development and Decentralization Project II (''MDDPII''), will implement the Regional Infrastructure Development Activity. MCA-Georgia will enter into an Implementing Entity Agreement, called a Collaboration Agreement, with MDF through which it will retain approval rights necessary for it to ensure compliance with limitations on the use of MCC Funding, including approval of the RID Operations Manual. MCA-Georgia will also enter into a separate Service Agreement with the World Bank that sets out certain supervisory and technical support services to be provided by the World Bank in furtherance of the Collaboration Agreement. MCA-Georgia will approve the RID Operations Manual which will provide the MDF supervisory board and the management of MDF with the policies and procedures to be followed during implementation of the Activity. The Government will ensure that MCA-Georgia will obtain and maintain a seat on the MDF supervisory board.

3. Beneficiaries

(a) Road Rehabilitation Activity

The principal beneficiaries of the Road Rehabilitation Activity are expected to be the rural/regional population located in and near the Samtskhe-Javakheti region through which the majority of the road traverses. Specific beneficiaries include (i) farmers who use the road to get products to market, (ii) domestic commercial freight transport operators, (iii) international shippers, (iv) users of public transport, (v) private business and tourist travelers, and (vi) service industries supporting transportation and tourism. The population of this region is expected to benefit from enhanced agricultural and trade opportunities afforded them by an improved road. Other benefits include improved access to education, healthcare and employment. The entire population is expected to benefit from improved decision-making, planning and policy-making that may result from the road master plan and RDMED technical assistance.

(b) Energy Rehabilitation Activity

Beneficiaries include households, businesses and industrial enterprises throughout Georgia that consume gas or electricity. Rehabilitation will improve a situation which currently endangers the environment as well as the health and safety of the population. Another benefit may be carbon credit revenue which may be secured as a result of reduced greenhouse gas emissions related to Pipeline rehabilitation. In addition, the financial condition of GGIC, the Pipeline operating company, will be improved through reduced technical losses and improved cash flow. All energy consumers located throughout Georgia are expected to benefit from implementation of the Government's energy strategy with the assistance of the Energy Advisors' services.

(c) Regional Infrastructure Development Activity

The immediate beneficiaries of the Regional Infrastructure Development Activity are expected to be Eligible Governmental Entities, which will manage the provision of improved services to their citizens through local infrastructure projects such as water supply, sanitation, irrigation, municipal gasification, roads and solid waste. The long-term principal beneficiaries of the Activity include the users of the services in localities in which the Activity funds investment.

4. Donor Coordination; Private Sector; Civil Society

(a) Road Rehabilitation Activity.

(i) World Bank. The World Bank is currently financing a Secondary and Local Roads Project for approximately USD $40,000,000 with a USD $15,000,000 contribution from the Government focused on rehabilitating 500–750 kilometers of paved secondary and local roads. Included in the current and previous World Bank road sector projects is (1) a component to strengthen the management, supervisory and road maintenance capacity of the RDMED; (2) institution building, policy reform, and restructuring of the Ministry of Transport; (3) improving access on the primary road network and (4) institutional strengthening of the Georgian transport agencies. The Road Rehabilitation Activity will complement

the World Bank project by further improving the Georgian road network.

(ii) European Bank for Reconstruction and Development (''EBRD''). EBRD is contemplating parallel financing of the rehabilitation of certain road segments (such as Akhalkalaki to Lake Tabatskuri and Lake Tabatskuri to Bakuriani) in the Samtskhe-Javakheti region that connect with segments to be funded under the Road Rehabilitation Activity, which would deepen the potential for economic growth in the region. EBRD may also provide technical assistance for commercialization of operations and maintenance for RDMED.

(iii) Other Donors. The Kuwait Fund for Arab Economic Development has provided Kuwait Dinar 5,000,000 (approximately USD $15,000,000) for the upgrade, rehabilitation, and reconstruction of approximately 100 km of international roads in Georgia. The Kuwait Fund is currently evaluating an additional assistance program for the upgrade of roads in Tbilisi, which would complement the Road Rehabilitation Activity network outside of Tbilisi.

(b) Energy Rehabilitation Activity

The possible availability of MCC Funding has raised the interest of the donor community in participating in rehabilitation of the Pipeline.

(i) World Bank. The World Bank is currently implementing an Energy Transit Institution Building Project. From this, the World Bank is contemplating providing approximately USD $830,000 to the Government for project preparation activities related to the Pipeline.

(ii) EBRD and IFC. In 2003, EBRD and IFC provided upwards of USD $220,000,000 each in syndicated loans to the private sector developers of the Baku-Tibilisi-Ceyhan Crude Oil Pipeline and the South Caucasus Pipeline, both of which traverse Georgia. EBRD has expressed interest in providing additional assistance related to the Pipeline rehabilitation, if MCC Funding is realized.

(iii) Other Donors and Sources of Funding. If MCC Funding is realized, additional World Bank and/or other funding to support further rehabilitation may be available from the purchase of carbon credits associated with the reduction of methane leakage resulting from the rehabilitation of the Pipeline.

BP, an international oil and gas company with investments in Georgia, is expected to participate in the preparatory surveys for the Pipeline rehabilitation under a separate grant (approximately USD $500,000).

In addition to the World Bank and EBRD, many other donors such as USAID and KfW have supported the electricity sector for the past decade. Assistance has been provided to support sector reform and restructuring, creation of a regulatory body, rehabilitation of plant and equipment and purchase of emergency energy supply. The engagement of Energy Advisors with MCC Funding represents an extension of such assistance and is complementary to the ongoing work of a very active and energy-focused donor group.

(c) Regional Infrastructure Development Activity

(i) USAID. USAID/Georgia currently does not undertake large infrastructure projects in Georgia. Their efforts in infrastructure have been primarily in the energy sector and rehabilitation of small, local community infrastructure, such as schools and health care facilities, as part of their rural programs.

(ii) World Bank. The World Bank currently funds small scale infrastructure projects proposed by local governments through its credit facility, MDDPII. This credit is based on an assessment of the creditworthiness of municipalities and thus has limited applicability to poorer regions. The Regional Infrastructure Development Activity would increase the availability and reach of financing through its grant mechanism and also ensure close coordination on local infrastructure investments, as the MCC Funding and the World Bank loans would be managed by the same administrative unit, the MDF.

(iii) EBRD. EBRD's main operational objectives in Georgia for 2004–2005 complement those of the Regional Infrastructure Development Activity and EBRD has prepared a number of projects which may be candidates for parallel funding under this Activity.

(iv) Other Donors. The World Bank, USAID, KfW and UNDP are working in the water sector through the Georgian Social Investment Fund. Efforts will be made to coordinate the Regional Infrastructure Development Project Activity and Georgia Social Investment Fund activities in the cities where both organizations are working.

5. Sustainability

(a) Institutional Sustainability

The implementation of the Regional Infrastructure Rehabilitation Project is designed to support the development of local capacity by providing Georgian professionals and institutions with experience in implementing the infrastructure projects, where appropriate, while maintaining tight fiduciary risk controls. It is anticipated that Georgian construction firms will be competitive as contractors or subcontractors in the bidding for construction packages in all three Project Activities.

The RDMED has received and continues to receive technical assistance from the World Bank to strengthen its capacity in engineering standards and data collection, works monitoring, road maintenance, traffic safety, and interaction and responsiveness with local communities. Such efforts will ensure the effectiveness of this body in overseeing and maintaining the Road as the ultimate owner and responsible entity once the Road Rehabilitation Activity is completed. MCC will provide technical assistance to the RDMED to build capacity in maintenance planning and contracting. The Road Rehabilitation Activity will also provide funding for the commissioning and development of a road master plan to aid in the prioritization of future road investment. The development of GGIC capacity to prioritize and carry out Pipeline rehabilitation and maintenance works is an essential feature of the design of the Energy Rehabilitation Activity. Close coordination between MCC-funded contractors and GGIC staff during the Pipeline rehabilitation is expected to enhance capacity through on-the-job training. Energy sector generation and transmission sustainability will also be addressed by the Energy Advisors through supporting the Government to further develop and implement its energy sector strategy. With respect to the Regional Infrastructure Development Activity, institutional capacity may be strengthened through direct technical assistance to the Eligible Governmental Entities applying for RID Grants. This assistance will allow for the establishment or improvement of service provision and could come in the form of assistance in the areas of financial management capability, tariff design, tariff collection, metering or general utility operations training.

(b) Financial Sustainability

Proper budgeting and funding of maintenance activities is the key to financial sustainability of the Regional Infrastructure Rehabilitation Project. Lack of maintenance on the Samtskhe-Javakheti Road has resulted in its current dilapidated state and need for major rehabilitation; therefore, regular maintenance and a proper drainage system will be critical to ensuring the long-term impact and realization of

benefits from the Road Rehabilitation Activity. As a condition precedent to the first disbursement for the Road Rehabilitation Activity in any fiscal year, MCC will require that a minimum budget be approved for the maintenance of all maintainable national roads and that prior year budgeted amounts have been spent for the intended purpose. Similarly, the present condition of the Pipeline may be attributed, in large part, to the lack of maintenance over the last decade. The Pipeline rehabilitation and the satisfaction of the associated conditions are intended to improve the financial sustainability of GGIC through reduced losses, increased revenue and improved cash flow. To promote financial sustainability of GGIC, MCC requires that: (i) in view of GGIC's outstanding tax liabilities, the Georgia Tax Restructuring Committee grant tax relief for past tax liabilities accrued through June 30, 2005 in the form of a fifteen year restructuring plan for such tax liabilities (including a five-year freeze and a ten-year payment period); and (ii) beginning in July 2007, the Georgian National Energy Regulatory Commission permits GGIC to withhold gas as payment in kind from its non-paying customers for transmission charges owed to GGIC, and GGIC will utilize this in-kind payment mechanism to the extent needed to ensure that collection rates (for all services provided) are at least 95% throughout the remainder of the Compact Term.

A lack of attention to maintenance is also seen at the level of local infrastructure where municipalities have consistently been unable to fund maintenance. The Regional Infrastructure Development Activity is intended to improve the financial sustainability of regional and municipal assets through the condition that MCC Funding will be provided only once it is evident that the necessary operations and maintenance of proposed investments will be funded either through user fees or similar charges generated from the RID Project, by the applicable Eligible Government Entity or by the Government.

Funding from MCC for the Regional Infrastructure Rehabilitation Project will depend on the satisfaction of all conditions precedent as set forth in the Disbursement Agreement for road maintenance, maintenance of the Pipeline, and the maintenance of other infrastructure assets funded through the Regional Infrastructure Development Activity.

(c) Environmental and Social Sustainability

Overall environmental and social sustainability depend on proper implementation of Project safeguards. MCA-Georgia's Management Team will include an Environmental and Social Impact Manager (''ESI Manager'') whose job will be to ensure that environmental and social mitigation measures (including occupational health and safety issues) are followed for all Project Activities in accordance with the provisions set forth in the Compact and other documents. The ESI Manager will serve as the point of contact for comments and concerns of Project affected parties regarding the implementation of all Project Activities under the Compact and lead the effort to find feasible resolutions to those problems. The ESI Manager will convene periodic public meetings to provide implementation updates and to identify and address public concerns. Should the issue of involuntary resettlement arise, the Regional Infrastructure Rehabilitation Project will be conducted in compliance with the World Bank Policy on Involuntary Resettlement.

6. Policy and Legal Reform; Procedural Changes or Regulatory Actions

(a) The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Regional Infrastructure Rehabilitation Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(i) Related to the Road Rehabilitation Activity:

(1) Authorization of the use of road design and construction standards consistent with modern European geometrical and physical standards having international applicability, acceptable to MCC;

(2) Maintenance of the Project Road in accordance with measurable performance standards acceptable to MCC and the Government, including winter maintenance and snow removal to keep the Project Road open; and

(3) Prior to the first disbursement in any fiscal year, the Government will approve the road maintenance budget for routine and periodic maintenance for the maintainable road network the forthcoming fiscal year providing for funding of at least the amount set out below, and will expend such amounts for the intended purpose and make-up any budget shortfall from the prior year's road maintenance budget:

(A) Fiscal year 2006: Georgian Lari (''GEL'') 60 million;

(B) Fiscal year 2007: GEL 70 million;

(C) Fiscal year 2008: GEL 80 million;

(D) Fiscal year 2009: GEL 90 million; and

(E) Fiscal year 2010: GEL 100 million.

(ii) Related to the Energy Rehabilitation Activity:

(1) Prior to the first disbursement for Pipeline rehabilitation, the Ministry of Energy will provide documentation satisfactory to MCC outlining the Ministry's plans and strategy for resolving the following four issues currently facing GGIC: (A) Kazbegigazi non-payment to GGIC; (B) Tbilgazi non-payment to GGIC; (C) Physical gas losses by GGIC; and (D) GGIC's tax liabilities;

(2) Prior to the first disbursement for Pipeline rehabilitation, the Georgia Tax Restructuring Committee will have granted tax relief to GGIC, acceptable to MCC, for past tax liabilities accrued through June 30, 2005 in the form of a fifteen year restructuring plan for such tax liabilities (including a five-year freeze and a ten-year payment period);

(3) The Government shall not sell or transfer, or permit to be sold or transferred, the Pipeline and/or a controlling interest in the GGIC group (GGIC and its subsidiaries and affiliates) and shall not place or permit to be placed any Lien on the Pipeline, in each case until the expiration of the Compact Term, except as may be otherwise agreed by MCC in writing (the ''Non-Transfer Condition'');

(4) Prior to each disbursement for Pipeline rehabilitation on or after July 1, 2007:

(A) GGIC will demonstrate in a form acceptable to MCC that it is maintaining the Pipeline in accordance with satisfactory standards agreed by MCC and the Government that cover the design and construction of gas networks (''Agreed Standards''); and

(B) GGIC will have obtained authorization, in a form acceptable to MCC, from the Georgian National Energy Regulatory Commission that allows GGIC, starting from July 1, 2007, to withhold gas as payment in kind from its customers for transmission charges owed to GGIC to the extent needed to ensure that collection rates (for all services provided) are at least 95% throughout the remainder of Compact Term; and GGIC will utilize this in-kind payment mechanism to the extent needed to ensure that collection rates (for all services provided) are at least 95% throughout the remainder of Compact Term;

(5) In the event that:

(A) The GGIC collection rate after July 1, 2007 is below 95% for two

consecutive quarters throughout the Compact Term;

(B) GGIC does not maintain the Pipeline in accordance with the Agreed Standards; and/or

(C) The Government does not comply with the Non-Transfer Condition; then:

(A) Prior to any further disbursement for Pipeline rehabilitation or for any other Project Activity, the Government agrees to reimburse promptly to MCC, in MCC's discretion, all or a portion of Compact Funding disbursed for the Pipeline; and/or

(B) MCC may suspend all or a portion of further disbursements in connection with the Pipeline rehabilitation and/or other Project Activities under the Compact.

(b) To improve its level of performance under the policy criteria identified in Section 607 of the Act and the MCA Eligibility Criteria and to support the Regional Infrastructure Rehabilitation Project, the Government will pursue the following legislative and policy reforms:

(i) Support GGIC to realize the sale of emission reductions in order to fund additional pipeline rehabilitation activities;

(ii) Undertake policy reform and improve legislation governing the infrastructure sectors, including adoption of user fees, as may be appropriate to cover the costs of operations and maintenance;

(iii) Develop, as part of the ongoing decentralization process, appropriate policies and/or legislation on local government budgeting;

(iv) Undertake measures to safeguard the rehabilitated infrastructure from any laws, regulations or policies that may undermine the results of individual projects, including those that adversely restrict local control over budgets for operations and maintenance; and

(v) Such other legal or policy reforms as may be needed to improve efficiency of the infrastructure sectors, including those that are identified through the ongoing consultative process.

Schedule 2 to Annex I—Enterprise Development Project

This Schedule 2 describes and summarizes the key elements of a regional business investment and development project in furtherance of the Enterprises in Regions Developed Objective (the ''Enterprise Development Project''). Additional details regarding the implementation of the Enterprise Development Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

With 53% of Georgia's population living in poverty and a majority of these impoverished households living in rural areas, the Government is committed to encouraging economic growth and poverty reduction, primarily in the Regions. Agribusiness, in particular, is a key driver of growth nationally, representing 18% of GDP, and in the Regions where farms and small enterprises engaged in agribusiness constitute an essential source of livelihoods. Other sectors, including tourism, represent substantial growth opportunities in the Regions. However, while the economy in Georgia has experienced significant growth during the past few years, the performance of the rural economy has stagnated.

Of particular concern is the agriculture sector, which accounts for one-quarter of Georgia's economic output and over 50% of employment. Georgia's diverse climatic zones and rich natural resources provide the potential for further development of the agriculture and agribusiness sectors, particularly in the Regions. With increased quantity and quality, Georgian agricultural products will better compete with imported food products, thereby improving the living standards of the rural poor. Yet businesses face problems with poor technology, processing, marketing, management skills, and credit access.

The lagging performance of the economy in the Regions and past political uncertainty have contributed to the reluctance of financial institutions and other investors to invest in risk capital. As a result, firms, particularly small and medium enterprises (''SMEs''), may not be able to obtain the risk capital they need to grow and may not generate enough cash-flow in the near-term to pay high interest rates on a typical loan (if any long-term loan is available) or may not have sufficient collateral to obtain a loan. Experience in other countries indicates the importance of SMEs to economic development and job creation.

The consultative process in Georgia identified a number of key constraints to growth of small and medium enterprises in the Regions. These include (i) insufficient access to long term risk capital on viable terms, (ii) lack of sophisticated company and investment management skills and corporate governance, (iii) inadequate laws and regulations, (iv) poor enforcement and (v) the need for improved agribusiness productivity, among other items.

2. Summary of Project Activities

The Enterprise Development Project is designed to provide access to capital on viable terms, support policy reforms to improve the business environment and improve business and technical skills in farms and enterprises.

The Enterprise Development Project consists of two Project Activities:

- The Investment Fund Activity. The objective of the Investment Fund Activity is to increase investment in and improve the performance of SMEs, primarily in the Regions. The Project Activity will create a professionally and independently managed investment fund (the ''Georgia Regional Development Fund'' or ''GRDF'' or such other name as may be agreed by the Parties) to provide capital to SMEs, provide technical assistance for portfolio companies and identify legal and policy reforms to encourage further investment in SMEs.
- The Agribusiness Development Activity (the ''ADA''). The objective of the ADA is to improve economic performance of agribusinesses. The ADA will accelerate the transformation from subsistence to commercial agriculture through technical assistance, targeted grants and market information. The ADA will provide technical assistance and grants to farmers and agribusinesses in critical value chains that supply agricultural products to the domestic market, as well as disseminate information on regional market prices and volumes.

The GRDF and the ADA will be managed separately, but they are intended to complement one another. For example, GRDF may invest in an entity receiving ADA technical assistance, or farmers may need technical assistance from ADA to take advantage of opportunities to supply products to a GRDF investee company in the processing industry. The managers of the GRDF and the ADA will meet on a regular basis to discuss potential synergies. Any decision-making by GRDF or ADA with respect to business opportunities with the other party will be undertaken as if GRDF and ADA were unrelated parties.

The following summarizes the Enterprise Development Project Activities. The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks at the Enterprise Development Project level and at each Project Activity level to monitor implementation progress. Performance against these benchmarks and the overall impact of the Enterprise Development Project and each Project

Activity will be assessed and reported at regular intervals as specified in the M&E Plan or otherwise agreed by the Parties from time to time. The Parties expect that additional benchmarks will be identified during implementation of each Project Activity. Estimated amounts of MCC Funding for each Project Activity within the Enterprise Development Project are identified in Annex II of this Compact. Conditions precedent to each Project Activity and sequencing of the Project Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements.

(a) Investment Fund Activity

The Investment Fund Activity involves three sub-activities: (i) Creation and capitalization of the GRDF; (ii) portfolio company technical assistance; and (iii) legal and policy environment support.

(i) Creation and Capitalization of GRDF.

MCC Funding will be used to capitalize a professionally and independently managed investment vehicle, to be known as the GRDF.

MCC and MCA-Georgia have agreed to an indicative term sheet as of the date of this Compact (the ''Indicative Term Sheet''), containing the proposed terms of the GRDF (including its investment policy guidelines and governance structure) and which will form the expected basis for preparation of the final investment guidelines, governance structure and investment management selection, compensation and agreement, and all other terms of the GRDF (the ''Final Fund Documents''). Because the Indicative Term Sheet represents indicative but non-binding terms, the provisions in the Final Fund Documents may differ from, and will supersede, those in the Indicative Term Sheet. As a Condition Precedent to Disbursement for the GRDF, the Final Fund Documents must be acceptable in form and substance to both MCC and MCA-Georgia.

The GRDF will include the following elements:

(1) Establishment and Term of GRDF.

(A) Following the satisfaction of conditions precedent contained in the Disbursement Agreement and in accordance with the Final Fund Documents, MCC Funding will be used to organize and establish the GRDF in a legal form and jurisdiction acceptable to MCC. All of the ownership interests in the GRDF are expected to be held initially by a trust (or similar structure acceptable to MCC and MCA-Georgia), the trustee (or similar) of which will be procured through a process acceptable to MCC and will be subject to MCC approval. MCC will be a third party beneficiary to the appropriate Final Fund Documents.

(B) The investment period of the GRDF shall run for five years from the Entry into Force, subject to an earlier termination upon termination of the Compact (the ''Investment Period''). All MCC obligations shall terminate at the end of the Investment Period. GRDF is expected to exist for ten years, including a five year wind-down period after the termination of the Investment Period.

(C) Any distributions to the GRDF will be held for the benefit of beneficiaries to be agreed upon by MCC and MCA-Georgia prior to the end of the Investment Period. Any beneficiary or beneficiaries selected by MCC and MCA-Georgia must be a charitable, educational or other non-profit developmental entity in Georgia that benefits, in substantial part, citizens working in agribusiness and/or other enterprises outside of Tbilisi.

(2) Investment Objective. The primary objective of the GRDF will be to maximize developmental impact, as well as to earn a reasonable and positive financial return, from investments in SMEs in agribusiness, tourism and other sectors, primarily outside of Tbilisi.

(3) Permitted and Prohibited Investments. The GRDF will invest in equity, quasi-equity and debt (subject to limits specified in the Final Fund Documents) issued by enterprises that meet the definition of ''permitted investments'' (''Permitted SMEs''). The Final Fund Documents will have clear criteria for which types of investments are permitted and prohibited, as well as the process by which investment decisions are approved by the GRDF. These criteria will be set forth in the Final Fund Documents. Among the provisions that the Final Fund Documents must contain are the following:

(A) Permitted sectors. The Final Fund Documents will require a majority of capital to be invested in agribusiness or tourism, with approximately 33% of capital invested in agribusiness, unless otherwise agreed by the Parties.

(B) Location of businesses. The GRDF will invest primarily outside of Tbilisi; accordingly, the Final Fund Documents will limit the percentage of GRDF capital that can be invested in Tbilisi to 20% unless otherwise agreed by the Parties.

(C) Developmental and financial criteria. The pipeline of potential investments by the fund will be determined in accordance with criteria used to measure the developmental impact associated with the investment as well as financial rate of return.

(D) Maximum investment size. The Final Fund Documents will limit the maximum investment size of any one particular investment to 10% of the committed capital of the GRDF unless otherwise agreed by the Parties.

(E) Stage of Development of Portfolio Companies. The GRDF will invest primarily in existing businesses but may also invest not more than 15% in start-ups, unless otherwise agreed by the Parties.

(F) Prohibited Investments. The Final Fund Documents will require compliance with (1) prohibitions on investments, including those that conflict with the limitations on the use of MCC Funding set forth in the Compact, and (2) environmental guidelines and environmental screening procedures (which will be based on MCC's Environmental Guidelines and specified in full in the Final Fund Documents). A full list of prohibited types of businesses will be included in the Final Fund Documents.

(4) Implementing Entity Arrangement; Governance Structure.

(A) Investment Manager. The GRDF will be managed by a professional, independent and qualified investment manager selected after a competitive tender conducted by the Procurement Agent (''Investment Manager''). MCC and MCA-Georgia will each have the right to approve the selection of the Investment Manager and the terms of the Investment Manager's contract, including auditing, reporting and termination provisions.

(B) GRDF Governing Board. The Investment Manager will report to an independent GRDF governing board (''GRDF Governing Board'') comprised of individuals with financial and development experience acceptable to MCC and MCA-Georgia. MCC will be entitled to appoint one additional member of, or a non-voting observer on, the GRDF Governing Board. MCA-Georgia will also be entitled to appoint a non-voting observer on the GRDF Governing Board.

(C) Investment Committee. An investment committee (''Investment Committee'') acceptable to MCC and MCA Georgia will be responsible for approving investments suggested by the Investment Manager and overseeing the monitoring and evaluation of the performance of those investments. MCC will have the right, in its discretion, to appoint one member, or one non-voting observer, to the Investment Committee.

(5) Relationship of GRDF to MCA-Georgia. All investment decisions will be made by the GRDF and the

Investment Manager independently from MCA-Georgia and the Government.

(6) Operating Policies. The Final Fund Documents will include requirements for the GRDF's due diligence/investment process, conflicts policy, internal controls and auditing, and reporting, in each case acceptable to MCC.

(ii) Portfolio Company Technical Assistance Facility.

(1) Establishment. MCC Funding will be used for technical and managerial assistance (the ''Portfolio Company TA Facility'') to be applied by the Investment Manager to improve the performance of portfolio companies following investment or to assist prospective portfolio companies that then become qualified for GRDF investments. The financial resources of the Portfolio Company TA Facility will not be invested in the GRDF or considered part of the management fee or fund expenses. The Portfolio Company TA Facility proceeds will be drawn down by the Investment Manager through separate disbursement requests.

(2) Objective. The Portfolio Company TA Facility will complement the work of the Investment Manager by assisting in the growth and development of the portfolio investees. The Portfolio Company TA Facility is intended to pay, on a cost-sharing basis with investees, a portion of the costs of third-party consultants and other service providers (the ''Service Providers'') that would otherwise have been reasonably considered beyond the capacity of the investee or the obligation of the Investment Manager to pay.

(3) Selection Criteria. Each use of the Portfolio Company TA Facility funding shall be determined jointly by the investee and the Investment Manager on a demand-driven basis according to selection criteria acceptable to MCC. The use of the Portfolio Company TA Facility will be subject to the same statutory limits on the use of MCC Funding as the GRDF. Additional detailed Service Provider selection criteria, conflict of interest provisions, cost-sharing criteria, disbursement and reporting procedures, and further definitions of permitted and prohibited uses of TA Facility resources, shall be provided in the Final Fund Documents.

(iii) Legal and Policy Environment.

MCC Funding will be used to engage an expert to identify and support Georgians advocating for key legal and policy reforms affecting the investment environment and to establish and operate a mechanism for this analysis and advocacy. This is intended to be similar to venture capital industry groups in other countries that work with local, key stakeholders and donors to build consensus and advocate for reforms needed for successful risk capital investments. The expert would be supported by an advisory board of key stakeholders acceptable to MCC, such as the Investment Manager, other private equity funds and financial institutions, other private sector participants, donors, and others.

(b) Agribusiness Development Activity

(i) ADA Establishment and Implementation.

The ADA is expected to contribute to poverty alleviation by accelerating agriculture sector transformation from subsistence production to profitable farms and rural enterprises directly participating in commercial value-chains. The ADA includes three separate sub-activities intended to support the development of Georgia's agriculture and agribusiness sectors. The ADA will be set up and managed by a professional, independent and qualified manager, acceptable to MCA-Georgia and MCC, selected after a competitive tender (the ''ADA Manager''). The competitive tender will be conducted by the Procurement Agent, with the assistance of an advisory panel, consisting of independent experts. MCC and MCA-Georgia will each have the right to approve the selection of the ADA Manager.

(ii) Access to Modern Technology.

MCC Funding will be used to provide modern technology to agribusiness processors in at least five agribusiness value-chains that have domestic market growth potential. For example, this could include the following types of activities:

(1) Developing the dairy industry through set-up of milk collection infrastructure to facilitate flow of quality raw product from small farms to processing plants that can better compete in the domestic market;

(2) Establishing private sector input supply centers that service productive yet hard to reach rural areas in order to increase higher value horticulture production for processors and the fresh market;

(3) Developing livestock production contracts with slaughter facilities that will establish the capacity to offer new, high-quality meat products into the growing domestic market;

(4) Facilitating investment in livestock feed processing and sales coupled with the beneficiary firm's financed livestock production agents to improve farm management; and

(5) Introducing new varieties and technology into the potato industry to produce and process products in direct response to domestic market demands.

(iii) Grants to Rural Enterprises.

MCC Funding will be used to provide grants (the ''Rural Enterprise Grants'') to groups of farmers and to private enterprises to apply innovative business solutions and technology to significantly increase household and agribusiness net revenue through higher productivity, better financing, improved post harvest processing and marketing.

(1) Selection Criteria. An application for a Rural Enterprise Grant must be supported with a sound business plan. Applications should be for equipment or supplies and matched with direct grantee investment in land, facilities, labor or additional equipment. Rural Enterprise Grants will range in value from USD $5,000 to USD $50,000, unless otherwise agreed by the Government and MCC. Rural Enterprise Grants will be made in three categories:

(A) Primary production. Innovative agriculture production technology and practices and development of business linkages of farmers with processors or directly with the market;

(B) Service providers. Introduction or expansion of input provision of seed, feed, fertilizer, new varieties, equipment leasing, best practices and better farm management among cooperatives and associations; and

(C) Value adding enterprises. Transfer of technology to add value to raw product through small scale processing equipment, quality assurance systems, processing, packaging, and competitive domestic marketing.

(2) Selection Procedure. A call for applications for Rural Enterprise Grants will be announced by the ADA Manager during the first quarter of each year with clear guidelines and evaluation criteria. The ADA Manager will be responsible for developing award selection criteria, subject to MCA-Georgia and MCC approval. The ADA Manager will establish an independent grant award committee acceptable to MCC and MCA-Georgia that will review grant applications and make grant awards.

(iv) Market Information. MCC Funding will support a market information campaign that disseminates information to the agriculture and food industry. The market information campaign will:

(1) Inform rural households and stakeholders about ADA objectives and guidelines for targeted technical assistance and grants;

(2) Broadcast information on innovations, best practices, and new technology, and highlight ''model'' farmers'' or entrepreneurs' success stories; and

(3) Produce regular reports on farm gate price and volumes of commodity sold from several regional marketing hubs throughout the country including market news/trends of business significance.

3. Beneficiaries

The principal direct beneficiaries of the GRDF are expected to be SMEs in agribusiness and other sectors in the Regions (and, to a limited extent, Tbilisi) needing risk capital to expand, agricultural producers and other local suppliers doing business with those SMEs, and farmers and rural households in the Regions employed by SMEs or related businesses. Certain activities in the GRDF, such as advocacy for legal and policy reform, will have national scope and impact. The objective of the ADA is to significantly improve capacities of rural households to engage and benefit from direct participation in the commercial economy. Therefore, the principal direct ADA beneficiaries are rural households that are dependent on agriculture and agribusiness for their livelihood. These are primarily small farmers and SMEs that deliver services to farmers and process raw product. As a result of ADA, over 50,000 rural participants are expected to benefit either directly or indirectly.

4. Donor Coordination

The Enterprise Development Project complements other donor supported projects, including projects by EBRD, IFC, World Bank, USAID and USDA. The goal and structure of the GRDF is significantly different from those of other donor-supported investment activities. The GRDF will be encouraged to work with other donors' financial institutions to attract capital and expertise to the SME sector in the Regions, especially to businesses in which such institutions may have been reluctant to invest in the absence of the GRDF in Georgia. The ADA is uniquely focused on rural household economic growth and will be reinforced by current activities that foster economic growth in agriculture. Specifically, Enterprise Development Project synergies with key U.S. agencies and other donors are as follows:

(a) Investment Fund Activity

(i) IFC. IFC is conducting a business development project that focuses on areas such as strengthening corporate governance and encouraging lease financing, as well as an initiative to determine the state of SME development in Georgia and significant legal and other barriers facing Georgian SMEs. Although IFC has previously sponsored investments in businesses in Georgia, the target internal rates of return and sizes of investments have exceeded the typical investment the GRDF is expected to pursue. The IFC business development efforts will complement and reinforce the Investment Fund Activity's efforts to improve the business climate.

(ii) EBRD. EBRD has established several debt and equity investment facilities that can invest in Georgia. EBRD has also established business consulting services using local consultants that offer their services to Georgian businesses at rates partly, and temporarily, subsidized by EBRD. The Investment Manager may (but is not required to) utilize these consulting services when applying technical assistance to one of the portfolio companies. The investment facilities may provide another source of capital for the GRDF's portfolio companies.

(iii) OPIC. There are several OPIC funds that are eligible to invest in Georgia, among other countries. However, the sizes and types of investments that these funds generally pursue differ from, and are larger than, those that the GRDF is expected to pursue. Moreover, OPIC guarantees debt issued by these funds, while MCC Funding would be used as the source of equity capital for the GRDF.

(iv) USAID. The GRDF will complement USAID's financial sector and agricultural activities. These have included AgVantage, the Georgia Enterprise Growth Initiative, the Georgia Microfinance Stabilization and Enhancement activity, the Land Market Development Project, and the banking infrastructure strengthening program to assist the National Bank of Georgia.

(b) Agribusiness Development Activity

(i) USAID. Of particular relevance to the objectives of the ADA is the USAID-funded project called AgVantage. This activity focuses on developing agricultural export markets and strategic interventions to overcome barriers to increase export sales of agriculture and food products. Later this year, AgVantage will also begin work in policy analysis, legal drafting, training, and limited administrative support to the Ministry of Agriculture and will put in place policies which promote and support the development of private sector agribusiness. The ADA is interested in supporting these efforts and participating in constructive dialogue with the Ministry of Agriculture to create a more conducive environment for private business development.

(ii) USDA. A transition program is underway by USDA/ICD in Georgia. Previous project activity provides opportunities for ADA to build upon progress made, especially in developing meat slaughterhouses and dairy processing in several regional locations. The new focus of USDA's program will most likely include assistance to the Ministry of Agriculture in seed and plant material certification and multiplication, quality assurance capabilities and veterinary inspection services, which complements ADA.

(c) Both Project Activities

(i) World Bank/IFAD. A new Rural Development Loan has been approved, with a portion to be used to flow through commercial banks and multilateral financial institutions as credit for agribusiness investments. This loan will provide a source of debt finance for businesses that has terms and characteristics different from many of the risk capital investments the GRDF will pursue. Discussions with World Bank and IFAD representatives generated collaborative ideas for loan preparation training and technical assistance to prospective borrowers through the ADA grant program. Also, IFAD has established four regional ''Farm Houses'' which support a variety of services to farmers including equipment leasing, extension, and input sales. Proposals from the leadership of a Farm House to expand to ADA clients will be encouraged.

5. Sustainability

(a) Financial and Institutional Sustainability.

The impacts of each of the Project Activities are intended to be sustainable, although neither the GRDF nor the ADA is required to be a sustainable institution. Sustainability will result from the following activities:

(i) Building, through the GRDF, profitable businesses that have an important demonstration effect on similar businesses, as well as investment funds or other financial institutions. To the extent these businesses are profitable, after the Compact Term they can be expected to survive and strengthen key links with other businesses in the value chain as well as pave the way for additional entrepreneurs and providers of finance considering developing the SME sector or Regional enterprises;

(ii) Establishing profitable farms, rural service providers and viable agribusiness that compete in commercial markets and are responsive to market forces and trends;

(iii) Investing in human capacities (skills, access to information and mind-set toward the market) to transform and make their enterprises profitable;

(iv) Building, through each of the Project Activities, sustainable and transferable Georgian enterprise management capacity and entrepreneurial skills, particularly for:

(1) Agribusinesses and other SME businesses that have received assistance from the GRDF or the ADA;

(2) Georgian consulting and technical advisory businesses that have been engaged as part of the Portfolio Company Technical Assistance Facility or the ADA; and

(3) Georgian investment professionals trained by the GRDF; and providing the enterprises and individuals that have acquired these skills with the ability to apply them to their businesses or transfer them to other businesses in Georgia;

(v) Attracting, as part of the GRDF, additional long-term capital to the agribusiness and other SME sectors in Georgia. Because these providers may have been attracted, because of the GRDF, to sectors and businesses they would not have otherwise financed, the successful performance of these investments will encourage additional investments; and

(vi) Complementing and encouraging reform to remove legal and regulatory impediments to investment and growth in the agribusiness and SME sectors in the Regions as well as nationally, including encouraging best practices for corporate governance.

(b) Environmental and Social Sustainability. To help ensure that investments made through the GRDF are not likely to cause a significant environmental health or safety hazard, the GRDF will develop investment guidelines acceptable to MCC that will require compliance with MCC Environmental Guidelines, and the Investment Manager will develop an environmental review process and monitoring check-list. To help ensure that investments made through the ADA are not likely to cause a significant environmental health or safety hazard, technical assistance will be provided to include training and guidance on the proper selection, handling, use, storage, and disposal of pesticides and other agricultural chemicals.

6. Policy and Legal Reform

To improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act and the MCA Eligibility Criteria and to support the Enterprise Development Project, the Government will pursue the following legislative and policy reforms:

(i) Improve the investment climate, particularly for investments in the agribusiness and other sectors relevant to the Enterprise Development Project, including those reforms identified by working with the expert engaged under the Legal and Policy Environment component of the Investment Fund Activity. Broadly construe reform to include commercial laws, enforcement mechanisms and systematic issues, such as problems with payment systems;

(ii) Provide for effective implementation of the law on additional privatization of agricultural land remaining in state ownership (providing for privatization of large plots of agricultural land);

(iii) Pass effective laws on immovable and moveable property pledge registration and related secured transaction law reform, and provide for implementation; and

(iv) Undertake policy reform and seek to improve legislation governing the agribusiness sector, including:

(1) Refine the National Agricultural Strategy that outlines critical priorities to be undertaken that creates a pro-agribusiness growth environment;

(1) Planning and implementing significant benchmarks for improved legislation for seed and plant material law; and

(3) Planning and implementing significant benchmarks for improved legislation for food safety regulations.

Annex II—Financial Plan Summary

This Annex II to the Compact (the ''Financial Plan Annex'') summarizes the Multi-Year Financial Plan for the Program. Each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact.

1. *General.* A multi-year financial plan summary (''Multi-Year Financial Plan Summary'') is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, MCA-Georgia will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of anticipated estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least 30 days prior to the anniversary of the entry into force of the Compact, the Parties shall mutually agree in writing to a Detailed Financial Plan for the upcoming year of the Program, which shall include a more detailed plan for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. *Implementation and Oversight.* The Multi-Year Financial Plan and each Detailed Financial Plan shall be implemented by MCA-Georgia, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governance Agreement and the Disbursement Agreement.[1]

3. *Estimated Contributions of the Parties.* The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, monitoring and evaluation, and each Project. The Government's contribution of resources to Program administration, monitoring and evaluation, and each Project shall consist of (i) ''in-kind'' contributions in the form of Government Responsibilities and any other obligations and responsibilities of the Government identified in this Compact, including contributions identified in the notes to the Multi-Year Financial Plan Summary, (ii) such other contributions or amounts as identified in notes to the Multi-Year Financial Plan Summary, and (iii) such other contributions or amounts as may be identified in relevant Supplemental Agreements between the Parties or as may otherwise be agreed by the Parties; provided, in no event shall the Government's contribution of resources be less than the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact.

4. *Modifications.* The Parties recognize that the anticipated distribution of MCC Funding between and among the various Program activities and Project and Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, the Parties may, upon agreement of the Parties in writing and without amending the Compact, change the designations and allocations of funds between

[1] The role of civil society in the implementation of the Compact (including through participation on the Stakeholders' Committee and as an observer on the Supervisory Board), the responsibilities of the Government and MCC in achieving the Compact Goal and Objectives, and the process for the identification of beneficiaries are addressed elsewhere in this Compact and therefore are not repeated here.

Program administration and a Project, between one Project and another Project, between different activities within a Project, or between a Project identified as of the entry into force of this Compact and a new Project, without amending the Compact; provided, however, that such reallocation (i) is consistent with the Objectives, (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, and (iii) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in Section 2.2(a) of this Compact, this Annex II or elsewhere in the Compact.

5. *Conditions Precedent; Sequencing.* MCC Funding will be disbursed in tranches. The obligation of MCC to approve MCC Disbursements and Material Re-Disbursements for the Program and each Project is subject to satisfactory progress in achieving the Objectives and on the fulfillment or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant Program activity or Project or Project Activity. The sequencing of Project activities or Project Activities and other aspects of how the Parties intend the Projects to be implemented will be set forth in the Implementation Plan, including Work Plans for the applicable Project, and MCC Disbursements and Re-Disbursements will be disbursed consistent with that sequencing.

Exhibit A—Multi-Year Financial Plan

COMPONENT	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	(USD $ million)					
1. REGIONAL INFRASTRUCTURE REHABILITATION PROJECT						
(a) Road Rehabilitation Project Activity*	$1.00	$44.49	$27.74	$18.90	$10.07	$102.20
(b) Regional Infrastructure Development Project Activity	$8.78	$20.20	$20.34	$9.17	$1.51	$60.00
(c) Energy Rehabilitation Project Activity	$27.55	$21.95				$49.50
Sub-Total	**$ 37.3**	**$ 86.6**	**$ 48.1**	**$ 28.1**	**$ 11.6**	**$ 211.7**
2. ENTERPRISE DEVELOPMENT PROJECT						
(a) Georgia Regional Development Fund Project Activity	$5.53	$6.39	$7.50	$6.57	$6.51	$32.50
(b) Agribusiness Development Project Activity	$2.47	$3.35	$3.96	$3.01	$2.20	$15.00
Sub-Total	**$ 8.0**	**$ 9.7**	**$ 11.5**	**$ 9.6**	**$ 8.7**	**$ 47.5**
3. MONITORING AND EVALUATION	$1.38	$1.43	$2.13	$0.91	$2.61	$8.45
Sub-Total	**$ 1.4**	**$ 1.4**	**$ 2.1**	**$ 0.9**	**$ 2.6**	**$ 8.4**
4. PROGRAM ADMINISTRATION AND CONTROL						0
(a) Program Administration	$2.35	$2.44	$2.54	$2.64	$2.75	$12.72
(b) Audit	$0.49	$1.00	$0.64	$0.41	$0.26	$2.80
(c) Fiscal and Procurement Management	$2.12	$4.33	$2.77	$1.78	$1.11	$12.11
Sub-Total	**$ 5.0**	**$ 7.8**	**$ 6.0**	**$ 4.8**	**$ 4.1**	**$ 27.6**
TOTAL ESTIMATED MCC CONTRIBUTION	**$ 51.7**	**$105.6**	**$ 67.6**	**$ 43.4**	**$ 27.0**	**$ 295.3**

* Note that in year 1, $4.1 million of 609(g) funds for the feasibility study, environmental impact assessment and final designs will be spent, to be followed by the procurement of construction services for the actual rehabilitation and construction of the Road.

Annex III—Description of the M&E Plan

This Annex III to the Compact (the ''M&E Annex'') generally describes the components of the M&E Plan for the Program. Each capitalized term in this Annex III shall have the same meaning given such term elsewhere in this Compact.

1. Overview

MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) shall formulate, agree to and the Government shall implement, or cause to be implemented, an M&E Plan that specifies (i) how progress toward the Objectives and Project Activity Outcomes will be monitored (the ''Monitoring Component''), (ii) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability (the ''Evaluation Component''), and (iii) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically generated reports, will be made publicly available on the MCA-Georgia Website and elsewhere.

2. Monitoring Component

To monitor progress toward the achievement of the Objectives and Project Activity Outcomes, the Monitoring Component of the M&E Plan shall identify (i) Program levels, (ii) the Indicators, (iii) the party or parties

responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to MCA-Georgia, and (iv) the method by which the reported data will be validated.

(a) Program Levels. The M&E Plan in general, as well as the Monitoring Component in particular, shall describe the Program at multiple levels of aggregation and shall describe the expected Program results at each of those levels.

(i) Compact Goal. The highest level of results to be achieved by the Program, the Compact Goal, is understood to be the aggregation of the estimated benefits of the two Projects and which are indicative of the overall impact expected from all of the Project Activities. While these benefits can be estimated, it is methodologically impossible to attribute with a high degree of precision changes in income at the end of the Compact Term specifically to interventions undertaken under or in furtherance of the Compact due to the existence of other factors, unrelated to the Program, that may affect income changes. However, these estimated benefits may be used to inform future impact evaluation.

INCREASED ECONOMIC GROWTH AND POVERTY REDUCTION IN REGIONS OF GEORGIA

Goal indicators	Indicator definition	Baseline	Year 5
Reduction in poverty gap in the Samtskhe-Javakheti Region.	The mean distance separating the population from the poverty line.	23.4% (2002)	19.90%
Reduction in poverty incidence in the Samtskhe-Javakheti Region.	The fraction of population under the poverty line, defined by SDS as the ''subsistence minimum.''	56.8% (2002)	50.00%
Incremental increase in household incomes from Compact interventions*.	Financial benefits derived from roads, infrastructure investment and pipeline rehabilitation, and GRDF and ADA enterprise development activities.	0	TBD

* Setting of targets will be made at the end of Year One, once RID projects have been selected and vehicle operating costs on S–J roads have been determined.

(ii) Project. At the second highest level of the Compact, or the Project level, the M&E Plan shall describe Program activities, results and measures of results' attainment in two categories which relate to: (1) The Regional Infrastructure Rehabilitation Project and (2) the Enterprise Development Project. The Project Objectives to be achieved by the activities under each of these Projects shall be understood, as with the Compact level benefits, as being indicative of impact and not necessarily measurably attributable to the Program's interventions within the timeframe of the Compact.

(iii). Project Activity. At the third highest level of the Program, or the Project Activity level, the M&E Plan shall describe the results to be achieved within each Project Activity: (1) The Road Rehabilitation Activity; (2) the Energy Rehabilitation Activity; (3) the Regional Infrastructure Development Activity; (4) the Investment Fund Activity and (5) the Agribusiness Development Activity. The outcomes of each Project Activity (''Project Activity Outcome'') shall be understood to be directly attributable to the Compact interventions and measurable within an intermediate period during the Compact Term.

(b) Indicators. The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data (''Indicators''). Each Indicator will have one or more expected results that specify the expected value and the expected time by which that result will be achieved (''Target''). The M&E Plan will measure and report on Indicators at each of the two levels corresponding to those described above. First, the indicators for each Objective (each, an ''Objective Indicator'') will measure the final results of the Projects in order to monitor their success in meeting each of the Objectives, including results for the intended beneficiaries identified in accordance with Annex I (collectively, the ''Beneficiaries''). Second, indicators for each Project Activity (each, a ''Project Activity Outcome Indicator'') will measure the intermediate results achieved under each of the Project Activities in order to provide an early measure of the likely impact of the Project Activities. For each Indicator for a Project Activity Outcome, and Objective, the M&E Plan shall define a strategy for obtaining and validating the value of such Indicator prior to its being affected by the Program (''Indicator Baseline''). All Indicators will be disaggregated by gender, income level and age, to the extent practicable.

(i) Project Objective Indicators. The M&E Plan shall contain the Objective Indicators listed in the table below, with their definitions. The corresponding Indicator Baselines and Targets to be achieved are in the following tables. MCA-Georgia may add Objective Indicators or refine the Targets of existing Objective Indicators prior to any MCC Disbursement or Re-Disbursement for any Project or Project Activity that may influence that Indicator, or at such other times as may be agreed with MCC, in each case with prior written approval of MCC.

PROJECT OBJECTIVE DEFINITIONS

[Key Regional Infrastructure Rehabilitated]

Goal Indicators:	Indicator Definition:
Financial benefits stemming from Infrastructure Project investments (in 1,000 USD).	Aggregated data for reduction of vehicle operating costs on rehabilitated roads, increased collection rate of GGIC, and actual operations and maintenance funds from responsible maintaining agencies (local/central government or other agencies).
Enterprises in Regions Developed:	
Goal Indicators:	Indicator Definition:
Aggregate jobs created by Program interventions.	Portfolio company jobs will be aggregated with ADA jobs in each year.
Aggregate incremental household incomes and business revenues (in 1,000 USD).	Absolute annual increase in household incomes and revenues to companies in both GRDF and ADA.

PROJECT OBJECTIVES

	Unit	Baseline	Year one	Year two	Year three	Year four	Year five
Key Regional Infrastructure Rehabilitated							
Financial benefits stemming from Infrastructure Rehabilitation Project investments (in 1,000 USD) *.	Number	0	.....	.....	.....	.....	TBDs
Enterprises in Regions Developed							
Aggregate jobs created by Program interventions **	Number	0	.....	.....	.....	.....	23,962
Aggregate incremental household incomes and business revenues (in 1,000 USD) **.	Number	0	.....	.....	.....	.....	59,434

* Setting of targets will be made at the end of Year One, once RID projects have been selected and vehicle operating costs on S–J roads have been determined.

** Portfolio company jobs and income will be aggregated with ADA jobs and income, shown here, in each year when GRDF investments are made.

(ii) Project Activity Outcome Indicators. The M&E Plan shall contain the Project Activity Outcome Indicators listed in the table below with their definitions. The baseline and targets to be achieved are shown in the subsequent table. MCA-Georgia may add Project Activity Outcome Indicators or refine the Targets of existing Project Outcome Indicators prior to any MCC Disbursement or Re-Disbursement for any Project Activity that may influence that Indicator, or at such other times as may be agreed with MCC, in each case with prior written approval of MCC.

ACTIVITY OUTCOME INDICATOR DEFINITIONS FOR REGIONAL INFRASTRUCTURE REHABILITATION PROJECT

Improved Transport for Regional Trade: Road Rehabilitation Activity	
Reduction in journey time: Akhalkalaki-Ninotsminda-Teleti (hours)	
Reduction in vehicle operating costs.	These costs comprise the economic value of the running costs of the vehicle for the duration of the journey on the section of road or road network, the depreciation and maintenance costs of the vehicle and the associated costs related to the driver/goods transported for the journey.
Increase in internal regional traffic volumes.	It is expected that this internal traffic will increase when the Project roads are improved as journey times will be significantly shorter thereby making it more attractive/enticing to the local population to make journeys that they would have thought too time consuming to attempt before the roads were improved.
Increased Reliability of Energy Supply and Reduced Losses: Energy Rehabilitation Activity	
Decreased technical losses.	Decrease of losses occurring between receiving point on Georgia-Russian border and delivery points to the customers, including Georgia-Armenia border.
Reduction in the production of greenhouse gas emissions measured in tons of CO_2 equivalent:	
Increased collection rate of GGIC.	Revenues from Gardabani, industries, gas distribution companies, and consumers of gas.
Improved Regional and Municipal Service Delivery: Regional Infrastructure Development Activity	
Number of household beneficiaries served by RID projects (cumulative).	Number of households that benefited from improved water/sanitation, irrigation and/or gas provision.
Actual operations and maintenance expenditures (in 1,000 USD).	Allocated and actual operations and maintenance funds from responsible maintaining agencies (local/central government or other agencies) used as a proxy measure of revenues and fees from RID investments.

SUB-ACTIVITY OUTPUT INDICATORS

Rehabilitation of Local Physical Infrastructure Sub-Activity	
Number of RID projects completed (cumulative).	Number of rehabilitation projects completed.
Value of RID projects (cumulative, mln. USD).	The cumulative total capital invested, where fund size is US $58 million.

ACTIVITY OUTCOME INDICATORS FOR REGIONAL REHABILITATION PROJECT

	Unit	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Improved Transport for Regional Trade: Road Rehabilitation Activity							
Reduction in journey time: Akhalkalaki-Ninotsminda-Teleti (hours).	Number	6.5	0	0	1	2.5	2.8
Reduction in vehicle operating costs (cumulative).	%	0%	0%	0.5%	2%	6%	15%
Increase in internal regional traffic volumes (cumulative).	%	0%	0%	0.5%	2%	5%	8%
Increased Reliability of Energy Supply and Reduced Losses: Energy Rehabilitation Activity							
Decreased technical losses	%	5%	5%	4%	3%	2%	2%
Reduction in the production of greenhouse gas emissions measured in tons of CO_2 equivalent.	Number	324,713	696,016	1,117,137	1,195,047	1,247,471	1,278,919
Increased collection rate of GGIC	%	50%	50%	95%	95%	95%	95%
Improved Regional and Municipal Service Delivery: Regional Infrastructure Development Activity							
Number of household beneficiaries served by RID projects (cumulative).	Number	0	0	2,000	20,000	46,000	53,000
Activity Outcome Indicators for Regional Rehabilitation Project							
Actual operations and maintenance expenditures (USD)*.	Number	0	TBD	TBD	TBD	TBD	TBD

* Setting of targets will be made at the end of Year One, once RID projects have been selected and vehicle operating costs on S–J roads have been determined.

SUB-ACTIVITY OUTPUT INDICATORS FOR REGIONAL INFRASTRUCTURE DEVELOPMENT ACTIVITY

[Rehabilitation of Local Physical Infrastructure Sub-Activity]

	Unit	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Sub-Activity Output Indicators:							
Number of RID projects completed (cumulative).	Number	0	0	2	8	13	14
Value of RID projects (cumulative, mln. USD).	Number	0	8	28	48	57	58

ACTIVITY OUTCOME INDICATOR DEFINITIONS FOR ENTERPRISE DEVELOPMENT PROJECT

Increased Investment in and Performance of SMEs: Investment Fund Activity Georgia Regional Development Fund (GRDF)	
Increase in annual revenue in portfolio companies (in 1,000 USD).	Aggregate increase in revenues of companies in which GRDF invests.
Increase in number of portfolio company employees and number of local suppliers.	Includes additional number of employees of, as well as additional local suppliers of inputs or services to, companies in which GRDF invests.
Increase in portfolio companies' wages and payments to local suppliers (in 1,000 USD)	
Improved Economic Performance in Agribusiness: Agribusiness Development Activity	
Jobs created	Includes jobs created in on farms, input supply services and agribusiness enterprises.
Increase in aggregate incremental net revenue to project assisted firms (in 1,000 USD and cumulative over five years).	Aggregate annual increase in Net Revenue (NR) of project assisted agribusinesses, service providers and value added enterprises.
Direct household net income (in 1,000 USD cumulative over five years).	Includes direct beneficiaries of the access to modern technology, grants to rural entrepreneurs initiatives.
Direct household net income for market information initiative beneficiaries (in 1,000 USD cumulative over five years)	
Number of beneficiaries	Includes population directly employed in and clients of agribusinesses, input supply services and enterprises.

ACTIVITY OUTCOME INDICATORS FOR ENTERPRISE DEVELOPMENT PROJECT

	Unit	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10
Increased Investment in and Performance of SMEs: Investment Fund Activity Georgia Regional Development Fund (GRDF)								
Increase in annual revenue in portfolio companies (in 1,000 USD and cumulative).	Number	0	.....	.....	.....	.....	22,200	55,000
Increase in number of portfolio company employees and number of local suppliers (cumulative).	Number	0	.....	.....	.....	.....	4,400	6,650
Increase in portfolio companies' wages and payments to local suppliers (cumulative).	Number	0	.....	.....	.....	.....	9,450	23,900
Improved Economic Performance in Agribusiness: Agribusiness Development Activity								
Jobs created from project interventions (cumulative)	Number	0	597	1,481	2,375	3,174	3,606	NA
Increase in aggregate incremental net revenue to project assisted firms (in 1,000 USD and cumulative over five years).	Number	0	45	287	951	2,277	4,448	NA
Direct household net income (in 1,000 USD cumulative over five years).	Number	250	160	1,035	3,474	8,415	16,605	NA
Direct household net income for market information initiative beneficiaries (in 1,000 USD cumulative over five years).	Number	250	133	713	1,941	3,929	6,731	NA
Number of beneficiaries (cumulative)	Number	0	8,584	20,070	36,625	49,423	57,626	NA

(c) Data Collection and Reporting. The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible parties. The Management Team shall conduct regular assessments of program performance to inform MCA-Georgia, Project Managers and the MCC of progress under the Program and to alert these parties to any problems. These assessments will report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. With respect to any data or reports received by MCA-Georgia, MCA-Georgia shall promptly deliver such reports to MCC along with any other related documents, as specified in this Annex III or as may be requested from time to time by MCC.

(d) Data Quality Reviews. From time to time, as determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection. The data quality reviewer shall enter into an Auditor/Reviewer Agreement with MCA-Georgia in accordance with Annex I.

3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal. The Evaluation Component shall contain a methodology, process and timeline for analyzing data in order to assess planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability. This component should use state-of-the-art methods for addressing selection bias and should make provisions for collecting data from both treatment and control groups, where practicable. The Evaluation Component shall contain two types of reports: Final Evaluations and Ad Hoc Evaluations, and shall be finalized before any MCC Disbursement or Re-Disbursement for specific Program activities or Project Activities.

(a) Final Evaluation. MCA-Georgia, with the prior written approval of MCC, may engage an independent evaluator to conduct an evaluation at the expiration or termination of the Compact Term (''Final Evaluation'') or at MCC's election, MCC may engage such independent evaluator. The Final Evaluation must at a minimum (i) evaluate the efficiency and effectiveness of the Program Activities; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the Compact Goal (to the extent possible), the Objectives and Project Activity Outcomes; (iii) determine if and analyze the reasons why the Compact Goal, Objectives and Project Activity Outcomes were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Georgia, such independent evaluator shall enter into an Auditor/Reviewer Agreement with MCA-Georgia in accordance with Annex I.

(b) Ad Hoc Evaluations. Either MCC or MCA-Georgia may request ad hoc or interim evaluations or special studies of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. If MCA-Georgia engages an evaluator, the evaluator will be an externally contracted independent source selected by MCA-Georgia, subject to the prior written approval of MCC, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. The cost of an independent evaluation or special study may be paid from MCC Funding. If MCA-Georgia requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Georgia resources may be applied to such evaluation or special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan shall include the following components

for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Project Activity Outcomes; provided, however, such assumptions and risks shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with the Program Annex, this M&E Annex, the Governance Agreement, and any other relevant Supplemental Agreement.

(b) Stakeholders' Committee. The completed portions of the M&E Plan will be presented to the Stakeholders' Committee at the Stakeholders' Committee's initial meetings, and any amendments or modifications thereto or any additional components of the M&E Plan will be presented to the Stakeholders' Committee at appropriate subsequent meetings of the Stakeholders' Committee. The Stakeholders' Committee will have opportunity to present its suggestions on the M&E Plan, which the Supervisory Board will take into consideration, as a factor, in its review of any amendments to the M&E Plan during the Compact Term. The Stakeholders' Committee shall deliver an acknowledgement following its review of the M&E Plan and any amendments thereto.

(c) MCC Disbursement and Re-Disbursement for a Project Activity. Unless the Parties otherwise agree in writing, prior to, and as a condition precedent to, the initial MCC Disbursement or Re-Disbursement with respect to certain Project Activities, the baseline data or report, as applicable and as specified in the Disbursement Agreement, with respect to such Project or Project Activity must be completed in form and substance satisfactory to MCC. As a condition to each MCC Disbursement or Re-Disbursement there shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements.

(d) Modifications. Notwithstanding anything to the contrary in the Compact, including the requirements of this M&E Annex, MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending the Compact; provided, any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

[FR Doc. 05–20008 Filed 10–6–05; 8:45 am]

BILLING CODE 9210–01–P

Federal Register

Friday,
October 7, 2005

Part VII

Department of Housing and Urban Development

HUD's Draft Section 504 Self-Evaluation Report on HUD-Conducted Programs and Activities; Reopening of Comment Period Grant Guideline; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4994–N–02; HUD–2005–0020]

HUD's Draft Section 504 Self-Evaluation Report on HUD-Conducted Programs and Activities; Reopening of Comment Period

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice; Reopening of Comment Period.

SUMMARY: On June 22, 2005, HUD published a notice in the **Federal Register** soliciting comments on its draft section 504 self-evaluation report of HUD-conducted programs, activities, and regional office facilities. The draft report was prepared consistent with HUD's responsibilities under section 504 of the Rehabilitation Act of 1973, as amended, and under HUD's implementing regulations. The public comment period closed on July 22, 2005. HUD has received numerous requests to re-open the period for public comment. This notice announces the reopening of the public comment period on the section 504 draft self-evaluation report.

DATES: *Comment Due Date:* November 7, 2005

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Electronic comments may be submitted through either:

- The Federal eRulemaking Portal: at *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

Oral Comments: Persons desiring to provide oral comments may call (202) 708–9410 and leave comments on voice mail. For individuals who are hearing or speech impaired and who use a TTY, oral comments may be submitted by calling (202) 401–1247. Please note that these numbers are not toll free. Summaries of the oral comments and the TTY transcripts will be available, without charge, for inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). The telephone numbers for oral comments will be in operation throughout the comment period and will be disconnected at the close of the public comment period.

FOR FURTHER INFORMATION CONTACT: Milton Turner, Director, Compliance and Disability Rights Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–2000; telephone (202) 708–2333, extension 7057 (this is not a toll free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD recently conducted a self-evaluation of its regional office facilities and its policies and practices consistent with HUD's responsibilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). The objective of the self-evaluation was two-fold: (1) To determine whether current HUD policies and practices (including regulations, handbooks, notices, and other written guidance) discriminate, or have the effect of discriminating, on the basis of disability; and (2) to determine if HUD facilities are accessible to persons with disabilities. The types of disability discrimination the self-evaluation sought to disclose included those situations where:

1. Otherwise qualified persons are excluded from participation in, or denied benefits of, HUD programs and activities on the basis of disability;

2. HUD policies that, although neutral on their face, in operation limit the ability of persons with disabilities to benefit from program opportunities (e.g., requiring a person to make a written request for information on HUD's assisted housing programs); and

3. Separate or different benefits or services are provided to persons on the basis of disability where such action is not required to provide a benefit or service as effective as those provided to others (e.g., holding a separate training program for persons with hearing impairments is discriminatory when the training can be effectively held in an integrated setting with the provision of interpreters).

HUD prepared a draft report presenting the results of its section 504 self-evaluation. The draft report, located at *http://www.hud.gov/offices/fheo/disabilities/index.cfm,* discusses the methodology HUD used to conduct the self-evaluation and contains recommendations for addressing identified barriers.

On June 22, 2005 (70 FR 36318), HUD published a **Federal Register** notice seeking public comment on this draft report. Following publication of the notice, many interested parties, who, citing the complexity of the report and the difficulty of evaluating and commenting on the report within 30 days, sought an extension of the 30-day comment period. HUD understands the complexity of the report and the difficulty of evaluating the report; therefore, in order to give all interested persons sufficient time to submit comments, HUD is reopening the public comment period for comments on HUD's draft self-evaluation report. Additionally, HUD is now accepting both oral and written comments on the section 504 draft report. HUD will issue a final self-evaluation report after consideration of all public comments received on the section 504 draft report.

A number of interested parties commented that the draft report on the HUD Web page did not contain Appendix 3, which were the blank worksheets that were completed internally by HUD Program Offices and Divisions. While the Department referenced Appendix 3 in the text of the draft report, it did not originally release the checklists because they were just one of several processes that were used to develop the final draft report. Since there is interest in the release of the blank worksheets contained in Appendix 3, they have been included in the draft Section 504 report posted on the HUD Web page.

In addition to those comments, both oral and written, that HUD will receive between today's date and November 7, 2005, all comments that were postmarked on or before July 22, 2005 (the original due date for public comments) will be considered in the

development of the final HUD section 504 self-evaluation report on HUD-conducted programs and activities.

Dated: September 29, 2005.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 05–20151 Filed 10–6–05; 8:45 am]

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Federal Register

Friday,

October 7, 2005

Part VIII

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

Obligation To Solicit Race and Gender Data for Agency Enforcement Purposes; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

RIN 1215–AB45

Obligation To Solicit Race and Gender Data for Agency Enforcement Purposes

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, DOL.

ACTION: Final rule.

SUMMARY: Office of Federal Contract Compliance Programs (OFCCP) regulations require covered federal contractors and subcontractors to collect information about the gender, race and ethnicity of each ''applicant'' for employment. The final rule published today modifies OFCCP applicant recordkeeping requirements to address challenges presented by the use of the Internet and electronic data technologies in contractors' recruiting and hiring processes. The final rule is intended to address recordkeeping requirements regarding ''Internet Applicants'' under all OFCCP recordkeeping and data collection requirements.

EFFECTIVE DATE: These regulations are effective February 6, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY). Copies of this final rule, including copies in alternative formats, may be obtained by calling OFCCP at (202) 693–0102 (voice) or (202) 693–1337 (TDD/TTY). The alternate formats available are large print, electronic file on computer disk and audiotape. This document also is available on the Internet at *http://www.dol.gov/esa*.

SUPPLEMENTARY INFORMATION:

I. Introduction

OFCCP requires covered federal contractors to obtain gender, race, and ethnicity data on employees and, where possible, on applicants. See 41 CFR 60–1.12(c). OFCCP requires this data collection activity for several purposes relating to contractors' administration of nondiscrimination and affirmative action requirements and OFCCP's role in monitoring compliance with OFCPP requirements. See 65 FR 68023 (November 13, 2000); 65 FR 26091 (May 4, 2000). For example, contractors use gender, race, and ethnicity data in the ''job group analysis'' portion of their AAPs (41 CFR 60–2.12) and OFCCP uses the data to decide which contractor establishments to review and, among those reviewed, when to conduct an on-site investigation. Contractors must supply this information to OFCCP upon request. *See* 41 CFR 60–1.12(c)(2).

II. Rulemaking History

The Uniform Guidelines on Employee Selection Procedures (UGESP) were issued in 1978 by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the predecessor of the Office of Personnel Management (''UGESP agencies''). UGESP requires employers to keep certain kinds of information and details methods for validating tests and selection procedures that are found to have a disparate impact.

The Department of Labor is a signatory to UGESP, which is codified in OFCCP regulations at 41 CFR part 60–3. Section 60–1.12, OFCCP's Executive Order 11246 record retention rule, was amended on November 13, 2000, to require contractors to be able to identify, where possible, the gender, race, and ethnicity of each applicant for employment. OFCCP promulgated this regulatory requirement to govern OFCCP compliance monitoring and enforcement (e.g., to allow OFCCP to verify EEO data), consistent with the UGESP. Prior to these amendments, OFCCP regulations did not expressly require contractors to maintain, or submit to OFCCP, information about the gender, race, and ethnicity of applicants and employees. *See* 65 FR 26091 (NPRM May 4, 2000); 65 FR 68023, 68042 (Final Rule Nov. 13, 2000). The pertinent provisions of the November 13, 2000 final rule were codified in OFCCP regulations at 41 CFR 60–1.12(c).

In 2000, the Office of Management and Budget instructed the Equal Employment Opportunity Commission to consult with the other UGESP agencies to address the ''issue of how use of the Internet by employers to fill jobs affects employer recordkeeping obligations'' under UGESP. *See* Notice of OMB Action, OMB No. 3046–0017 (July 31, 2000). In particular, the Office of Management and Budget instructed the agencies to ''evaluate the need for changes to the Questions and Answers accompanying the Uniform Guidelines necessitated by the growth of the Internet as a job search mechanism.'' *Id.*

On March 4, 2004, the UGESP agencies issued a Notice in the **Federal Register** seeking comments under the Paperwork Reduction Act about the burdens and utility of interpretive guidance intended to clarify how UGESP applies in the context of the Internet and related electronic data technologies. 69 FR 10152 (March 4, 2004). The preamble to the new interpretive guidance discussed the need for clarification of UGESP obligations in the context of the Internet and related electronic data technologies. *See* 69 FR 10154–155. The UGESP agencies expressly contemplated that ''[e]ach agency may provide further information, as appropriate, through the issuance of additional guidance or regulations that will allow each agency to carry out its specific enforcement responsibilities.'' 69 FR 10153.

On March 29, 2004, OFCCP published a Notice of Proposed Rulemaking proposing amendments to OFCCP regulations governing applicant recordkeeping requirements. 69 FR 16446, 16449 (March 29, 2004). OFCCP determined that additional regulations were required to clarify OFCCP applicant recordkeeping requirements in light of OFCCP's unique use of applicant data for compliance monitoring and other enforcement purposes.

In the proposed rule, OFCCP proposed to amend OFCCP regulations at 41 CFR 60–1.3 to add a definition of ''Internet Applicant.'' 69 FR 16449. The proposed definition of ''Internet Applicant'' involved four criteria: (1) The job seeker has submitted an expression of interest in employment through the Internet or related electronic data technologies; (2) the employer considers the job seeker for employment in a particular open position; (3) the job seeker's expression of interest indicates the individual possesses the advertised, basic qualifications for the position; and, (4) the job seeker does not indicate that he or she is no longer interested in employment in the position for which the employer has considered the individual. 69 FR 16449. Under the proposed rule, ''advertised, basic qualifications'' were qualifications that the employer advertises to potential applicants that they must possess in order to be considered for the position. 69 FR 16449. The proposed definition further provided that ''advertised, basic qualifications'' must be noncomparative, objective, and job-related. 69 FR 16449–450.

The proposed rule also would amend 41 CFR 60–1.12(a) to require contractors to retain records of all expressions of interest through the Internet or related electronic technologies. 69 FR 16450.

Lastly, the proposed rule would amend 41 CFR 60–1.12(c)(1)(ii) to incorporate the new category of ''Internet Applicant,'' as defined in the proposed amendment to section 60–1.3 and to distinguish between ''applicants,'' i.e., expressions of interest in employment that are not submitted through the Internet and related electronic technologies, and ''Internet Applicants.'' 69 FR 16450.

OFCCP received 46 comments from 45 entities: four individuals, nine interest groups, an academic organization, the Chairman of the U.S. House of Representatives Committee on Education and the Workforce's Subcommittee on Employer-Employee Relations, seventeen employers who are covered contractors within OFCCP's jurisdiction, three trade associations, one law firm that represents contractors, and nine consultants that represent contractors.

The commenters offered a diverse array of views on the proposed rule. Almost all of the comments focused on four general areas: (1) The relationship between the proposed rule and the UGESP Additional Questions and Answers; (2) the specific criteria of the proposed ''Internet Applicant'' definition, especially the part of the definition involving ''advertised, basic qualifications;'' (3) the recordkeeping requirements of the proposed rule; and (4) the treatment of ''traditional'' expressions of interest, i.e., those made through means other than the Internet or related electronic data technologies.

Several commenters also addressed significant issues related to OFCCP compliance monitoring and enforcement activities under the proposed rule, including OFCCP's use of labor force statistics and the effective date of the final rule.

III. Summary and Explanation of the Final Rule

The final rule, for the most part, adopts the text that was proposed in the March 29, 2004 NPRM. However, in response to the public comments, OFCCP has modified the proposed text in certain respects. The discussion which follows identifies the significant comments received in response to the NPRM, provides OFCCP's responses to those comments, and explains any resulting changes to the proposed rule.

Discussion of Comments and Revisions

Comments Regarding the Relationship Between the Proposed UGESP Additional Questions and Answers and the OFCCP Proposed Rule

Many of the commenters expressed concern about the relationship between OFCCP's proposed rule and the Proposed UGESP Additional Questions and Answers. Most of these commenters argued that the proposals are not sufficiently coordinated, which could create confusion among employers, and could lead to inconsistent or even conflicting obligations.[1] Many of these commenters, such as Society for Human Resources Management (SHRM), ORC Worldwide (ORC), National Association of Manufacturers (NAM), and National Industry Liaison Group (NILG), pointed out that this perceived lack of coordination could lead to inadequate compliance with either of the rules and enormous recordkeeping burdens for employers. The Equal Employment Advisory Council (EEAC) believed that the OFCCP proposal conflicts in several important respects with the proposed UGESP Additional Questions and Answers. Gaucher Associates believed that the OFCCP proposal conflicts with OFCCP's prior informal interpretation of UGESP.

These commenters recommended an array of differing solutions for this coordination problem. Most of the commenters preferred that the UGESP agencies more explicitly adopt the ''basic qualifications'' component of the OFCCP applicant definition.[2] Several commenters argued against the OFCCP proposed rule altogether and asserted a preference for the UGESP proposal.[3]

OFCCP agrees with the commenters that coordination between this final rule and the proposed UGESP Additional Questions and Answers is desirable. While the Department believes that the NPRM was consistent with the proposed UGESP Additional Questions and Answers, the Department will work with the other UGESP agencies to coordinate the final UGESP Additional Questions and Answers to ensure that contractors do not face inconsistent applicant recordkeeping obligations.

Morgan, Lewis & Bockius LLP asked how OFCCP interprets procedures for evaluating Internet Applicant recordkeeping obligations under section 60–1.12 and UGESP. To make clear OFCCP's interpretation of procedures regarding Internet Applicant recordkeeping under both rules, OFCCP has added a new regulatory provision, section 60–1.12(d), to the final rule. The new provision, captioned ''Adverse impact evaluations,'' explains that when evaluating whether a contractor has maintained information on impact and conducted an adverse impact analysis under Part 60–3 with respect to Internet hiring procedures, OFCCP will require only those records relating to the analyses of the impact of employee selection procedures on Internet Applicants and the impact of employment tests. As discussed below, OFCCP does not deem employment tests to be basic qualifications under the final rule and contractors must continue to collect and maintain records related to the impact of employment tests that are used as employee selection procedures, without regard to whether the tests were administered to Internet Applicants. However, OFCCP's compliance evaluations will not be limited to an evaluation of those records produced by the contractor. During compliance evaluations OFCCP will continue to look broadly at all aspects of a contractor's compliance with its obligations to refrain from discrimination in recruitment, hiring, and other employment practices, including the possible adverse impact of screens for basic qualifications.

As a technical matter, today's rule redesignates the former section 60–1.12(d), *Failure to preserve records,* as section 60–1.12(e), and removes former section 60–1.12(e), Applicability. The latter section was contained in the regulations merely to indicate the Office of Management and Budget's approval under the Paperwork Reduction Act of a previously published recordkeeping requirement. 62 FR 66971 (Dec. 22,

[1] *See, e.g.,* Blount International, Inc., Computer Associates International, Inc., Glenn Barlett Consulting Services, LLC, L–3 Communications, Maly Consulting LLC, Motorola Corp., Society for Human Resource Management, Southwest Airlines Co., ORC Worldwide, National Association of Manufacturers, National Industry Liaison Group, Morgan, Lewis & Bockius LLP, Thomas Houston Associates, Inc., TOC Management Services, Nancy J. Purvis, Sentari Technologies, Inc., Society for Industrial and Organizational Psychology, Louisiana Pacific Corp., and Premier Health Partners.

[2] *See, e.g.,* American Bankers Association, Chairman of the U.S. House of Representatives Committee on Education and the Workforce's Subcommittee on Employer-Employee Relations, Computer Associates International, Inc., L–3 Communications, ORC Worldwide, Motorola, Inc., National Association of Manufacturers, National Industry Liaison Group, Morgan, Lewis & Bockius LLP, Sentari Technologies, Inc., Siemens USA, Society for Human Resource Management, Society for Industrial and Organizational Psychology, Southwest Airlines Co., Thomas Houston Associates, Inc., TOC Management Services, Louisiana Pacific Corp., and Premier Health Partners.

[3] *See, e.g.,* Blount International, Inc., The Leadership Conference on Civil Rights, the National Women's Law Center, and the Lawyers' Committee for Civil Rights Under Law.

1997). Accordingly, it is no longer necessary.

General Comments on OFCCP's Proposed Definition of ''Internet Applicant''

Most commenters provided comments specific to one or more of the parts and subparts of OFCCP's proposed definition of ''Internet Applicant.'' OFCCP discusses below these comments in relation to each specific part or subpart of the proposed ''Internet Applicant'' definition to which they apply.

However, several commenters, including EEAC, NILG and Glenn Barlett Consulting Services, Inc. (GBCS), expressed general concern that OFCCP's proposed definition is too precise and prescriptive, in light of the variety of recruiting and selection practices that employers utilize. These commenters requested that OFCCP adopt more general guidelines that afford employers significant discretion in determining whether an individual qualifies as an ''applicant'' under the employer's own recruiting and selection systems. For example, GBCS argued that employers should be permitted to determine any point in the selection process in which race, ethnicity, and gender data would be collected. GBCS noted, ''[m]any contractors currently solicit race, ethnicity, and gender at the interview stage.''

OFCCP disagrees with commenters that suggested that general guidelines are preferable to clear rules. OFCCP believes that general guidelines would not provide clear guidance on compliance requirements or ensure adequate protections for employees and applicants. As many commenters have pointed out, over the years, there has been significant controversy between OFCCP and the contractor community as to whether a particular applicant recordkeeping practice satisfies OFCCP requirements. This controversy was fueled by the lack of clear rules about applicant recordkeeping requirements, and, in particular, clear rules about applicant recordkeeping requirements in the context of the Internet and related electronic technologies. Without clear rules, OFCCP cannot secure general compliance with the requirements, either through compliance assistance or compliance monitoring.

Northern California and Silicon Valley Industry Liaison Group requested that OFCCP expressly state in the final rule that the regulatory definition of ''Internet Applicant'' provides a minimum requirement for contractors, but also permits contractors to voluntarily implement a more expansive definition of ''applicant'' for OFCCP recordkeeping purposes.

OFCCP is well aware that contractors utilize a variety of recruitment and selection practices. Nothing in the final rule alters contractors' discretion to determine their own recruitment and selection practices and procedures. Rather, the final rule simply requires contractors to maintain sufficient records to allow both the employer and OFCCP to monitor the contractor's selection practices for potential discrimination. OFCCP disagrees with the recommendation that contractors be afforded ultimate discretion to determine recordkeeping requirements. OFCCP prescribes recordkeeping standards in order to enforce E.O. 11246, which prohibits employment discrimination on the basis of race, color, national origin, religion, and sex. OFCCP regulations implementing E.O. 11246 require contractors to self audit their own selection practices to ensure nondiscrimination. *See* 41 CFR 60–2.17, 60–3.4. OFCCP could not enforce E.O. 11246 effectively to ensure nondiscrimination if contractors are themselves the ultimate arbiters of whether sufficient records are available for OFCCP compliance monitoring activities. Nor, in OFCCP's judgment, could contractors adequately self audit their own selection practices without adequate applicant recordkeeping. Thus, the final rule establishes minimum standards for applicant recordkeeping in the context of the Internet and related electronic technologies. Contractors, however, may voluntarily adopt recordkeeping practices that are broader than those mandated by the final rule.

Comments on OFCCP's Proposed Definition of ''Internet Applicant''

Part 1: ''Submits an expression of interest in employment through the Internet or related electronic data technologies;''

In the proposed rule, ''Internet Applicant'' was defined as any individual who satisfied four criteria. OFCCP has retained the four criteria in the final rule. The first criterion of the proposed definition required that the individual ''[s]ubmits an expression of interest in employment through the Internet or electronic data technologies.'' The preamble to the proposed rule made clear that this provision applied only to expressions of interest in employment through the Internet or related electronic data technologies and that the existing standards would apply to expressions of interest through traditional means.

OFCCP solicited comments on this subject in the preamble of the proposed rule:

> The new interpretive guidelines promulgated by the UGESP agencies apply only to the Internet and related technologies. Because OFCCP relies on applicant data to determine whether to conduct an on-site audit of a contractor's workplace, OFCCP is concerned that the data allow for meaningful analysis. The proposed rule creates differing standards for data collection for traditional applicants versus Internet Applicants for the same job. Accordingly, if an employer's recruitment processes for a particular job involve both electronic data technologies, such as the Internet, and traditional want ads and mailed, paper submissions, the proposed rule would treat these submissions differently for that particular job. We are unsure whether this dual standard will provide OFCCP with meaningful contractor data to assess in determining whether to commit agency resources into an investigation of a contractor's employment practices. Therefore, OFCCP expressly solicits comments on this issue.

69 FR 16447 (March 29, 2004). OFCCP received many comments regarding whether the standard for ''Internet Applicant'' should be applied to individuals who submit an expression of interest through a means other than the Internet or related electronic data technologies. Many of the commenters addressed this subject and virtually all argued that the definition of applicant should not depend on the means by which an expression of interest comes into the employer's possession.[4] Most of these commenters asserted that the differing definitions of applicant would cause confusion and impose significant burdens on employers who would have to maintain two different recordkeeping systems.[5] Several of the commenters,

[4] *See, e.g.*, American Bankers Association, Chairman of the U.S. House of Representatives Committee on Education and the Workforce's Subcommittee on Employer-Employee Relations, Computer Associates International, Inc., Glenn Barlett Consulting Services, HR Analytical Services, Kairos Services, Inc., Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil Rights, L–3 Communications, Lorillard, Inc., Maly Consulting LLC, Morgan, Lewis & Bockius LLP, Motorola Corp., ORC Worldwide, National Women's Law Center, National Industry Liaison Group, Northern California and Silicon Valley Industry Liaison Group, Siemens USA, Society for Human Resource Management, Society for Industrial and Organizational Psychology, Southwest Airlines Co., Thomas Houston Associates, Inc., TOC Management Services, and U.S. Chamber of Commerce. As discussed below, several of these commenters, including Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil Rights, and National Women's Law Center, disagreed with the proposed rule's reference to ''basic qualifications'' in defining ''Internet Applicant.''

[5] *See, e.g.*, American Bankers Association, Computer Associates International, Inc., Gaucher Associates, HR Analytical Services, L–3 Communications, ORC Worldwide, Morgan, Lewis

including HR Analytical Services, L–3 Communications, and the U.S. Chamber of Commerce, noted that the applicant data employers would obtain under the proposed rule would not provide for meaningful analysis of recruitment and hiring practices. Several commenters, such as Siemens USA (Siemens), Gaucher Associates, and SHRM, also asserted that a dual standard may create an incentive for employers not to consider expressions of interest through traditional means, such as mailing a paper resume, which would work to the disadvantage of persons who do not have ready access to the Internet.

In response to the comments, OFCCP added a related provision in the final rule which eliminates the proposed rule's dual standard for Internet versus traditional applicants, but only as to positions for which the contractor considers expressions of interest through both the Internet and traditional means. To make this rule clearer, the final rule adds three examples that explain this new provision. In the first example, the contractor solicits potential applicants for a position that is posted on its Web site. The contractor's Web site encourages potential applicants to complete an on-line profile to express an interest in the position. The contractor's Web site also advises potential applicants that they can mail a hard-copy resume with a cover letter that identifies the position for which they would like to be considered. In this example the contractor considers individuals expressing interest in a position using on-line profiles, an Internet technology, and mailed hard-copy resumes, a traditional method of application. Since the contractor considers expressions of interest through both on-line profiles and mailed hard-copy resumes, the Internet Applicant rule applies to both types of expressions of interest. In the second example, the contractor posts an opening for a position on its Web site and encourages potential applicants to complete an on-line profile. The contractor also receives a large number of unsolicited hard-copy resumes in the mail each year. The contractor scans the hard-copy resumes into an internal database that also includes all the on-line profiles that individuals have completed for various jobs. The contractor uses this internal database to find potential applicants for a position posted on the contractor's Web site. In this example, the Internet Applicant rule applies to both the on-line profiles and the unsolicited paper resumes. In the third example, the contractor does not consider potential applicants using Internet or related technologies, and, therefore, the Internet Applicant rule does not apply.

OFCCP agrees with the commenters that the bifurcated standard contained in the proposed rule would not have provided useful data where the contractor considers both types of expressions of interest for a particular position. Indeed, this bifurcated standard would result in essentially two applicant data pools—one describing individuals who possess the basic qualifications and another describing some individuals who do not possess those basic qualifications—depending on the manner in which the employer obtained the expression of interest. Because the pools are composed differently, OFCCP could not draw meaningful conclusions from analysis of the combined pool. OFCCP also shares the concerns regarding the complexity of such a framework and the corresponding difficulty in achieving substantial compliance through compliance assistance and compliance monitoring. Thus, in the final rule, OFCCP eliminated the differing standards for data collection for traditional applicants versus Internet Applicants for the same job when the employer considers both types of applicants. Under the final rule, where the Internet Applicant standard applies to a particular position, a particular expression of interest that does not qualify as an ''Internet Applicant'' for that position (*e.g.*, because the individual did not possess the basic qualifications for the position), will not qualify as an ''applicant'' for that position, as the term ''applicant'' is used in OFCCP regulations at 41 CFR 60–1.12(c). Further, pursuant to section 60–1.12(d), where the Part 60–1 Internet Applicant standard applies to a particular position, OFCCP will only require those records under Part 60–3 (other than those related to job seekers screened by a test used as a selection procedure) that relate to job seekers that are Internet Applicants as defined in 41 CFR 60–1.3. OFCCP modified the text of section 60–1.12(c)(1)(ii) in the final rule to make clear that either the ''applicant'' standard or the ''Internet Applicant'' standard would apply for a particular position, but not both. In the final rule, section 60–1.12(c) requires contractors to maintain records that identify ''where possible, the gender, race, and ethnicity of each applicant or ''Internet Applicant'' as defined in 41 CFR 60–1.3, whichever is applicable to the particular position.''

However, OFCCP does not believe that these problems and concerns are present to the same extent, if at all, where the contractor considers *only* traditional expressions of interest for a particular position. In such a situation, a single standard is used to determine who is an applicant. For example, a manufacturer that hires for assembly line positions and considers only individuals who fill out and submit a hard copy application form has a single data pool—no member of which are Internet Applicants. This contractor can solicit race, ethnicity, and gender information through a voluntary self-identification form provided with the application form. In this example, the applicant pool consists of those individuals who completed and submitted an application form, applying a single, traditional standard for who is an applicant.

OFCCP received several other comments about this part of the proposed rule. The Leadership Conference on Civil Rights (LCCR) requested that OFCCP ''make clear that there are multiple ways for a potential applicant to submit an expression of interest in a particular position.'' LCCR's concern was that an employer might refuse to consider the expressions of interest of individuals who do not follow the employer's desired process for making such expressions of interest. LCCR also was concerned that employers might make *ad hoc* exceptions to their standard process for accepting expressions of interest. LCCR argued that ''any guidance that is developed should make clear that individuals who reasonably believe, based on the information they received from the employer, that they have applied for a particular position should be considered applicants for that position and recorded a (sic) such.''

OFCCP has addressed these comments fully in the section that discusses the second criterion for the ''Internet Applicant'' definition. OFCCP agrees that contractors should not be permitted to selectively determine who will be considered for employment based on the qualifications information contained on an expression of interest. OFCCP has added an explicit definition of ''considers the individual for employment in a particular position.'' Under the final rule at subsection (3) of the definition of Internet Applicant, '' 'considers the individual for employment in a particular position,' means that the contractor assesses the substantive information provided in the

& Bockius LLP, Motorola Corp., Nancy J. Purvis, National Women's Law Center, Society for Human Resource Management, Society for Industrial and Organizational Psychology, Southwest Airlines Co., Thomas Houston Associates, Inc., and U.S. Chamber of Commerce.

expression of interest with respect to any qualifications involved with a particular position.'' This definition forecloses the possibility that a contractor could evaluate an individual's qualifications for a particular position without thereby having ''considered'' the individual.

At the same time, OFCCP does not provide a blanket requirement that contractors must consider any and all expressions of interest they receive, regardless of the manner or nature of the expression of interest. OFCCP makes this clear in the final rule (subsection (3) of the Internet Applicant definition) through the definition of ''considers the individual for employment in a particular position,'' which further provides that ''[a] contractor may establish a protocol under which it refrains from considering expressions of interest that are not submitted in accordance with standard procedures the contractor establishes. Likewise, a contractor may establish a protocol under which it refrains from considering expressions of interest, such as unsolicited resumes, that are not submitted with respect to a particular position.'' Under the final rule, it is the contractor's actual practice with respect to a particular expression of interest that determines whether the contractor has ''considered'' that expression of interest and similar expressions of interest. For example, if the contractor's policy is to accept expressions of interest only through its Web site, but its actual practice is to also review faxed resumes and scan those it is interested in into its database, the contractor's actual practice is to consider faxed resumes as well as expressions of interest received through its Web site. This is consistent with OFCCP's longstanding policy to permit contractor's to dispose of unsolicited resumes if the contractor has a consistently applied policy of not considering unsolicited resumes.

OFCCP investigates whether a contractor has such a protocol by reviewing the contractor's hiring procedures and policies and by reviewing the contractor's hiring practices to determine whether those procedures and policies were consistently and uniformly followed.

Several other commenters, including EEAC, Louisiana Pacific Corp., and Premier Health Partners, criticized the proposed rule for not including a requirement that the individual make an expression of interest in accordance with the employer's standard procedures for submitting applications.

Several commenters, including EEAC, ORC, SHRM, and the Society for Industrial and Organizational Psychology (SIOP), requested that this part of the proposed definition expressly require that the expression of interest must be an expression for a particular position. Otherwise, these commenters argued, any expression of interest might qualify an individual as an applicant for any position, which would impose significant burdens on contractors if the potential applicant pool is voluminous. ORC offered the example of an employer that searches Monster.com and finds over 20,000 resumes of individuals who satisfy the basic qualifications for a particular position. ORC argued that all 20,000 of these individuals would be applicants under OFCCP's proposed definition, unless the definition is somehow limited to those individuals who express an interest in the particular position for which the contractor is considering the individual. SIOP argued that contractors will face significant recordkeeping burdens if expressions of interest are not limited to those for a particular position because the proposed rule would require contractors to retain all expressions of interest, regardless of whether the individual qualifies as an Internet Applicant.

OFCCP agrees that the proposed data collection and recordkeeping requirements would be unreasonable in the example ORC offered. To address these situations, the agency has modified or clarified several provisions of the proposed rule. Specifically, OFCCP expressly states in the final rule (subsection (3) of the definition of ''Internet Applicant'') that ''[i]f there are a large number of expressions of interest, the contractor does not 'consider the individual for employment in a particular position' by using data management techniques that do not depend on assessment of qualifications, such as random sampling or absolute numerical limits to reduce the number of expressions of interest to be considered, provided that the sample is appropriate in terms of the pool of those submitting expressions of interest.'' Data management techniques are not ''appropriate'' under subsection (3) if they are not facially neutral or if they produce disparate impact based on race, gender, or ethnicity in the expressions of interest to be considered. Further, OFCCP modified the fourth part (subsection (1)(iv)) of the proposed definition of ''Internet Applicant'' to require that ''[t]he individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.''

OFCCP also added a related provision (subsection (5) of the definition of ''Internet Applicant'') to clarify that, ''a contractor may conclude that an individual has removed himself or herself from further consideration, or has otherwise indicated that he or she is no longer interested in the position for which the contractor has considered the individual, based on the individual's express statement that he or she is no longer interested in the position, or on the individual's passive demonstration of disinterest shown through repeated non-responsiveness to inquiries from the contractor about interest in the position. A contractor also may determine that an individual has removed himself or herself from further consideration or otherwise indicated that he or she is no longer interested in the position for which the contractor has considered the individual based on information the individual provided in the expression of interest, such as salary requirements or preferences as to type of work or location of work, provided that the contractor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers. If a large number of individuals meet the basic qualifications for the position, a contractor may also use data management techniques, such as random sampling or absolute numerical limits, to limit the number of individuals who must be contacted to determine their interest in the position, provided that the sample is appropriate in terms of the pool of those meeting the basic qualifications.'' Data management techniques are not ''appropriate'' under subsection (5) if they are not facially neutral or if they produce adverse impact based on race, gender, or ethnicity in the job seekers that will be contacted by the contractor to discern interest in the job. Finally, in the final rule (§ 60–1.12(a)), OFCCP clarified that, when a contractor uses a third-party resume database, the contractor must retain the electronic resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor, not all the resumes contained in the third-party resume database, along with records identifying job seekers contacted regarding their interest in a particular position, a record of the position for which each search of the database was made, the substantive search criteria used, and the date of the search.

Returning to ORC's example in light of these modifications, the contractor may reduce the burden from applicant

recordkeeping obligations by determining which of the 20,000 individuals from Monster.com to contact through random sampling or an absolute numerical technique.[6] The contractor could also limit burdens from recordkeeping obligations by determining which of the 20,000 individuals are interested in the position through the individuals' stated preferences as to type or location of work, or salary requirements. The contractor would be required to retain only the resumes of job seekers who met the basic qualifications for the particular position and who were considered by the contractor, not 20,000 resumes or all the resumes in the Monster.com database.

Several commenters, including Gaucher Associates and Siemens USA (Siemens), argued that the term ''Internet and related electronic data technologies'' is vague and requested that OFCCP clarify the meaning of this term in the final rule. OFCCP will not provide a precise definition of this term in recognition of rapid changes in technology in this area. However, OFCCP does intend this term to include the types of technologies referenced in the preamble to the proposed UGESP Additional Questions and Answers as follows:

> Internet-related technologies and applications that are widely used in recruitment and selection today include:
>
> E-mail: Electronic mail allows for communication of large amounts of information to many sources with remarkable ease. Recruiters, employers, and job seekers use e-mail lists to share information about potential job matches. Recruiters send e-mails to lists of potential job seekers. These lists are obtained through various sources of information, such as trade or professional lists and employer Web site directories. Employers publish job announcements through e-mail to potential job seekers identified through similar means. Job seekers identify large lists of companies to receive electronic resumes through e-mail. E-mail allows all of these users to send the same information to one recipient or many, with little additional effort or cost.
>
> Resume databases: These are databases of personal profiles, usually in resume format. Employers, professional recruiters, and other third parties maintain resume databases. Some third-party resume databases include millions of resumes, each of which remains active for a limited period of time. Database information can be searched using various criteria to match job seekers to potential jobs in which they may be interested.
>
> Job Banks: The converse of the resume database are databases of jobs. Job seekers search these databases based on certain criteria to identify jobs for which they may have some level of interest. Job seekers may easily express interest in a large number of jobs with very little effort by using a job bank database. Third-party providers, such as America's Job Bank, may maintain job banks or companies may maintain their own job bank through their Web sites.
>
> Electronic Scanning Technology: This software scans resumes and individual profiles contained in a database to identify individuals with certain credentials.
>
> Applicant Tracking Systems/Applicant Service Providers: Applicant tracking systems began primarily to help alleviate employers' frustration with the large number of applications and resumes received in response to job postings. They also serve the wider purpose of allowing employers to collect and retrieve data on a large number of job seekers in an efficient manner. Whether in the form of custom-made software or an Internet service, the system receives and evaluates electronic applications and resumes on behalf of employers. For example, an employer could have the group of job seeker profiles from a third party provider's system searched, as well of those received on its own corporate Web site entered into one tracking system. The system would then pull a certain number of profiles that meet the employer-designated criteria (usually a particular skill set) and forward those profiles to the employer for consideration.
>
> Applicant Screeners: Applicant screeners include vendors that focus on skill tests and other vendors that focus on how to evaluate general skills. Executive recruiting sites emphasize matching job seekers with jobs using information about the individual's skills, interests, and personality.
>
> 69 FR 10155 (March 4, 2004).

Part 2: ''The employer considers the individual for employment in a particular open position;''

In the proposed rule, the second criterion of the ''Internet Applicant'' definition required that ''[t]he employer considers the individual for employment in a particular open position.'' Subsection (1)(ii). OFCCP made one change to this text in the final rule; the word ''open'' was deleted. The deletion was made to avoid confusion about whether the second criterion is met if an individual is considered for a position that may by open in the future, but is not currently open. Under subsection (1)(ii) it will be sufficient for a contractor to consider an individual for employment in a particular position.

In response to comments received from the LCCR, EEAC and others discussed above, OFCCP added a related provision at subsection (3) of the definition of Internet Applicant in the final rule:

> For purposes of paragraph (1)(ii) of this definition, ''considers the individual for employment in a particular position,'' means that the contractor assesses the substantive information provided in the expression of interest with respect to any qualifications involved with a particular position. A contractor may establish a protocol under which it refrains from considering expressions of interest that are not submitted in accordance with standard procedures the contractor establishes. Likewise, a contractor may establish a protocol under which it refrains from considering expressions of interest, such as unsolicited resumes, that are not submitted with respect to a particular position. If there are a large number of expressions of interest, the contractor does not ''consider the individual for employment in a particular position'' by using data management techniques that do not depend on assessment of qualifications, such as random sampling or absolute numerical limits, to reduce the number of expressions of interest to be considered, provided that the sample is appropriate in terms of the pool of those submitting expressions of interest.

Subsection (3) explains that a contractor may establish a protocol under which it refrains from considering expressions of interest that are not submitted in accordance with standard procedures established by the contractor, or not submitted with respect to a particular position. However, the protocol must be uniformly and consistently applied to similarly situated job seekers. As previously mentioned, it is the contractor's actual practice that determines whether the contractor ''considered'' the expression of interest. If a contractor's policy is to accept expressions of interest only through its Web site, but its actual practice is to review faxed resumes as well and to scan those it is interested in into its resume database, then the contractor ''considers'' faxed resumes as well as expressions of interest received through its Web site.

Subsection (3) also provides that if there are a large number of expressions of interest the contractor may use data management techniques to reduce the number of expressions of interest that must be considered, provided that the sample is appropriate in terms of the pool of those submitting expressions of interest. Data management techniques used to reduce the number of expressions of interest to be considered must be facially neutral in terms of race, ethnicity, gender or other protected factors. Data management techniques that produce adverse impact based on race, gender or ethnicity in the expressions of interest that will be considered by the contractor would not be appropriate.

[6] Under a random sampling technique, the employer considers only a small subset of resumes drawn randomly from the 20,000 resumes; many spreadsheets and database software packages offer random sampling functions. Under an absolute numerical limit, the employer reviews only a predesignated number of resumes, such as the first 100 resumes.

Several commenters, including Maly Consulting LLC, ORC, Siemens, and the SIOP, commented generally that the term ''considers'' is ambiguous and requested that OFCCP clarify its meaning. ORC argued that ''considers'' should include the determination of whether an individual meets the basic qualifications for the position.

Siemens was concerned that the term ''considers'' could be interpreted to preclude contractors from searching an internal resume database using successively more precise qualification searches to narrow the pool of potential applicants to a manageable number. Siemens argued that the term ''considers'' should be interpreted to permit contractors to use database searches to narrow a large pool of potential applicants down to a manageable number for individual evaluation. Siemens also recommended that ''considers'' be restricted to the stage in which ''the recruiter or hiring manager evaluates an actual applicant against the employer's requirements and makes a judgment as to which individuals should continue in the process.'' Similarly, SIOP argued that the term ''considers'' should not include searching an external resume database or ''querying an internal database of recruit profiles.''

The U.S. Chamber of Commerce (the Chamber) recommended that the term ''considers'' be interpreted to permit an employer to count as ''applicants'' for OFCCP purposes only ''those individuals best qualified to fill its positions.'' The Chamber argued that this interpretation of ''considers'' is necessary to permit employers to manage large volumes of expressions of interest while retaining their prerogative to select only the best qualified candidates. The Chamber offered an example of how its recommended interpretation of ''considers'' might be applied: ''Hospital A'' has an opening for an emergency room nurse position and advertises that it is seeking registered nurses with hospital experience; Hospital A obtains fifty expressions of interest that meet the advertised, basic qualifications of registered nurse with hospital experience; Hospital A lacks the time or resources to ''consider'' all 50 of these expressions of interest, so it assesses which of the 50 expressions of interest indicate emergency room nursing experience, and finds that 20 of the 50 expressions of interest indicate such experience; Hospital A then looks at 10 out of these 20 expressions of interest with emergency room nursing experience, determines that they are ''good candidates for the job,'' and submits those ten candidates for ''consideration.'' Thus, under the Chamber's recommended interpretation, Hospital A has ''considered'' only the ten individuals whose expressions of interest indicate they are ''good candidates for the job.''

OFCCP agrees with the commenters who recommended that the agency provide clear rules on applicant recordkeeping requirements. It is the agency's intent to provide clear rules for applicant recordkeeping that will allow OFCCP to enforce these requirements and that will provide contractors with meaningful guidance on how to comply with them. Therefore, OFCCP has included an express definition of ''considers the individual for employment in a particular position'' in subsection (3) of the definition of ''Internet Applicant'' in the final rule. Under this definition, ''considers'' involves an assessment of the job seeker's qualifications against any qualifications of a particular position, including a determination of whether a job seeker meets the basic qualifications for the position.

With respect to Siemens' concern about searching a resume database, nothing in the definition of Internet Applicant precludes a contractor from engaging in multiple searches of a resume database, so long as each of the search criteria fall within the definition of ''basic qualifications.'' Moreover, a contractor need not search for all of the qualifications that constitute the ''basic qualifications'' for a particular position. If the contractor chooses not to search for all of the ''basic qualifications'' of the position, then it will collect race and gender information from a broader pool than that framed by search criteria that included all of the ''basic qualifications'' for the position. The final rule provides minimum standards for applicant recordkeeping. It does not prohibit contractors from voluntarily collecting race, ethnicity or gender information from potential applicants, nor does E.O. 11246 preclude contractors from voluntarily obtaining this information from potential applicants, as long as such information is used only for purposes of the contractor's affirmative action and nondiscrimination programs.

However, OFCCP disagrees with Siemens, SIOP and the Chamber with respect to their proposals essentially to eliminate the conditions on ''basic qualifications'' (*i.e.,* that basic qualifications must be noncomparative, objective, and ''relevant to performance of the particular position * * *'') from the proposed definition of Internet Applicant. OFCCP would not have sufficient records to evaluate contractors' recruiting and hiring practices under E.O. 11246 if contractors collected race and gender information in accordance with the recommendations of these commenters. Under these recommendations, OFCCP would be unable to assess a significant portion of a contractor's recruiting and hiring practices, including the impact of basic qualifications [7] and the comparative assessment of candidates. In the Chamber's example, only 10 individuals would be Internet Applicants under their proposal, while 50 would be under the final rule. Under some of these recommendations, OFCCP would be able to assess only the final stages of the contractor's hiring process, leaving open whether there was discrimination at any of the prior stages in the hiring or recruiting processes. Further, many of the recommendations were far too vague to provide a clear rule that OFCCP could enforce or that contractors could apply to their particular recruiting and hiring procedures.

In addition to the comments from LCCR discussed above, LCCR and the National Women's Law Center (NWLC) also expressed concern that the proposed rule leaves to the employer's discretion whom to ''consider'' for a particular position and argued that OFCCP should require employers to ''consider'' all individuals who are similarly situated with respect to the manner of making their expressions of interest. LCCR also noted concern that an employer might make exceptions to its internal procedures: ''[a] misguided employer could decide that he/she only wanted to ''consider'' applicants with certain credentials, or from a particular community, regardless of their actual qualifications for a job.''

As noted above, OFCCP agrees that, for purposes of defining applicant recordkeeping requirements, contractors should not be permitted to selectively determine who will be considered for employment based on the qualification information contained on an expression of interest. Otherwise, OFCCP would not have sufficient information to assess contractors' hiring practices for potential discrimination. As discussed above, OFCCP has addressed this concern through an explicit definition of ''considers the individual for employment in a particular position'' under which contractors do not have

[7] By contrast, under the final rule, OFCCP can assess the impact of ''basic qualifications'' by comparing the demographics of the pool of ''Internet Applicants'' with statistics on the qualified labor force. See discussion under ''Basic Qualifications,'' below.

discretion to assess information about a potential applicant's credentials against any qualification of a particular position without thereby having ''considered'' the potential applicant.

In addition, the final rule (at § 60–1.12(a)) requires contractors to retain records of qualifications used in the hiring process and any and all expressions of interest through the Internet or related electronic data technologies as to which the contractor considered the individual for a position, including records such as on-line resumes or internal resume databases and records identifying job seekers contacted regarding their interest in a particular position. The rule also specifies that with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search. In addition, with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor. These records are to be maintained regardless of whether the individual qualifies as an Internet Applicant under 41 CFR 60–1.3. Existing recordkeeping requirements (under § 60–1.7 and 1.12) and OFCCP's investigative rights (under § 60–1.20) enable OFCCP to determine whether a qualification actually was used for a particular position. The recordkeeping requirements embodied in the final rule combined with the existing OFCCP recordkeeping requirements will ensure that OFCCP has adequate information to assess whether employers are selectively ''considering'' only certain candidates or imposing qualification standards that do not meet the definition of ''basic qualifications'' under the final rule.

Part 3: ''The individual's expression of interest indicates the individual possesses the advertised, basic qualifications for the position;''

In the proposed rule, the third criterion of the ''Internet Applicant'' definition required that ''[t]he individual's expression of interest indicates that the individual possesses the advertised, basic qualifications for the position.'' 69 FR 16446, 16447 (March 29, 2004). The proposed rule defined ''advertised, basic qualifications'' as ''qualifications that the employer advertises (*e.g.*, posts a description of the job and necessary qualifications on its Web site) to potential applicants that they must possess in order to be considered for the position and that meet all of the following three conditions * * *.'' *Id.* at 16449.

A. ''Advertised, basic qualifications''

1. ''Advertised''

Several commenters argued that the ''advertised'' component of the proposed definition of Internet Applicant conflicts with the way employers recruit for employees in many instances. EEAC argued that many employers use ''broadcast recruitment,'' under which the employer permits job seekers to submit a resume or register an expression of interest ''in being considered for a range of positions, a broad category of positions, or in some cases simply any position for which the employer might currently or at some time in the future consider the individual to be a good candidate.'' Siemens asserted that the proposed requirement that the basic qualifications be advertised could place ''undue emphasis on the drafting of the initial announcement of the vacancy and qualifications.'' Siemens argued that employers cannot know in advance whether an advertised qualification will produce too few or too many candidates who meet the basic qualifications, and recommended that the final rule afford contractors flexibility to be able to ensure an adequate, but manageable applicant pool. SIOP provided comments similar to both EEAC and Siemens. HR Analytical Services noted that employers may at times truncate qualifications listed in an advertisement or job posting to save cost or space. ORC, SHRM, and Thomas Houston Associates, Inc. argued that many job seekers submit expressions of interest without ever viewing an advertisement for a specific position. Most of these commenters suggested that OFCCP revise the proposed definition of Internet Applicant to include qualifications that are ''advertised or established.''

OFCCP acknowledges that in certain circumstances a contractor may not have an opportunity because of emergent business conditions to advertise a position before hiring a new employee. To address this issue, the final rule provides an alternative for qualifications that are not advertised. The final rule provides that if the contractor does not advertise for the position, the contractor may use ''an alternative device to find individuals for consideration (for example, through an external resume database),'' and establish the qualification criteria by making and maintaining a record of such qualifications for the position prior to considering any expression of interest for that position. Contractors must retain records of these established qualifications in accordance with section 60–1.12(a).

In response to the comments, OFCCP modified this part in the final rule by eliminating the word ''advertised.'' Thus, subsection (1)(iii) of the definition of ''Internet Applicant'' in the final rule provides, ''[t]he individual's expression of interest indicates the individual possesses the basic qualifications for the position. * * *''

2. ''Basic Qualifications''

Many commenters expressed general approval of the ''basic qualifications'' component of the proposed rule.[8] Several commenters approved generally of the concept of ''basic qualifications,'' but requested modifications of the proposed rule. For example, several commenters, such as HR Analytical Services, SHRM, and Thomas Houston Associates, Inc., argued that the term ''basic qualifications'' would cause confusion because it is not a term that is commonly used by employers, job seekers, or recruiters. These commenters recommended that the term ''minimum qualifications'' be used instead of ''basic qualifications,'' and argued that employers, job seekers, and recruiters already understand and use the term ''minimum qualifications.''

SHRM and HR Analytical Services also expressed concern that the word ''basic'' in the term ''basic qualifications'' somehow could be interpreted as a substantive limit on the types of qualifications that could qualify under the definition, over and above the substantive limits contained in the proposed definition of ''basic qualifications,'' *i.e.*, that they are noncomparative, objective, and job related. SHRM and SIOP recommended that OFCCP provide more guidance on what qualifications are ''basic'' in the final rule.

OFCCP disagrees with these commenters that a term other than ''basic qualifications'' is desirable for purposes of the final rule. OFCCP believes that borrowing a term from common usage would cause more confusion, not less. The term ''basic qualifications'' is carefully defined in

[8] *See* note 4, above.

the final rule to satisfy OFCCP compliance monitoring purposes. Under this definition, any qualification that is noncomparative, objective, and ''relevant to performance of the particular position and enabl[ing] the contractor to accomplish business-related goals'' may be a ''basic qualification.'' However, employment tests used as employee selection procedures, including on-line tests, are not considered basic qualifications under the final rule. Contractors are required to retain records about the gender, race and ethnicity of employment test takers who take an employment test used to screen them for employment, regardless of whether test takers are Internet Applicants under section 60–1.3. For example, if 100 job seekers take an employment test, but the contractor only considers test results for the 50 who meet the basic qualifications for the job, demographic information must be solicited only for the 50 job seekers screened by test results because the test was used as a selection procedure only for those individuals. By contrast, if the contractor used the test results from 100 test takers to narrow the pool to 50 job seekers whose basic qualifications are considered, the test is used as a selection procedure and demographic information from all test takers must be solicited.

The term ''basic'' is not intended to provide any substantive limit on the type or range of qualifications that could meet this definition. Rather than offer examples of qualifications that meet the definition of ''basic qualifications'' for particular jobs—which would require OFCCP to describe the actual duties and responsibilities corresponding to the job titles referenced in such examples—OFCCP provides additional discussion of the components (*i.e.*, noncomparative, objective, and ''relevant to performance of the particular position * * *'') of the definition in response to comments under separate headings below.

A job seeker must meet all of a contractor's basic qualifications in order to be an Internet Applicant under today's rule. For example, a contractor initially searches an external job database with 50,000 job seekers for 3 basic qualifications for a bi-lingual emergency room nursing supervisor job (a 4-year nursing degree, state certification as an RN, and fluency in English and Spanish). The initial screen for the first three basic qualifications narrows the pool to 10,000. The contractor then adds a fourth basic qualification, 3 years of emergency room nursing experience, and narrows the pool to 1,000. Finally, the contractor adds a fifth basic qualification, 2 years of supervisory experience, which results in a pool of 75 job seekers. Under this final rule, only the 75 job seekers meeting all five basic qualifications would be Internet Applicants, assuming other prongs of the definition were met.

Several other commenters asserted that OFCCP's proposal was unclear about whether screening for criteria other than qualifications would be deemed ''basic qualifications'' under the definition of Internet Applicant. For example, Morgan Lewis & Bockius LLP asked whether job seekers' salary requirements used to define the applicant pool would be deemed ''basic qualifications.'' SIOP questioned whether ''willingness to work in a specific geographic location,'' ''willingness to travel a certain percentage of time,'' and ''willingness to work certain days or shifts'' would qualify as ''basic qualifications.'' Several commenters, such as NAM and Maly Consulting LLC, asked whether contractors' use of random sampling or specific numerical limits (*e.g.*, first 30 reviewed out of 10,000) to manage large volumes of expressions of interest would be deemed ''basic qualifications.''

OFCCP recognizes that contractors may gauge a job seeker's willingness to work in the particular position through information the individual has provided about salary requirements and willingness to work in certain types of positions or certain geographic areas, provided that the contractor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers. OFCCP also recognizes that contractors may need to use additional data management techniques (such as random sampling or numerical limits) to develop a reasonable applicant pool out of a large volume of job seekers who possess the basic qualifications for the particular position. OFCCP does not view use of such information or techniques to determine who is interested in a particular position to be consideration of ''basic qualifications,'' provided that the sample is appropriate in terms of the pool of those meeting the basic qualifications. OFCCP addressed these comments in the final rule by modifying the fourth part of the Internet Applicant definition to require that ''[t]he individual at no point in the contractor's selection process * * * removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.'' The final rule includes a provision (subsection (5) of the definition of ''Internet Applicant'') under which ''a contractor may determine that an individual has removed himself or herself from further consideration * * * based on information the individual provided in the expression of interest, such as salary requirements or preferences as to type of work or location of work, provided that the contactor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers.'' In addition, as discussed above with regard to Part 2 of the Internet Applicant definition (subsection (1)(ii)), OFCCP added a definition of ''considers the individual for employment in a particular position,'' which also addresses these issues.

In response to the comments, OFCCP modified subsection (4) of the definition of ''Internet Applicant'' by defining ''basic qualifications'' as: ''qualifications (i)(A) that the contractor advertises (*e.g.*, posts on its web site a description of the job and the qualifications involved) to potential applicants that they must possess in order to be considered for the position, or (B) for which the contractor establishes criteria in advance by making and maintaining a record of such qualifications for the position prior to considering any expression of interest for that particular position, if the contractor does not advertise for the position but instead uses an alternative device to find individuals for consideration (*e.g.*, through an external resume database), and (ii) that meet all of the following three conditions * * *'' In the final rule, OFCCP retained most of the text of the proposed rule with respect to the ''three conditions'' referenced in the definition of ''basic qualifications.'' Thus, the final rule provides:

(A) The qualifications must be noncomparative features of a job seeker. For example, a qualification of three years' experience in a particular position is a noncomparative qualification; a qualification that an individual have one of the top five number of years' experience among a pool of job seekers is a comparative qualification.

(B) The qualifications must be objective; they do not depend on the contractor's subjective judgment. For example, ''a Bachelor's degree in Accounting'' is objective, while ''a technical degree from a good school'' is not. A basic qualification is objective if a third-party, with the contactor's technical knowledge, would be able to evaluate whether the job seeker possesses the qualification without more information about the contractor's judgment.

(C) The qualifications must be relevant to performance of the particular position and enable the contractor to accomplish business-related goals.

Several commenters opposed the use of ''basic qualifications'' in defining ''Internet Applicant'' for purposes of OFCCP recordkeeping requirements. The Leadership Conference on Civil Rights, the National Women's Law Center, and the Lawyers' Committee for Civil Rights Under Law generally offered three arguments against the use of ''basic qualifications'' as a way to determine applicant recordkeeping obligations: (1) Established nondiscrimination legal standards do not require an individual to be qualified for a job in order to be an applicant for the job; (2) employers could use the ''basic qualifications'' to manipulate the composition of the applicant pool, exclude qualified individuals, and mask discrimination; and (3) the purpose of applicant recordkeeping is to ensure that the qualifications standards employers use, including ''basic qualifications,'' do not discriminate against individuals on the basis of race, ethnicity or sex. In sum, these commenters essentially were concerned that OFCCP would not be able to find and remedy particular cases of hiring discrimination under the proposed rule.

OFCCP disagrees with the three arguments presented by these commenters. As to the commenters' first argument, OFCCP is proposing a definition of applicant for the limited purposes of OFCCP recordkeeping and data collection requirements pursuant to Executive Order 11246. Accordingly, OFCCP is not purporting to define who is an applicant for any purposes which would affect the substantive interests of any individual, such as for purposes of litigation of employment discrimination claims under any federal, state, or local antidiscrimination statute. Moreover, OFCCP is not aware of any case in which a court relied on OFCCP's recordkeeping definitions for purposes of determining liability or remedy under Title VII or any other federal, state or local antidiscrimination statute. OFCCP itself may not rely on recordkeeping definitions to frame the appropriate analysis for liability or remedy purposes when alleging a violation of the nondiscrimination requirements of Executive Order 11246 (as opposed to recordkeeping requirements).

As to the commenters' second argument, contractors will not be able to manipulate basic qualifications in order to effectuate discrimination, because the final rule provides adequate safeguards against this problem. First, the final rule requires a contractor to retain all the expressions of interest it considered, even those of individuals who are not Internet Applicants.[9] OFCCP will have access to these records during a compliance evaluation and will review them as appropriate to determine if discrimination exists. Second, OFCCP has carefully defined ''basic qualifications'' in the final rule, requiring that they be noncomparative, objective, and ''relevant to the performance of the particular position and enabl[ing] the contractor to accomplish business-related goals.'' Under the final rule, a contractor must retain records of all such basic qualifications used to develop a pool of Internet Applicants. Again, OFCCP will have access to these records during a compliance evaluation.

Finally, OFCCP will rely on Census and other labor market data to assess contractors' hiring practices for potential discrimination and will carefully review the basic qualifications themselves. The Supreme Court of the United States has authorized the use of comparisons between actual hiring rates and population or labor force statistics to prove hiring discrimination. *See Int'l Bhd. of Teamsters* v. *United States,* 431 U.S. 324, 339 n.20 (1977) (population statistics); *Hazelwood Sch. Dist.* v. *United States,* 433 U.S. 299, 307 n.12 (1977) (labor force statistics). As noted in the preamble of the proposed rule, hiring discrimination cases frequently rely on population and labor force statistics. *See, e.g., Griggs* v. *Duke Power Co.,* 401 U.S. 424, 430 n.6, 431 (1971) (relying on Census data about the general population to find that a high school degree requirement had a disparate impact on African-Americans); *Dothard* v. *Rawlinson,* 433 U.S. 321, 329–330 (1977) (''The application process itself might not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory.''); *E.E.O.C.* v. *Joint Apprenticeship Comm. of Joint Industrial Bd. of Elec. Indus.,* 186 F.3d 110, 119 (2d Cir. 1999) (general population and qualified labor market data ''often form the initial basis of a disparate impact claim * * *''). OFCCP also will directly review whether the qualifications appear to be relevant to the position at issue and whether they are of a type that have been subject to disparate impact litigation, such as requirements as to height and weight, arrest records, and high school degree or GED. *See, e.g.*, 41 CFR 60–3.4(C) (requiring users to evaluate individual components of hiring process ''where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances'').

As to the commenters' third argument against ''basic qualifications''—that OFCCP will miss particular cases of disparate impact discrimination—OFCCP disagrees that the proposed applicant recordkeeping standards will make OFCCP less effective at finding and remedying hiring discrimination. Indeed, OFCCP has determined that applicant data under the proposed definition of Internet Applicant will make the agency much more effective at finding and remedying hiring discrimination across the range of cases. OFCCP's rationale can be appreciated only through an understanding of how the agency uses applicant data. OFCCP's use of applicant data is broader than determining whether a particular contractor has engaged in hiring discrimination. The distinction in uses of applicant data reflects OFCCP's historical mission of focusing on systemic workplace discrimination. In *Reynolds Metal Co.* v. *Rumsfeld,* 564 F.2d 663, 668 (4th Cir. 1977), the court described OFCCP's mission and contrasted it with the EEOC's:

> Both agencies are charged with the responsibility of eliminating employment discrimination, but their specific missions differ. The compliance office monitors government contractors to determine whether they are meeting their commitments as equal opportunity employers. It gives priority to the eradication of systemic discrimination rather than to the investigation and resolution of complaints about isolated instances of discrimination.

In keeping with its unique mission, OFCCP uses applicant data broadly to deter all contractors under its jurisdiction from engaging in systemic hiring discrimination, either in the form of disparate impact or disparate treatment discrimination. OFCCP deters contractors in two ways: (1) By monitoring all contractors through a tiered-review approach that effectively targets contractors who have engaged in hiring discrimination; and (2) by effectively investigating contractors who have engaged in systemic hiring discrimination and obtaining significant financial awards (along with instatement obligations) to remedy such discrimination.

[9] With the exception of expressions of interest from external resume databases, where the massive volume of resumes makes such a requirement impracticable. As noted below, as of January, 2005, Monster.com reported that it had over 41 million resumes in its database.

OFCCP primarily uses applicant data with respect to the first part of the two-part deterrence model. OFCCP uses the data to target OFCCP investigations at workplaces in which hiring discrimination is likely to exist. OFCCP initially selects a contractors establishment for a compliance evaluation based, in part, on a statistical analysis of workforce demographic data the contractor submits on annual EEO–1 reports. Once OFCCP selects a contractor's establishment for a compliance evaluation, OFCCP sends the contractor a ''scheduling letter'' that asks the contractor to submit data on, among other things, applicants and hires for a specified period. After receiving the contractor's data, OFCCP analyzes the ratio of applicants and hires, and, based on this analysis, determines whether to investigate the contractor's hiring practices. This initial analysis of applicant and hire data is a part of the compliance evaluation process known as the ''desk audit.'' OFCCP considers desk audit results when determining whether to conduct an on-site investigation, and the scope of any such on-site investigation. OFCCP typically conducts many more desk audits than on-site reviews, and uses the desk audit analysis to allocate agency investigation resources toward workplaces where the likelihood of a discrimination problem is highest.

Thus, inclusion of basic qualifications in the definition of Internet Applicant under section 60–1.3 furthers OFCCP's goal of targeting for in-depth reviews contractor's that are potentially the worst offenders. If, during the desk audit, OFCCP were to target contractors for more in-depth review based on Internet applicant data that includes job seekers not meeting basic qualifications, OFCCP would select contractors that rejected a high proportion of job seekers because they were not even minimally qualified for the job. The result would be that OFCCP would waste finite resources by focusing its on-site reviews on contractors that were not the worst offenders. Under the OFCCP approach, targeting will be based on a contractor's rejection rate of qualified applicants, a better predictor of worst offenders. In determining who are potentially the worst offenders for more in-depth reviews, OFCCP will also analyze whether the contractor potentially discriminated in hiring by comparing the demographic characteristics of the applicants hired to the demographic characteristics of the qualified labor market. During an in-depth review, OFCCP will be able to analyze the contractor's use of basic qualifications by comparing the demographic characteristics of Internet applicants meeting basic qualifications with labor market data. Consequently, including basic qualifications in the definition of Internet Applicant furthers OFCCP's goal of focusing investigative resources on potentially the worst offenders, while preserving OFCCP's ability to efficiently and effectively review a contractor's hiring practices for discrimination.

In addition to the fact that such data would not permit meaningful analysis to guide OFCCP resource allocation decisions, some practical limits must be placed on collecting race, ethnicity, and gender information in this context because of the massive numbers of resumes in these databases. Otherwise, the applicant recordkeeping burdens would be excessive. Several commenters proposed various alternative definitions for ''basic qualifications'' that appeared to be attempts to address these practical problems. For example, Gaucher Associates contended that contractors could use sampling techniques to obtain race, ethnicity and gender data where there are large numbers of applicants. In limited circumstances contractors may use appropriate sampling techniques to collect information required by these regulations (See 41 CFR 60–3.4.A). However, sampling is not always appropriate. For example, a random sample that includes many individuals in a large resume database who have no interest in, nor basic qualifications for, a particular position would provide far less useful information than labor force statistics that are tailored for the position and geographic location.

One commenter, ChevronTexaco Federal Credit Union (CTFCU), argued that the proposed rule would impose undue burdens on small contractors where a significant number of individuals who meet the basic qualifications submit an expression of interest.

CTFCU contended that small contractors cannot afford automated applicant tracking systems and they cannot manually consider all individuals who meet the basic qualifications. CTFCU recommended that OFCCP apply the proposed ''Internet Applicant'' definition and associated obligations only to ''employees showing underutilization of women and/or minorities,'' based on workforce demographic data from EEO–1 reports.

OFCCP believes that data management techniques such as random sampling or absolute numerical limits, discussed above, will enable small contractors to comply with applicant recordkeeping requirements without undue burden. OFCCP does not agree that CTFCU's recommendation would necessarily help small businesses because the burden involved with this proposal depends entirely on the amount of ''underutilization.'' Nor would this proposal provide records that OFCCP requires to enforce E.O. 11246 for job categories in which there was no ''underutilization.'' As OFCCP understands this proposal, contractors would not be required to collect race, ethnicity or gender information about *any* individuals considered for positions in job categories that are not ''underutilized.'' However, the fact that a broad occupational category, such as an AAP job group or EEO–1 job category, is ''utilized'' does not necessarily imply that there is not a discrimination problem in the recruiting or hiring process for the jobs that make up those occupational categories.

3. ''Non-comparative''

In the proposed rule, OFCCP provided that ''basic qualifications'' must be ''non-comparative.'' The proposed rule provided examples of qualifications that would and would not qualify as ''non-comparative'': ''a qualification of three years' experience in a particular position is a noncomparative qualification; a qualification that an individual have one of the top five number of years' experience among a pool of job seekers is a comparative qualification.'' OFCCP retained this provision in the final rule.

The Chamber argued that ''[e]stablished caselaw permits employers to set job qualifications 'as high as [they] like [],' based on current business needs, and permits employers to craft selection procedures that enable them to identify the best-qualified candidates for the job.'' Based on this argument, the Chamber asserted that the ''noncomparative'' component of the proposed rule should not be interpreted ''to imply that a candidate becomes an ''applicant'' simply because he or she possesses the 'basic' qualifications for the position.''

OFCCP disagrees with the Chamber's comments. OFCCP's proposed definition of Internet Applicant determines contractors' recordkeeping obligations, it does not impose substantive limits on the qualifications a contractor may use to select employees. Under the interpretation suggested by the Chamber, OFCCP would not have sufficient records or information to evaluate whether a contractor's hiring practices were discriminatory. In particular, OFCCP

would not be in a position to evaluate a contractor's comparative assessment of applicants' qualifications. Therefore, OFCCP retained in the final rule the requirement that ''basic qualifications'' must be noncomparative.

4. ''Objective''

In the proposed rule, OFCCP provided that ''basic qualifications'' must be ''objective'' and not depend on the employer's subjective judgment. OFCCP used the term ''third party'' in the proposed rule to describe how to determine whether a qualification is objective: ''One way to tell an advertised, basic qualification is objective is that a third-party, unfamiliar with the employer's operation, would be able to evaluate whether the job seeker possesses the qualification without more information about the employer's judgment.''

ORC expressed concern that the term ''third party'' is ambiguous and that OFCCP's proposed definition does not provide meaningful guidance about whether a qualification is ''objective.'' Similarly, Nancy J. Purvis argued that the reference to ''third parties'' would not work in ''situations where only someone with sufficient technical knowledge (of the company, of the industry, of the job, etc.) will be able to evaluate whether or not an applicant meets the basic requirements.''

OFCCP agrees with these commenters that, as described in the proposed rule, the term ''objective'' left unanswered whether the referenced ''third-party'' has the necessary technical expertise to understand whether a candidate possesses a technical qualification. It is not OFCCP's intent to preclude technical qualifications from being ''basic qualifications.'' Accordingly, OFCCP modified the second sentence of subsection (4)(b) to provide that a basic qualification is objective if a third party, with the contractor's technical knowledge, would be able to evaluate whether the job seeker possesses the qualification without more information about the contractor's judgment.

5. ''Job related''

In the proposed rule, OFCCP provided that ''basic qualifications'' must be ''job-related.'' The proposed rule defined ''job-related'' as ''relevant to performance of the job at hand and enabl[ing] the employer to accomplish business-related goals.'' In response to the comments, OFCCP eliminated the term ''job-related'' and replaced it with the phrase, ''relevant to the performance of the particular position and enabl[ing] the contractor to accomplish business-related goals'' at subsection (4)(c) of the definition of ''Internet Applicant''.

The Lawyers' Committee for Civil Rights Under Law and the Leadership Conference on Civil Rights (LCCR) criticized the requirement in the proposed rule that ''basic qualifications'' must be ''job related.'' They noted that the Civil Rights Act of 1991 provides a defense to disparate impact claims if the criteria having the disparate impact can be shown to be ''job related for the position in question'' and ''consistent with business necessity.'' [10] These commenters argued that OFCCP's proposed rule leaves out the requirement that the basic qualifications must be ''consistent with business necessity.'' LCCR further argued that ''the explanation of what is meant by 'job-related' seems to understate what the law requires by suggesting that any 'relevant' job criteria is sufficient to satisfy the legal standard.''

OFCCP agrees with these commenters that use of the term ''job-related'' in the proposed definition of ''Internet Applicant'' could cause confusion because the term is also used in the Civil Rights Act of 1991. Indeed, there is uncertainty as to the meaning of ''job related'' under the Civil Rights Act of 1991.[11] Therefore, OFCCP has eliminated the term in the final rule and replaced it with the phrase, ''relevant to performance of the particular position and enabl[ing] the contractor to accomplish business-related goals.''

OFCCP disagrees with the commenters' suggestion that the ''business necessity'' standard should be incorporated into the definition of ''basic qualifications.'' OFCCP does not intend to limit the qualifications that could be ''basic qualifications'' only to those which meet the ''business necessity'' standard. That standard is applicable as a *defense* where a disparate impact has already been proven. By including the ''relevant to performance of the particular position * * *'' standard in the final rule as a limitation on qualifications that could qualify as ''basic qualifications,'' OFCCP intends to provide a reasonable limit on the nature of the qualifications used only to define recordkeeping obligations. OFCCP does not intend to define recordkeeping obligations through a presumption that every putative ''basic qualification'' involves a disparate impact. Of course, once it is established that a criterion caused a disparate impact, the contractor has the burden of justifying that the criterion is job related and consistent with business necessity.

Part 4: ''The individual does not indicate that he or she is no longer interested in employment in the position for which the employer has considered the individual.''

In the proposed rule, the fourth part of the ''Internet Applicant'' definition provided that ''[t]he individual does not indicate that he or she is no longer interested in employment in the position for which the employer considered the individual.''

Several commenters, including EEAC, Morgan, Lewis & Bockius LLP, and the Chamber, argued against the negative phrasing of this part of the proposed definition of ''Internet Applicant'' because it implies that an individual is presumed to be interested in a particular position even before the employer contacts the individual. These commenters expressed concern that an individual who does not respond to an employer's inquiry would automatically qualify as an Internet Applicant because the individual has not indicated ''that he or she is no longer interested in the position.''

OFCCP does not believe that the negative phrasing of this part of the proposed rule implies—and OFCCP does not intend for the language to imply—a presumption that every individual who otherwise meets the

[10] The Lawyers' Committee for Civil Rights Under Law joined in LCCR's comments. However, the Lawyers' Committee did not expressly reference the Civil Rights Act of 1991 in its comments, but referred only to ''established legal precedent.'' We understand the Lawyers' Committee to be referencing the Civil Rights Act of 1991 with respect to the standard for defense of a disparate impact claim.

[11] The Civil Rights Act of 1991 does not define the terms ''job related'' or ''business necessity.'' Nor have the federal courts of appeals agreed upon any single explanation of these terms. *Compare Bew* v. *City of Chicago*, 252 F.3d 891, 894 (7th Cir. 2001) (finding that the Civil Rights Act of 1991 adopted the *Griggs* standard and noting that ''Griggs does not distinguish business necessity and job relatedness as two separate standards. It states that: 'The touchstone is business necessity. If an employment practice which operates to exclude [a protected group] cannot be shown to be related to job performance, the practice is prohibited.' To satisfy the standard, an employment test must 'bear a demonstrable relationship to successful performance of the jobs for which it was used.'" (citations omitted)), with *Ass'n of Mexican-American Educators* v. *State of California*, 231 F.3d 572, 585 (9th Cir. 2000) (en banc) (explaining that a 'job related' test measures ''skills, knowledge or ability required for successful performance of the job''), with *Lanning* v. *Southeastern Pa. Transp. Auth.*, 181 F.3d 478, 489 (3d Cir. 1999) (''Our conclusion that the Act incorporates this standard is further supported by the business necessity language adopted by the Act. Congress chose the terms 'job related for the position in question' and 'consistent with business necessity.' Judicial application of a standard focusing solely on whether the qualities measured by an entry level exam bear some relationship to the job in question would impermissibly write out the business necessity prong of the Act's chosen standard.'').

definition of Internet Applicant is deemed by OFCCP to be automatically interested in the particular position, even before the contractor contacts the individual. Subsection (5) explains that a contractor may conclude that an individual has removed himself or herself from the selection process or has otherwise indicated lack of interest in the position based on the individual's express statement or on the individual's passive demonstration of disinterest. For example, if an individual declines a contractor's invitation for a job interview, he or she has removed himself or herself from the selection process. If the individual declines a job offer he or she has expressly shown disinterest in the job. If an individual repeatedly fails to respond to a contractor's telephone inquiries or emails asking about his or her interest in a job, the individual has passively shown disinterest in the job. In addition to determining an individual's abandonment of interest through an express or passive negative response to the contractor's inquiry as to whether the individual is interested in the position, a contractor may also presume a lack of continuing interest based on a review of the expression of interest. Statements pertaining to the individual's interest in the specific position or type of position at issue, the location of work, and his or her salary requirements may provide the basis for determining the individual is no longer interested in the position, provided that the contractor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers. If the potential applicant withdraws from further consideration after the point at which the individual already has qualified as an ''Internet Applicant'' under this final rule, the employer must retain any race, ethnicity, or gender information which the individual already provided, as well as the individual's expression of interest.

In response to the comments, which expressed concern with the clarity of the proposed rule, OFCCP has slightly modified this part (subsection (1)(iv)) in the final rule to read: ''(iv) The individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.'' OFCCP also explained in subsection (5) of the definition of ''Internet Applicant'' in the final rule that a contractor may determine whether an individual has removed himself or herself from consideration based on information the individual provided in the expression of interest, such as salary requirements or preferences as to type of work or location of work, provided that the contractor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers. Subsection (5) further explains that if a large number of individuals meet the basic qualifications for the position, a contractor may also use data management techniques, such as random sampling or absolute numerical limits, to limit the number of individuals who must be contacted to determine their interest in the position, provided that the sample is appropriate in terms of the pool of those meeting the basic qualifications.

Comments on OFCCP's Proposed Revisions To Record Retention Requirements Section 60–1.12(a): Record Retention

In the proposed rule, OFCCP added to existing recordkeeping requirements a provision which would require contractors to maintain ''any and all employment submissions through the Internet or related electronic technologies, such as on-line resumes or resume databases (regardless of whether an individual qualifies as an Internet Applicant under 41 CFR 60–1.3).''

Many commenters expressed concern that the proposed record retention requirements would impose significant burdens on contractors, due to the massive volume of expressions of interest.[12] TOC Management Services (TOC) contended that the proposed rule would require employers to maintain all unsolicited expressions of interest, even those that were never considered by the employer. TOC asserted that this proposed requirement runs contrary to OFCCP's longstanding practice of allowing an employer to dispose of unsolicited expressions of interest if the employer adheres to a general policy of not considering them. The Chamber argued that the proposed recordkeeping provision ''would require employers to search all the computer and paper files of each of its employees to identify any expressions of interest that were sent to someone in the company but were never routed through the appropriate channels to those responsible for recruitment and hiring.'' Kairos Services, Inc. suggested that contractors should be required only to maintain records on individuals who qualify as ''Internet Applicants'' under the proposed rule.

In response to the comments, OFCCP modified section 60–1.12(a) of the final rule to require contractors to maintain any and all expressions of interest through the Internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases and records identifying job seekers contacted regarding their interest in a particular position. In addition, for internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search. Also, for external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of any job seekers who met the basic qualifications for the particular position who are considered by the contractor. These records must be maintained regardless of whether the individual qualifies as an Internet Applicant under 41 CFR 60–1.3.

OFCCP agrees that the proposed rule could present unwarranted recordkeeping burdens if the contractor receives a large number of expressions of interest. Therefore, OFCCP modified this provision in the final rule to clarify that contractors must maintain ''expressions of interest through the Internet or related electronic data technologies *as to which the contractor considered the individual for a particular position* * * *'' [emphasis added]. ''Considers the individual for employment in a particular position'' (as defined in subsection 3 of the definition of ''Internet Applicant'') means that the contractor assesses the substantive information provided in the expression of interest with respect to any qualifications involved with a particular position. A contractor may establish a protocol under which it refrains from considering expressions of interest that are not submitted in accordance with standard procedures the contractor establishes. Likewise, a contractor may establish a protocol under which it refrains from considering expressions of interest, such as unsolicited resumes, that are not

[12] *See, e.g.*, Chairman of the U.S. House of Representatives Committee on Education and the Workforce's Subcommittee on Employer-Employee Relations, Kairos Services, Inc., Louisiana Pacific Corp., ORC Worldwide, Morgan, Lewis & Bockius LLP, National Association of Manufacturers, and U.S. Chamber of Commerce.

submitted with respect to a particular position.

If there are a large number of expressions of interest to be considered, the contractor does not ''consider'' the individual for employment in a particular position'' by using data management techniques that do not depend on assessment of qualifications, such as random sampling or absolute numerical limits, to reduce the number of expressions of interest to be considered, provided that the sample is appropriate in terms of the pool of those submitting expressions of interest.

Under section 60–1.12(a), contractors avoid significant burdens even if there are large numbers of expressions of interest, because contractors are not required to retain records regarding individuals who were never considered for a particular position. However, OFCCP disagrees with the suggestion that contractors be required to maintain only expressions of interest of individuals who qualify as ''Internet Applicants.'' Part of the reason that OFCCP requires contractors to maintain such records is to ensure that they are actually complying with the definition of ''Internet Applicant.'' OFCCP could not verify the contractor's compliance with the ''Internet Applicant'' definition if the agency did not have access to records of individuals whom the contractor contends did not meet that definition.

Several commenters, including NAM, Siemens, and TOC, were also concerned that the proposed rule would require contractors to maintain a ''snapshot'' of the resume database for each search. These commenters suggested that OFCCP require employers to retain any resume databases, specific search terms used in each search, and the date of each search.

OFCCP agrees with these commenters and believes that their recommended approach avoids recordkeeping burdens and affords OFCCP adequate records to ensure compliance. Therefore, OFCCP added a provision to section 60–1.12(a) of the final rule which requires contractors to maintain the following information from internal resume databases: ''A record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search * * *.''

Maly Consulting LLC was concerned that the proposed rule would require contractors to download and retain all resumes on a third-party resume database, whenever the contractor searched the database for potential applicants. OFCCP agrees that it would be unreasonable to require an employer to maintain a copy of every record on a third-party resume database. For example, Monster.com reported that as of January, 2005, it had over 41 million resumes in its resume database. Therefore, in the context of a third-party resume database, the final rule requires contractors to retain resumes only of job seekers who met the basic qualifications for the particular position who are considered by the contractor, and records identifying job seekers contacted regarding their interest in a particular position, along with a record of the position for which each search of the database was made, the substantive search criteria used, and the date of the search.

Section 60–1.12(c)(1)(ii): ''Where possible, the gender, race, and ethnicity of each applicant (i.e., submissions that are not through the Internet and related electronic technologies) and Internet Applicant as defined in 41 CFR 60–1.3.''

In the proposed rule, OFCCP added the term ''Internet Applicant'' into an existing provision of OFCCP regulations which requires contractors to identify ''where possible, the gender, race, and ethnicity of each applicant.'' As discussed under Part 1 of the definition of Internet Applicant above, OFCCP modified this provision in the final rule to eliminate dual standards when the contractor accepts or considers expressions of interest submitted through either the Internet or traditional means for a particular position. Thus, under the final rule, the contractor must identify, ''where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60–1.3, whichever is applicable to the particular position.''

Obligation To Solicit Race, Ethnicity and Gender Data

Northern California and Silicon Valley Industry Liaison Group (NCILG) argued that neither UGESP nor existing OFCCP regulations required contractors to solicit or obtain race, ethnicity, and gender data and that OFCCP misinterpreted UGESP and existing OFCCP regulations by asserting such a requirement in the preamble of the proposed rule. NCILG further contended that UGESP and OFCCP's existing regulations required only that contractors ''maintain'' race, ethnicity, and gender data, but there was no affirmative obligation to obtain or solicit such data. NCILG and Affirmative Action Partners, Inc. objected to any requirement that contractors solicit race, ethnicity, or gender information from applicants.

OFCCP disagrees with these commenters. OFCCP historically has taken the position that contractors have some obligation to collect race, ethnicity, and gender information from applicants. OFCCP intends to make clear that, under the final rule, contractors are required to solicit race, ethnicity, and gender information from ''applicants'' or ''Internet Applicants,'' whichever is applicable to the particular position. OFCCP intends this to be a mandate, not an option, because OFCCP requires this information to enforce E.O. 11246, as discussed throughout this preamble.

SHRM argued that requiring employers to collect race, ethnicity, and gender data from all Internet Applicants would impose significant burdens on employers. OFCCP disagrees that the final rule imposes significant burdens on contractors compared with existing recordkeeping requirements. The final rule draws an appropriate balance between, on the one hand, the need of OFCCP and the contractor for certain information and records to enforce and comply with E.O. 11246, and, on the other hand, the practical realities of Internet recruiting.

Several commenters, including GBCS, NILG, and SIOP, expressed concern that the OFCCP proposal does not clearly identify the point in the employment process at which contractors are required to collect race, ethnicity and gender data. Under the final rule, contractors are required to solicit race, ethnicity, and gender data from all individuals who meet the definition of Internet Applicant. OFCCP does not mandate a specific time or point in the employment process that contractors must solicit this information, so long as the information is solicited from all Internet Applicants.

Methods for Complying With the Rule

Several commenters, including NILG, Thomas Houston Associates, Inc., and SHRM, expressed concern that the OFCCP proposal does not provide clear guidance on permissible methods for collecting race, ethnicity, and gender data. NCILG requested that OFCCP ''reaffirm'' that contractors have no obligation to somehow obtain race, ethnicity or gender data from individuals who refuse to voluntarily disclose such information in response to the contractor's solicitation. GBCS questioned whether contractors would be required to make a visual observation of individuals who refuse to voluntarily disclose race, ethnicity or gender information on a written solicitation

form. Nancy J. Purvis argued that contractors should be permitted to continue to use visual observation as a means of identifying the race, ethnicity and gender of applicants. SHRM recommended that employers be permitted to gather race, ethnicity, and gender data through either visual observation or self-identification. Affirmative Action Partners, Inc. (AAPI) offered several problems with collecting and maintaining race, ethnicity, and gender data on job applicants. In particular, AAPI noted that it does not promote EEO compliance to allow hiring managers to have access to candidates' race, ethnicity, or gender.

OFCCP agrees with these commenters that further clarification of these issues would promote compliance with applicant recordkeeping requirements. OFCCP recently issued a Policy Directive on this subject. *See* ADM 04–1, ''Contractor Data Tracking Responsibilities,'' which is available on OFCCP's Web site at *http://www.dol.gov/esa/regs/compliance/ofccp/directives/dir265.htm*. The Directive was prompted by the Office of Management and Budget's (OMB) 1997 Revision to the Standards for the Classification of Federal Data on Race and Ethnicity (62 FR 58782) and its Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity (2000). The OMB Standards and Provisional Guidance emphasize self-reporting or self-identification as the preferred method for collecting data on race and ethnicity. In situations where self-reporting is not practicable or feasible, observer information may be used to identify race and ethnicity. Prior to the 1997 Standards, the position of the Federal Government was that the preferred method of collecting race and ethnic data was visual observation and that self-reporting was not encouraged.

OFCCP issued the Directive on Contractor Data Tracking Responsibilities to make OFCCP's policy on collection of demographic information on applicants consistent with OMB's 1997 Standards. The Directive is applicable to collection of race, ethnic and gender information about applicants under all of OFCCP's regulations, including 41 CFR 60–1.12(c) and 41 CFR Part 60–3. The Directive encourages contractors to use tear off sheets, post cards, or short forms to request demographic information from applicants. These methods can be adapted to electronic formats for recordkeeping regarding Internet Applicants. For example, some contractors have developed ''electronic tear off sheets'' for use with electronic applications that separate reported demographic information to be maintained for record keeping from electronic applications reviewed by employers. Other contractors have sent e-mails to individuals submitting electronic applications, requesting additional information necessary to process the application, including demographic information. The contractor's invitation to an applicant to self-identify his or her race, ethnicity or gender is always to state that the provision of such information is voluntary. Visual observation may be used when the applicant appears in person and declines to self-identify his or her race, ethnicity or gender.

Use of Labor Force Statistics and Census Data

In the NPRM, OFCCP noted that it will ''compare the proportion of women and minorities in the contractor's relevant applicant pool with labor force statistics or other data on the percentage of women and minorities in the relevant labor force. If there is a significant difference between these figures, OFCCP will investigate further as to whether the contractor's recruitment and hiring practices conform with E.O. 11246 standards.''

Several commenters, including EEAC, ORC, and the Chamber, expressed concern about OFCCP's proposed use of labor force statistics and Census data under the proposed rule. ORC, Gaucher Associates, and the Chamber argued that Census and workforce data may not provide a valid basis for assessing contractors' recruitment or hiring practices because these data do not reflect current labor market conditions or because the Census occupational categories are too general to provide accurate workforce data for specific jobs. ORC recommended that OFCCP should rely on each contractor's own availability statistics as a basis for assessing the contractor's recruitment and hiring practices.

OFCCP disagrees with these commenters that appropriate Census and other labor market data are not reliable benchmarks for assessing contractors' recruitment and hiring practices. As noted above, courts frequently approve of this type of data in recruitment and hiring discrimination cases under Title VII. OFCCP intends to use such data during compliance reviews to determine whether basic qualifications have an adverse impact on the basis of race, ethnicity, or gender. OFCCP does not agree that it should rely exclusively on availability data compiled by contractors, although OFCCP will generally consider such data. OFCCP must ensure that such data is accurate for compliance monitoring and enforcement purposes.

The NCILG urged OFCCP to rescind the requirement that contractors conduct adverse impact analyses of their hiring practices. OFCCP believes such self-analyses are important steps for achieving and maintaining an equal opportunity workplace. Furthermore, the final rule relates to recordkeeping and solicitation of demographic information under section 60–1.12. Accordingly, this final rule would not be the appropriate vehicle for amending UGESP, even if the agency were inclined to do so. A commenter raised concerns about how OFCCP will interpret procedures regarding Internet Applicant recordkeeping under both section 1.12 and UGESP. OFCCP has addressed these concerns by adding a new regulatory provision, section 60–1.12(d), to the final rule, as discussed above.

ORC requested that OFCCP clarify what ''significant difference'' means and recommended that it be defined as two standard deviations or more. OFCCP agrees that the minimum standard for what is statistically significant is generally accepted to be two standard deviations, although the agency may allocate its investigative resources by focusing on larger statistical disparities or other factors, such as the size of the potential affected class.

Effective Date

Several commenters, such as EEAC and NILG, requested that contractors be afforded sufficient time to implement the new applicant recordkeeping standards to be promulgated in the final rule. These commenters noted that contractors will have to make significant changes in technology and personnel practices in order to implement the new requirements. For example, NILG asserted that ''[f]or some companies, this will involve an extensive process of clarifying need, requesting information from possible vendors, seeking proposals from vendors, allowing a period for vendor evaluation, selection and subsequent company customization, implementation and system testing.''

OFCCP agrees with these commenters that contractors should be afforded sufficient time to implement the recordkeeping requirements of the final rule. Therefore, OFCCP has established an effective date of one-hundred twenty days after the date of the publication of the final rule in the **Federal Register**.

Regulatory Procedures

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866. As noted in the preamble to the NPRM, this rule constitutes a ''significant regulatory action'' within the meaning of Executive Order 12866 (although not an economically significant regulatory action under the Order). As such, this rule is subject to review by the Office of Management and Budget (''OMB''). However, the Department has determined that 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. Therefore, the Department has concluded that this final rule is not ''economically significant'' as defined in section 3(f)(1) of EO 12866. As a result, the cost-benefit analysis called for under section 6(a)(3)(C) of the Executive Order is not required.

Congressional Review Act

This regulation is not a major rule for purposes of the Congressional Review Act.

Executive Order 13132 (Federalism)

OFCCP has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Regulatory Flexibility Act

As explained in the Proposed Rule, this final rule will not change, but instead will help to clarify, existing obligations for Federal contractors. Consequently, under the RFA, as amended, 5 U.S.C. 605(b), it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in increased expenditures by state, local and tribal governments, or by the private sector, of $100,000,000 or more in any one year.

Paperwork Reduction Act

This final rule does not introduce any new information collection requirements. It simply clarifies existing requirements already approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The information collection requirements for 41 CFR Part 60–1 are approved under OMB control numbers 1215–0072 (Supply and Service) and 1215–0163 (Construction).

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department certifies that this final rule does not impose substantial direct compliance costs on Indian tribal governments.

Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects in 41 CFR Part 60–1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 3rd day of October, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

■ Accordingly, part 60–1 of Title 41 of the Code of Federal Regulations is amended as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Section 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 399, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230 and E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258.

■ 2. In § 60–1.3, a new definition is added below ''government contract'' and above ''minority group'' to read as follows:

§ 60–1.3 Definitions.

* * * * *

Internet Applicant. (1) Internet Applicant means any individual as to whom the following four criteria are satisfied:

(i) The individual submits an expression of interest in employment through the Internet or related electronic data technologies;

(ii) The contractor considers the individual for employment in a particular position;

(iii) The individual's expression of interest indicates the individual possesses the basic qualifications for the position; and,

(iv) The individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

(2) For purposes of paragraph (1)(i) of this definition, ''submits an expression of interest in employment through the Internet or related electronic data technologies,'' includes all expressions of interest, regardless of the means or manner in which the expression of interest is made, if the contractor considers expressions of interest made through the Internet or related electronic data technologies in the recruiting or selection processes for that particular position.

(i) Example A: Contractor A posts on its web site an opening for a Mechanical Engineer position and encourages potential applicants to complete an on-line profile if they are interested in being considered for that position. The web site also advises potential applicants that they can send a hard copy resume to the HR Manager with a cover letter identifying the position for which they would like to be considered. Because Contractor A considers both Internet and traditional expressions of interest for the Mechanical Engineer position, both the individuals who completed a personal profile and those who sent a paper resume and cover letter to Contractor A meet this part of the definition of Internet Applicant for this position.

(ii) Example B: Contractor B posts on its web site an opening for the Accountant II position and encourages potential applicants to complete an on-line profile if they are interested in being considered for that position. Contractor B also receives a large number of unsolicited paper resumes in the mail each year. Contractor B scans these paper resumes into an internal resume database that also includes all the on-line profiles that individuals completed for various jobs (including possibly for the Accountant II position) throughout the year. To find potential applicants for the

Accountant II position, Contractor B searches the internal resume database for individuals who have the basic qualifications for the Accountant II position. Because Contractor B considers both Internet and traditional expressions of interest for the Accountant II position, both the individuals who completed a personal profile and those who sent a paper resume and cover letter to the employer meet this part of the definition of Internet Applicant for this position.

(iii) Example C: Contractor C advertises for Mechanics in a local newspaper and instructs interested candidates to mail their resumes to the employer's address. Walk-in applications also are permitted. Contractor C considers only paper resumes and application forms for the Mechanic position, therefore no individual meets this part of the definition of an Internet Applicant for this position.

(3) For purposes of paragraph (1)(ii) of this definition, ''considers the individual for employment in a particular position,'' means that the contractor assesses the substantive information provided in the expression of interest with respect to any qualifications involved with a particular position. A contractor may establish a protocol under which it refrains from considering expressions of interest that are not submitted in accordance with standard procedures the contractor establishes. Likewise, a contractor may establish a protocol under which it refrains from considering expressions of interest, such as unsolicited resumes, that are not submitted with respect to a particular position. If there are a large number of expressions of interest, the contractor does not ''consider the individual for employment in a particular position'' by using data management techniques that do not depend on assessment of qualifications, such as random sampling or absolute numerical limits, to reduce the number of expressions of interest to be considered, provided that the sample is appropriate in terms of the pool of those submitting expressions of interest.

(4) For purposes of paragraph (1)(iii) of this definition, ''basic qualifications'' means qualifications—

(i)(A) That the contractor advertises (e.g., posts on its web site a description of the job and the qualifications involved) to potential applicants that they must possess in order to be considered for the position, or

(B) For which the contractor establishes criteria in advance by making and maintaining a record of such qualifications for the position prior to considering any expression of interest for that particular position if the contractor does not advertise for the position but instead uses an alternative device to find individuals for consideration (e.g., through an external resume database), and

(ii) That meet all of the following three conditions:

(A) The qualifications must be noncomparative features of a job seeker. For example, a qualification of three years' experience in a particular position is a noncomparative qualification; a qualification that an individual have one of the top five number of years' experience among a pool of job seekers is a comparative qualification.

(B) The qualifications must be objective; they do not depend on the contractor's subjective judgment. For example, ''a Bachelor's degree in Accounting'' is objective, while ''a technical degree from a good school'' is not. A basic qualification is objective if a third-party, with the contractor's technical knowledge, would be able to evaluate whether the job seeker possesses the qualification without more information about the contractor's judgment.

(C) The qualifications must be relevant to performance of the particular position and enable the contractor to accomplish business-related goals.

(5) For purposes of paragraph (1)(iv) of this definition, a contractor may conclude that an individual has removed himself or herself from further consideration, or has otherwise indicated that he or she is no longer interested in the position for which the contractor has considered the individual, based on the individual's express statement that he or she is no longer interested in the position, or on the individual's passive demonstration of disinterest shown through repeated non-responsiveness to inquiries from the contractor about interest in the position. A contractor also may determine that an individual has removed himself or herself from further consideration or otherwise indicated that he or she is no longer interested in the position for which the contractor has considered the individual based on information the individual provided in the expression of interest, such as salary requirements or preferences as to type of work or location of work, provided that the contractor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers. If a large number of individuals meet the basic qualifications for the position, a contractor may also use data management techniques, such as random sampling or absolute numerical limits, to limit the number of individuals who must be contacted to determine their interest in the position, provided that the sample is appropriate in terms of the pool of those meeting the basic qualifications.

* * * * *

■ 3. In § 60–1.12:
■ A. The third sentence in paragraph (a) is revised;
■ B. Paragraph (c)(1)(ii) is revised;
■ C. Paragraph (e) is removed;
■ D. Paragraph (d) is redesignated as paragraph (e); and
■ E. A new paragraph (d) is added.

The revisions and addition read as follows:

§ 60–1.12 Record retention.

(a) *General requirements.* * * * Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes, and any and all expressions of interest through the Internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position (for purposes of recordkeeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; for purposes of recordkeeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor), regardless of whether the individual qualifies as an Internet Applicant under 41 CFR 60–1.3, tests and test results, and interview notes. * * *

* * * * *

(c) * * *

(1) * * *

(ii) Where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60–1.3, whichever is applicable to the particular position.

* * * * *

(d) *Adverse impact evaluations.* When evaluating whether a contractor has maintained information on impact and conducted an adverse impact analysis under part 60–3 with respect to Internet hiring procedures, OFCCP will require only those records relating to the analyses of the impact of employee selection procedures on Internet Applicants, as defined in 41 CFR 60–1.3, and those records relating to the analyses of the impact of employment tests that are used as employee selection procedures, without regard to whether the tests were administered to Internet Applicants, as defined in 41 CFR 60–1.3.

* * * * *

[FR Doc. 05–20176 Filed 10–6–05; 8:45 am]

BILLING CODE 4510–CM–P

Federal Register

Friday,
October 7, 2005

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Mode S Transponder Requirements in the National Airspace System; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28586; Notice No. 96–5]

RIN 2120–AE81

Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: On May 23, 1996, the Federal Aviation Administration (FAA) proposed to rescind the requirement to install a Mode S transponder on all aircraft operating under parts 135 and those aircraft operating under part 121 of Title 14 of the Code of Federal Regulations that are not equipped with Traffic Collision and Alert System (TCAS) II. The FAA has, however, reassessed the need for retaining this requirement and now withdraws that notice.

DATES: Notice No. 96–5 is withdrawn October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. K. Douglas Davis, Avionic Systems Branch, Aircraft Certification Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4636.

SUPPLEMENTARY INFORMATION: You can get an electronic copy of this document by going to our Web page at *http://www.faa.gov/avr/arm/nprm.htm* or by using the search feature of the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs*.

You can get a printed copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Please identify the docket number of this final rule.

Background

The FAA published a final rule on February 3, 1987 (52 FR 3380), requiring the installation of Mode S transponders on U.S. registered aircraft. The rule provided that any transponder newly installed before January 1, 1992, in aircraft used for operations under parts 121 and 135 of the Federal Aviation Regulations could be a Mode A or Mode C transponder if the transponder was manufactured prior to January 1, 1990. After January 1, 1992, only Mode S transponders could be newly installed in U.S.-registered civil aircraft operated under Parts 121 and 135. The rule also provided that Mode S transponders were required for Part 91 operations in specified designated airspace.

The FAA delayed the rule's effective date for 6 months until July 1992 due to manufacturing difficulties of Mode S transponders. Additionally, the Air Traffic Issues Group of the Aviation Rulemaking Advisory Committee recommended to the FAA that the Mode S requirement for Part 91 was premature and deserved further study. In light of this recommendation, we reviewed the issue and concluded that the requirement was not necessary for Part 91 operators. Specifically, we determined that ''While areas of high density aircraft activity might benefit from the improved target and altitude integrity of the Mode S system, many portions of the airspace over the country might not require a homogenous Mode S environment for several years.'' Subsequently, we rescinded this equipment requirement for Part 91 operations in 1992 (57 FR 34614; August 5, 1992).

On May 23, 1996, the FAA proposed rescinding the Mode S requirement for Part 135 operators and those Part 121 operators not required to have TCAS II (61 FR 26036). The FAA has reassessed the need for Mode S transponder equipage for these operators in today's transportation system.

FAA Assessment and Review

In the May 1996 NPRM (Notice 96–5), we articulated several reasons for proposing to rescind the Mode S transponder requirement because: (1) The FAA's revised strategy of multiple air-ground data links managed through Aeronautical Telecommunications Network would remove the requirements for Mode S transponders;[1] (2) operational experience with Mode S ground sensors has shown that most surveillance enhancements can be achieved by the Mode S ground sensors with the present mixed population of airborne transponders; and (3) the use of Mode S transponders for aircraft, other than those required to have TCAS II, does not offer, nor is it expected to offer, any significant safety advantage in the current or future environment.

Since Notice 96–5 was published, the National Airspace System (NAS) has experienced significant changes that now necessitate retaining the Mode S transponder requirement. The basis for this requirement, however, has changed due to advances in the technological use of Mode S systems, and the continued growth of aviation traffic. Mode S technology has the largest ground and airborne infrastructure in place. Both industry and the FAA have invested in this infrastructure, and as discussed below, new technology and new safety enhancement programs utilize Mode S. Thus, we conclude that Mode S transponders are necessary for part 135 and part 121 operators (those not required to have TCAS II) and provide benefits beyond those considered in 1996.

Mode S avionics now are available for all types of aircraft from general aviation to heavy commercial aircraft. Virtually all commercial aircraft manufactured within the last 10 years have been equipped with Mode S transponders. In addition, over the last decade, the FAA has modernized many ground-based systems with considerable investment placed on Mode S capability—enhancing the operational picture available to aircrews and air traffic control.

The FAA has developed and implemented safety enhancements that either did not exist at the time that Notice 96–5 was published or that perform better with Mode S transponders than with Mode A or Mode C transponders. Airport Surface Detection 3 (ASDE–3), ASDE–X and Airport Movement Area Safety Systems (AMASS) are the core of supporting surveillance services for airport surfaces at approximately 60 of the busiest airports around the United States. These systems were all implemented after 1996.

ASDE–3 was the first surface detection system to become operational, and when used with the AMASS system, it provides a safety alerting service that warns the controllers of possible runway incursions.

ASDE–X is the next generation of surface detection systems and adds multilateration transponder based surveillance, both ground based and airborne, that is used with ASDE–3. The multilateration capability of ASDE–X allows the system to provide much more reliable overall surveillance than the ASDE–3 AMASS system. Increasing use of Mode A or Mode C transponders in lieu of Mode S transponders will weaken the surveillance capability of an ASDE multilateration system (as discussed below) and increase the risk of false or missed alerts.

The multilateration component of these systems uses fixed wide beam antennas when it interacts with transponders, and is thus more susceptible to synchronous garble and

[1] In our review, we determined that this specific rationale was incorrect. Data link capability is not required and moreover, the use of the Mode S transponder only will not provide that data link services.

Frequent Replies to Unwanted Interrogation Transmissions (FRUIT). FRUIT occurs when one system detects replies that match another system's interrogation. When FRUIT replies are received at the same time as the reply that actually matches the system's interrogation, these replies will garble the matching reply. A combination of the timing of the interrogation and its matching reply allows the development of the surveillance data in determining the location and altitude of the aircraft. The garbling of these transmissions corrupts the surveillance data.

Synchronous garble occurs when a ground sensor or a TCAS (airborne) interrogate Mode A or Mode C aircraft and receive replies from more than one aircraft at the same time. Again, the replies garble each other and their corresponding data may be lost. Reducing the number of Mode A and Mode C transponders will reduce the frequency of this garble and corruption of the data. Mode S systems use addressed interrogations where only one Mode S transponder replies at a time.

We also have found that Mode S transponders perform better than Mode C or Mode A transponders with respect to the Traffic Information Service (TIS). TIS avionics is optional and provides pilots with information on nearby traffic. It operates in Mode S radar systems. The Mode S radar system receives requests from TIS avionics through a Mode S transponder onboard an aircraft. The Mode S radar system processes the request from the TIS avionics and transmits basic traffic information to the requesting aircraft for processing and display to the pilot. This information includes distance and bearing to the traffic, for up to eight aircraft. This information also allows the pilot to look out the window and find the aircraft more effectively.

ADS–B is a system where aircraft automatically transmit surveillance data derived from navigation position data, *e.g.*, GPS. ADS–B, when using the 1090 extended squitter application, uses Mode S transponder transmissions. Just as FRUIT garbles regular transponder reply transmissions, FRUIT will garble these transmissions. Excessive FRUIT will lower the capacity of ADS–B and reduce its usefulness, and any related safety and efficiency benefits.

TCAS is a system installed in aircraft to help avoid midair collisions. Mode A and Mode C transponders can affect TCAS in two ways. First, the TCAS may experience FRUIT, synchronous garble or transponder dead time, which results in reduced ability to detect and track aircraft and provide its collision service effectively. Secondly, the presence of Mode A and Mode C transponders may limit the TCAS's range of operation. The fewer Mode A and Mode C transponders operating around TCAS equipped aircraft, the greater the range the TCAS may operate, which maximizes its safety benefit. Decreasing the numbers of Mode A/C transponders decreases the risk of missed alerts and false alerts.

Mode S provides benefits over Mode C or Mode A transponders during interrogation and transponder dead time. ''Dead time'' is when the transponder is busy. The transponder is kept busy when processing interrogations and preparing/transmitting a reply. The transponder also is kept busy with processing interrogations with an indication to suppress and not transmit an unnecessary reply. In systems such as ASDE–X, FRUIT replies from Mode A and/or Mode C aircraft can be received at the same time as the Mode S reply matching the interrogation. These garbling FRUIT replies can cause the loss of the Mode S reply. While the Mode S protocols prevent data corruption, the ASDE–X system will re-interrogate the Mode S transponder again in an effort to get the needed reply. This increases the transponder's dead time through over-interrogation. The Mode S interrogations also include an indication to Mode A and/or Mode C transponders to suppress and not reply. This protects against synchronous garble. Consequently, while the Mode S interrogations are intended primarily for a Mode S transponder, the Mode A and/or Mode C transponders anywhere near the path from the Mode S transponder to the radar or TCAS will see the suppression indication. Again, as with over interrogation, these transponders are also kept more busy than necessary, which increases their dead time as well.

Overall, the selective interrogation and the superior resolution ability of Mode S eliminates synchronous garble; resolves the effects of over interrogation; simplifies aircraft identification; and allows Mode S integration with new technologies designed to improve efficiency in the NAS.

Since the NPRM, the European Union and similar global coalitions have implemented equipage mandates, including Mode S, to operate in their airspace. Consequently, the FAA is working to synchronize and bridge equipage gaps to ensure that the United States' aviation economic interests around the world are maintained.

Published concurrently with this notice, is a separate notice seeking public comment on a proposed date for the equipage of Mode S transponders for aircraft that have been operating under FAA issued exemptions from this requirement.

Withdrawal of the NPRM

Since Mode S transponders can provide improved safety and efficiency in a more densely populated NAS, the FAA has concluded that the Mode S requirement for Part 135 and certain Part 121 operators remains valid. Therefore, the FAA withdraws NPRM 96–5.

Issued in Washington, DC on September 28, 2005.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 05–20181 Filed 10–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA–2005–22593]

Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy; request for comments.

SUMMARY: This notice of policy announces the FAA's policy concerning current exemptions from the Mode S transponder equipment requirements under Title 14 of the Code of Federal Regulations §§ 121.345(c) and 135.143(c). Additionally, this notice of policy seeks comments from persons currently holding an exemption from the above regulations on a proposed date for which they must comply with the equipment requirements.

DATES: Comments must be filed no later than November 7, 2005.

ADDRESSES: You may send comments to Docket Number 22593 using any of the following methods:

- 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 20590–001.
- Fax: 1–202–493–2251.
- 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.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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: Ida Klepper, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9677, email: *Ida.Klepper@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Concurrent with the publication of this notice and in a separate part of this **Federal Register** publication, the FAA announces that it is withdrawing Notice No. 96–5, a Notice of Proposed Rulemaking to rescind the Mode S transponder requirements for aircraft operating under Title 14 of the Code of Federal Regulation (CFR) part 135 and aircraft operating under Part 121 that are not required to have Traffic Alert and Collision Avoidance Systems (TCAS) II.

Since Notice 96–5 was published in May 1996, the FAA has granted a number of exemptions to the above referenced sections as the agency progressed toward removing this equipment requirement from all aircraft except those aircraft operated under Part 121 that have TCAS II. As the agency has revised its long-term plan for Mode S and is retaining this equipment requirement, we want to provide a reasonable timeframe for the exemptions to terminate and for affected operators to comply with the applicable regulations.

Proposed Termination Date of Exemptions

We propose that all FAA authorized exemptions of 14 CFR 121.345(c) and 135.143(c) terminate no later than March 1, 2007. Until that date, the FAA will review on a case-by-case basis requests to extend current exemptions to that date. The FAA, however, would not be granting any new exemptions after March 1, 2007. This proposed date would provide affected operators with approximately 18 months to install a Mode S transponder if necessary under §§ 121.345(c) and 135.143(c).

Under paragraphs (c) of §§ 121.345 and 135.143, after January 1, 1992, only Mode S transponders may be newly installed in U.S. registered civil aircraft. Under these regulations, the term ''installation'' does not include: (1) Temporary installation of a Mode C transponder or substitute equipment as appropriate, during maintenance of the permanent equipment; (2) reinstallation of equipment after temporary removal for maintenance; or (3) for fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

Consequently, the FAA proposes that effective March 1, 2007, if a transponder needs to be permanently replaced it must be replaced with a Mode S transponder. This does not mean that effective March 1, 2007, operators are required to install Mode S transponders, if they have an operable and appropriate Mode C or Mode A transponder in the aircraft. The current regulation only requires the replacement of a Mode A or C transponder with Mode S when the existing transponder can no longer be repaired. In addition, the FAA notes that if you were (or are) issued an exemption before March 1, 2007, allowing you to install a Mode C transponder on your aircraft, you may use that transponder until it no longer can be repaired and must be replaced with a Mode S. Therefore, if you hold an exemption, any Mode A or C transponder that is installed on or before March 1, 2007, may remain in your aircraft and may continue to be repaired after March 1, 2007. When that Mode A or C transponder can no longer be repaired, it must be replaced with a Mode S transponder. After March 1, 2007, you will not receive an exemption to allow the installation of a Mode A or C transponder to replace a Mode A or C transponder that cannot be repaired.

The FAA invites all affected operators to comment on the proposed date of March 1, 2007, as the latest termination date for authorized exemptions from §§ 121.345(c) and 135.143(c). After that date, any transponder newly installed in U.S. registered aircraft must be Mode S.

Issued in Washington, DC on September 27, 2005.

Anthony Fazio,

Director of Rulemaking.

[FR Doc. 05–20183 Filed 10–6–05; 8:45 am]

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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/laws.html*.

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H.R. 2132/P.L. 109–78
To extend the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2005; 119 Stat. 2043)

H.R. 2385/P.L. 109–79
To extend by 10 years the authority of the Secretary of Commerce to conduct the quarterly financial report program. (Sept. 30, 2005; 119 Stat. 2044)

H.R. 3200/P.L. 109–80
Servicemembers' Group Life Insurance Enhancement Act of 2005 (Sept. 30, 2005; 119 Stat. 2045)

H.R. 3784/P.L. 109–81

Higher Education Extension Act of 2005 (Sept. 30, 2005; 119 Stat. 2048)

H.R. 3864/P.L. 109–82

Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005 (Sept. 30, 2005; 119 Stat. 2050)

S. 1752/P.L. 109–83

To amend the United States Grain Standards Act to reauthorize that Act. (Sept. 30, 2005; 119 Stat. 2053)

H.R. 3667/P.L. 109–84

To designate the facility of the United States Postal Service located at 200 South Barrington Street in Los Angeles, California, as the "Karl Malden Station". (Oct. 4, 2005; 119 Stat. 2054)

H.R. 3767/P.L. 109–85

To designate the facility of the United States Postal Service located at 2600 Oak Street in St. Charles, Illinois, as the "Jacob L. Frazier Post Office Building". (Oct. 4, 2005; 119 Stat. 2055)

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