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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHAT: Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, December 6, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO–271–A37; DA–03–04–A]

Milk in the Arizona-Las Vegas Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations pertaining to the producer milk provision of the Arizona-Las Vegas Federal milk order. More than the required number of producers for the Arizona-Las Vegas marketing area approved the issuance of the final order amendments.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail: *jack.rower@usda.gov.*

SUPPLEMENTARY INFORMATION: This document amends the pooling and related provisions of the Arizona-Las Vegas Federal milk order. Specifically, this final rule permanently adopts a provision that will eliminate the ability to simultaneously pool the same milk on the Arizona-Las Vegas milk order and any State operated milk order that has marketwide pooling.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this final rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500–employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In September 2003, the month in which the hearing began, the milk of 106 dairy producers was pooled on, and 22 handlers were regulated by, the Arizona-Las Vegas order. Approximately 18 producers, or 17 percent, were small businesses based on the above criteria. On the handler side, 7 handlers, or 32 percent were ''small businesses.''

The adoption of the proposed standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving, the fluid milk needs of the Arizona-Las Vegas milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and to determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established in the amended pooling standards provision are applied in an equal fashion to both large and small businesses. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements are necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and

reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued July 31, 2003; published August 6, 2003 (68 FR 46505).

Correction to Notice of Hearing: August 20, 2003; published August 26, 2003 (68 FR 51202).

Notice of Reconvened Hearing: Issued October 27, 2003; published October 31, 2003 (68 FR 62027).

Notice of Reconvened Hearing: Issued December 18, 2003; published December 29, 2003 (68 FR 74874).

Tentative Final Decision: Issued December 23, 2004; published December 30, 2004 (69 FR 78355).

Interim Final Rule: Issued February 23, 2005; published March 1, 2005 (70 FR 9846).

Partial Recommended Decision: Issued April 7, 2005; published April 13, 2005 (70 FR 19636).

Partial Final Decision: Issued June 20, 2005; published June 27, 2005 (70 FR 36859).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Arizona-Las Vegas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Arizona-Las Vegas order:

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Arizona-Las Vegas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

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

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

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Arizona-Las Vegas order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) or the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Arizona-Las Vegas order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined by the order as hereby amended;

(3) The issuance of the order amending the Arizona-Las Vegas order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Arizona-Las Vegas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

■ The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on February 23, 2005, and published in the **Federal Register** on March 1, 2005 (70 FR 9846), are adopted without change and shall be and are the terms and provisions of this order.

Dated: November 18, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23253 Filed 11–23–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 214

[CIS No. 2369–05; Docket No. USCIS–2005–0022]

RIN 1615–ZA31

Short-Term Employment Authorization and Reduced Course Load for Certain F–1 Nonimmigrant Students Adversely Affected by Hurricane Katrina

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of temporary rule suspension.

SUMMARY: This document informs the public of the suspension of certain regulatory requirements for a specific group of F–1 nonimmigrant students who were enrolled in academic institutions located in areas that have been adversely affected by Hurricane Katrina. F–1 students who are granted short-term employment authorization pursuant to this document will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization, provided such students satisfy the minimum course load requirement set forth in this document.

DATES: This document is effective November 25, 2005, and will remain in effect until February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Alanna Ow, Adjudications Officer, Office of Program and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue NW, 3rd Floor, Washington, DC 20529, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

What action is the Department of Homeland Security (DHS) taking under this Notice?

The Secretary of Homeland Security is exercising his authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment. F–1 students, who are granted employment authorization pursuant to this Notice, will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization, provided such students satisfy the minimum course load requirement set forth in this Notice. *See* 8 CFR 214.2(f)(6)(F).

Who is covered by this Notice?

This Notice applies exclusively to nonimmigrant aliens admitted to the United States in F–1 classification for duration of status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (Act), who: (1) On August 29, 2005, were lawfully present in the United States in F–1 status and enrolled in an institution, which is approved by DHS for enrollment of F–1 students and located in an area adversely affected by Hurricane Katrina; (2) are currently maintaining valid F–1 status; and (3) are experiencing severe economic hardship as a direct result of Hurricane Katrina. This Notice also applies to nonimmigrant aliens admitted to the United States in F–2 classification under section 101(a)(15)(F)(ii) of the Act, who are the dependents (spouse or minor children) of F–1 students covered by this Notice, provided that the F–1 student continues to maintain F–1 status.

F–1 students otherwise covered by this Notice, who transfer to other academic institutions, which are approved by DHS for enrollment of F–1 students, remain eligible for the relief provided by means of this Notice.

Why is DHS taking this action?

Hurricane Katrina caused loss of life, caused extensive damage to property, and has disrupted normal activities in the states of Alabama, Louisiana, and Mississippi. Certain academic institutions that are located in the affected areas are consequently unable to operate normally, or at all, during the current academic term. Approximately 5,500 F–1 students were enrolled in academic institutions located in the areas adversely affected by Hurricane Katrina. As a result of this catastrophic natural disaster, many of these F–1 students are suffering severe economic hardship resulting from, among other things, costs incurred to replace lost or damaged possessions, and/or to transfer to other academic institutions. Moreover, many of these F–1 students are experiencing difficulty in satisfying the normal regulatory requirements for maintaining valid F–1 status, which include the pursuit of a ''full course of study'' pursuant to 8 CFR 214.2(f)(6).

DHS is taking action to provide relief to these F–1 students so they may obtain short-term employment authorization, and consequently reduce their course load.

Which academic institutions are covered by this Notice?

This Notice lists the specific campuses of academic institutions, which are approved by DHS for enrollment of F–1 students and located in the areas adversely affected by Hurricane Katrina. In the event that DHS, after the publication of this Notice, identifies other academic institutions, which are approved by DHS for enrollment of F–1 students and located in areas adversely affected by Hurricane Katrina, DHS will extend the relief authorized under this Notice to eligible F–1 students who were enrolled in those academic institutions on August 29, 2005.

School name	Campus name	City	State	Zip code
Archdiocese of New Orleans	Academy of the Sacred Heart	New Orleans	LA	70115
Archdiocese of New Orleans	Christian Brothers School	New Orleans	LA	70124
Archdiocese of New Orleans	Henriette DeLille	New Orleans	LA	70126
Archdiocese of New Orleans	Holy Cross	New Orleans	LA	70117
Archdiocese of New Orleans	Holy Ghost	New Orleans	LA	70115
Archdiocese of New Orleans	Holy Name of Jesus	New Orleans	LA	70118
Archdiocese of New Orleans	Holy Rosary Academy	New Orleans	LA	70119
Archdiocese of New Orleans	House of the Holy Family	New Orleans	LA	70126
Archdiocese of New Orleans	Immaculate Heart of Mary	New Orleans	LA	70126
Archdiocese of New Orleans	Marian Central Catholic Middle School	New Orleans	LA	70126
Archdiocese of New Orleans	Our Lady of Lourdes	New Orleans	LA	70115
Archdiocese of New Orleans	Resurrection of Our Lord	New Orleans	LA	70127
Archdiocese of New Orleans	St. Alphonsus	New Orleans	LA	70130
Archdiocese of New Orleans	St. Anthony of Padua	New Orleans	LA	70119
Archdiocese of New Orleans	St. Benedict the Moor	New Orleans	LA	70126
Archdiocese of New Orleans	St. David	New Orleans	LA	70117
Archdiocese of New Orleans	St. Dominic	New Orleans	LA	70124
Archdiocese of New Orleans	St. Frances Xavier Cabrini	New Orleans	LA	70122
Archdiocese of New Orleans	St. Joan of Arc	New Orleans	LA	70118
Archdiocese of New Orleans	St. Joseph Central Catholic Elementary	New Orleans	LA	70122
Archdiocese of New Orleans	St. Leo the Great	New Orleans	LA	70119
Archdiocese of New Orleans	St. Mary of the Angels	New Orleans	LA	70117
Archdiocese of New Orleans	St. Paul the Apostle	New Orleans	LA	70126
Archdiocese of New Orleans	St. Pius X	New Orleans	LA	70124
Archdiocese of New Orleans	St. Raymond	New Orleans	LA	70122
Archdiocese of New Orleans	St. Stephen	New Orleans	LA	70115
Archdiocese of New Orleans	Stuart Hall School for Boys	New Orleans	LA	70118
Archdiocese of New Orleans	Ursuline Academy	New Orleans	LA	70118
Archdiocese of New Orleans	All Saints	New Orleans	LA	70114
Archdiocese of New Orleans	Holy Name of Mary	New Orleans	LA	70114
Archdiocese of New Orleans	Our Lady of Divine Providence	Metairie	LA	70003
Archdiocese of New Orleans	Our Lady of Perpetual Help	Kenner	LA	70062
Archdiocese of New Orleans	St. Angela Merici	Metairie	LA	70002
Archdiocese of New Orleans	St. Benilde	Metairie	LA	70001
Archdiocese of New Orleans	St. Catherine of Siena	Metairie	LA	70005
Archdiocese of New Orleans	St. Christopher	Metairie	LA	70001
Archdiocese of New Orleans	St. Clement of Rome	Metairie	LA	70002
Archdiocese of New Orleans	St. Edward the Confessor	Metairie	LA	70001
Archdiocese of New Orleans	St. Elizabeth Ann Seton	Kenner	LA	70065
Archdiocese of New Orleans	St. Francis Xavier	Metairie	LA	70005
Archdiocese of New Orleans	St. Louis King of France	Metairie	LA	70005
Archdiocese of New Orleans	St. Mary Magdalen	Metairie	LA	70003

School name	Campus name	City	State	Zip code
Archdiocese of New Orleans	St. Matthew the Apostle	River Ridge	LA	70123
Archdiocese of New Orleans	St. Philip Neri	Metairie	LA	70003
Archdiocese of New Orleans	St. Rita	Harahan	LA	70123
Archdiocese of New Orleans	Immaculate Conception	Marrero	LA	70072
Archdiocese of New Orleans	Our Lady of Prompt Succor	Westwego	LA	70094
Archdiocese of New Orleans	St. Anthony	Gretna	LA	70053
Archdiocese of New Orleans	St. Cletus	Gretna	LA	70053
Archdiocese of New Orleans	St. Joseph the Worker	Marrero	LA	70072
Archdiocese of New Orleans	St. Rosalie	Harvey	LA	70058
Archdiocese of New Orleans	Visitation of Our Lady	Marrero	LA	70072
Archdiocese of New Orleans	Our Lady of Perpetual Help	Belle Chasse	LA	70037
Archdiocese of New Orleans	Our Lady of Prompt Succor	Chalmette	LA	70043
Archdiocese of New Orleans	St. Louise DeMarillac	Arabi	LA	70032
Archdiocese of New Orleans	St. Mark	Chalmette	LA	70043
Archdiocese of New Orleans	St. Robert Bellarmine	Arabi	LA	70032
Archdiocese of New Orleans	Sacred Heart of Jesus	Noco	LA	70079
Archdiocese of New Orleans	St. Charles Borromeo	Destrechan	LA	70047
Archdiocese of New Orleans	Ascension of Our Lord	LaPlace	LA	70068
Archdiocese of New Orleans	Our Lady of Grace	Reserve	LA	70084
Archdiocese of New Orleans	St. Joan of Arc	LaPlace	LA	70068
Archdiocese of New Orleans	St. Peter	Reserve	LA	70084
Archdiocese of New Orleans	Mary, Queen of Peace	Mandeville	LA	70471
Archdiocese of New Orleans	Our Lady of Lourdes	Slidell	LA	70458
Archdiocese of New Orleans	St. Margaret Mary	Slidell	LA	70458
Archdiocese of New Orleans	St. Peter	Covington	LA	70433
Archdiocese of New Orleans	Annunciation	Bogalusa	LA	70427
Archdiocese of New Orleans	Brother Martin	New Orleans	LA	70122
Archdiocese of New Orleans	Cabrini	New Orleans	LA	70119
Archdiocese of New Orleans	DeLaSalle	New Orleans	LA	70115
Archdiocese of New Orleans	Jesuit	New Orleans	LA	70119
Archdiocese of New Orleans	Mount Carmel Academy	New Orleans	LA	70124
Archdiocese of New Orleans	Redeemer-Seton	New Orleans	LA	70122
Archdiocese of New Orleans	St. Augustine	New Orleans	LA	70119
Archdiocese of New Orleans	St. Gerard Majella Alternative School	New Orleans	LA	70122
Archdiocese of New Orleans	St. Mary's Academy	New Orleans	LA	70126
Archdiocese of New Orleans	Xavier University Prep	New Orleans	LA	70115
Archdiocese of New Orleans	Archbishop Chapelle	Metairie	LA	70003
Archdiocese of New Orleans	Archbishop Rummel	Metairie	LA	70001
Archdiocese of New Orleans	Archbishop Blenk	Gretna	LA	70053
Archdiocese of New Orleans	Archbishop Shaw	Marrero	LA	70072
Archdiocese of New Orleans	Immaculata	Marrero	LA	70072
Archdiocese of New Orleans	Archbishop Hannan	Meraux	LA	70075
Archdiocese of New Orleans	St. Charles Catholic	LaPlace	LA	70068
Archdiocese of New Orleans	Pope John Paul II	Slidell	LA	70461
Archdiocese of New Orleans	The Saint Paul's School	Covington	LA	70433
Archdiocese of New Orleans	St. Scholastica Academy	Covington	LA	70433
Bass Memorial Academy	Bass Memorial Academy	Lumberton	MS	39455
Delgado Community College	Delgado Community College	New Orleans	LA	70119
Dillard University	Dillard University	New Orleans	LA	70122
East Central Community College	East Central Community College	Decatur	MS	39327
East Mississippi Community College	Scooba Campus	Scooba	MS	39358
Ecole Classique	Ecole Classique	New Orleans	LA	70112
English Language Center	University of South Alabama	Mobile	AL	36688
Faulkner State Community College	Faulkner State Community College	Bay Minette	AL	36507
Faulkner University	Faulkner University at Mobile	Mobile	AL	36609
John Curtis Christian School	John Curtis Christian School	River Ridge	LA	70123
Kaplan Test Prep, a division of Kaplan, Inc	Kaplan Test Prep—New Orleans, LA	New Orleans	LA	70118
Louisiana State University Health Sciences Center.	Louisiana State University Health Sciences Center.	New Orleans	LA	70006
Loyola University New Orleans	Loyola University New Orleans	New Orleans	LA	70118
Lutheran High School	Lutheran High School	Metairie	LA	70002
Meridian Community College	Meridian Community College	Meridian	MS	39307
Metairie Park Country Day School	Metairie Park Country Day School	Metairie	LA	70005
Mississippi Gulf Coast Community College	Perkinston Campus	Perkinston	MS	39573
Mississippi Gulf Coast Community College	Jefferson Davis Campus	Gulfport	MS	39507
Mississippi Gulf Coast Community College	Jackson County Campus	Gautier	MS	39553
Mobile County Public Schools	Division of Student Support Service	Mobile	AL	36602
Mobile County Public Schools	Baker High	Mobile	AL	36608
Mobile County Public Schools	Blount High	Prichard	AL	36610
Mobile County Public Schools	Bryant High	Irvington	AL	36544
Mobile County Public Schools	Citronelle High	Citronelle	AL	36522
Mobile County Public Schools	Davidson High	Mobile	AL	36609
Mobile County Public Schools	Montgomery High	Semmes	AL	36575
Mobile County Public Schools	Murphy High	Mobile	Al	36606

School name	Campus name	City	State	Zip code
Mobile County Public Schools	Rain High	Mobile	AL	36605
Mobile County Public Schools	Satsuma High	Satsuma	AL	36572
Mobile County Public Schools	Shaw High	Mobile	Al	36608
Mobile County Public Schools	Theodore High	Theodore	AL	36582
Mobile County Public Schools	Vigor High	Prichard	AL	36610
Mobile County Public Schools	Williamson High	Mobile	AL	36605
Modern languages Institute	Modern Languages Institute	New Orleans	LA	70130
New Orleans Baptist Theological Seminary	New Orleans Baptist Theological Seminary	New Orleans	LA	70126
Nicholls State University	Nicholls State University	Thibodaux	LA	70301
Notre Dame Seminary	Notre Dame Seminary	New Orleans	LA	70118
Nunez Community College	Nunez Community College	Chalmette	LA	70043
Our Lady Holy Cross College	Our Lady Holy Cross College	New Orleans	LA	70131
Picayune School District	Picayune Memorial High School	Picayune	MS	39466
Remington College	Remington College	Metairie	LA	70005
Reserve Christian School	Reserve Christian School	Reserve	LA	70084
Ridgewood Preparatory School	Ridgewood Preparatory School	Metairie	LA	70001
Riverside Academy Corporation	Riverside Academy	Reserve	LA	70084
Saint Joseph Seminary College	St. Benedict	St. Benedict	LA	70457
School of Urban Missions	New Orleans School of Urban Missions	Gretna	LA	70053
Southeastern Baptist College	Southeastern Baptist College	Laurel	MS	39440
Southeastern Louisiana University	Southeastern Louisiana University	Hammond	LA	70402
Southern University at New Orleans	Southern University at New Orleans	New Orleans	LA	70126
Spring Hill College	Spring Hill College	Mobile	LA	36608
St. Paul's Episcopal School	St. Paul's Episcopal School	Mobile	LA	36608
St. Stanislaus College Prep	St. Stanislaus College Prep	Bay St. Louis	MS	39520
St. Stanislaus College Prep	Mercy Cross High School	Biloxi	MS	39530
St. Stanislaus College Prep	St. John High School	Gulfport	MS	39501
St. Stanislaus College Prep	Resurrection Catholic School	Pascagoula	MS	39567
St. Stanislaus College Prep	Nativity, B. V. M.	Biloxi	MS	39530
St. Stanislaus College Prep	Sacred Heart	Hattiesburg	MS	39401
The University of Southern Mississippi	Hattiesburg Campus	Hattiesburg	MS	39406
The University of Southern Mississippi	English Language Institute	Hattiesburg	MS	39406
Top Garden School	Top Garden School	Irvington	AL	36544
Tulane University	Tulane University	New Orleans	LA	70118
United States Sports Academy	United States Sports Academy	Daphne	AL	36526
University of Mobile	University of Mobile	Mobile	AL	36613
University of New Orleans	University of New Orleans	New Orleans	LA	70148
Unviersity of New Orleans	UNO Intensive English Language Program	New Orleans	LA	70148
University of South Alabama	University of South Alabama	Mobile	AL	36688
William Carey College	William Carey College	Hattiesburg	MS	39401
Xavier University of Louisiana	Xavier University of Louisiana	New Orleans	LA	70125

What regulatory requirements in 8 CFR 214.2(f)(9) does this Notice temporarily suspend?

1. On-Campus Employment

For F–1 students covered by this Notice, the Secretary of Homeland Security is suspending temporarily the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 student to no more than 20 hours per week of on-campus employment when school is in session.

2. Off-Campus Employment

For F–1 students covered by this Notice, the Secretary of Homeland Security is suspending temporarily the applicability of the following regulatory requirements: (a) The requirement in 8 CFR 214.2(f)(9)(ii)(A), that limits an F–1 student to no more than 20 hours per week of off-campus employment when school is in session; (b) the requirement in 8 CFR 214.2(f)(9)(ii)(D)(1), that requires a student to be in F–1 status for one full academic year in order to be eligible for off-campus employment; and (c) the requirement in 8 CFR 214.2(f)(9)(ii)(D)(3), that requires an F–1 student to demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study.

Will F–1 students who are granted employment authorization pursuant to this Notice be authorized to reduce their normal course load?

Yes. Pursuant to 8 CFR 214.2(f)(6)(i)(F), F–1 students, who are granted employment authorization pursuant to this Notice, will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization, provided such students satisfy the minimum course load requirement set forth in this Notice.

What is the minimum course load requirement set forth in this Notice?

Pursuant to 8 CFR 214.2(f)(5)(v), undergraduate level F–1 students who are granted employment authorization pursuant to this Notice must remain registered for a minimum of 6 semester/quarter hours of instruction per academic term, and graduate level F–1 students who are granted employment authorization pursuant to this Notice must remain registered for a minimum of 3 semester/quarter hours of instruction per academic term. In addition, pursuant to 8 CFR 214.2(f)(6)(i)(G), F–1 students granted employment authorization pursuant to this Notice, both at the undergraduate level and the graduate level, may count the equivalent of one class or three credits per semester/quarter of on-line or distance education toward satisfying this minimum course load requirement.

How may F–1 students covered by this Notice obtain employment authorization pursuant to this Notice?

1. On-Campus Employment

An F–1 student covered by this Notice, who seeks to pursue on-campus employment pursuant to this Notice,

must demonstrate to the Designated School Official (DSO) at the academic institution where the F–1 student currently is enrolled that such employment is necessary to avoid severe economic hardship resulting from Hurricane Katrina. See 8 CFR 214.2(f)(9)(i). The DSO should sign, date, and include the following notation in the student employment box on page 3 of Form I–20: ''Approved for more than 20 hours per week of on-campus employment until February 1, 2006, pursuant to Hurricane Katrina Special Student Relief.'' By making this notation, the DSO certifies that the F–1 student is covered by this Notice.

2. Off-Campus Employment

An F–1 student covered by this Notice, who seeks to pursue off-campus employment pursuant to this Notice, must file a complete Form I–765, Application for Employment Authorization, including required supporting documentation, with the USCIS Texas Service Center at:

U.S. Citizenship and Immigration Services, Texas Service Center, P.O. Box 853062, Mesquite, TX 75815–3062.

The front of the envelope, on the bottom right-hand side, should include the following notation: ''HURRICANE KATRINA SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

An application package is complete if it contains: (1) A properly completed Form I–765, Application for Employment Authorization, with the required fee or, if the F–1 student believes he or she is eligible for a waiver of this fee, a written affidavit or unsworn declaration, which requests waiver of the fee under 8 CFR 103.7(c) and explains the reasons why the student is unable to pay the prescribed fee, and (2) Form I–20 with a recommendation for off-campus employment from the DSO at the academic institution where the F–1 student is currently enrolled. See 8 CFR 214.2(f)(9)(ii)(D). The DSO should sign, date, and include the following notation in the student employment box on page 3 of Form I–20: ''Approved for more than 20 hours per week of off-campus employment until February 1, 2006, pursuant to Hurricane Katrina Special Student Relief.'' By making this notation, the DSO certifies that the F–1 student is covered by this Notice.

If U.S. Citizenship and Immigration Services (USCIS) approves the F–1 student's Form I–765, Application for Employment Authorization, USCIS will send the student a Form I–766, Employment Authorization Document, to evidence his or her employment authorization. The Form I–766 will contain an expiration date that will not extend beyond February 1, 2006. If USCIS denies the F–1 student's Form I–765, Application for Employment Authorization, USCIS will notify the student of the decision, and the reason(s) for the denial.

Is there a cut-off date for the filing of a Form I–765, Application for Employment Authorization, pursuant to this Notice?

No. DHS has not established a cut-off date for the filing of a Form I–765, Application for Employment Authorization, pursuant to this Notice. Any benefits granted by means of this Notice, however, will expire no later than February 1, 2006. While USCIS will exercise its best efforts to process such applications in as prompt a manner as possible, F–1 students applying for employment authorization pursuant to this Notice should bear in mind this expiration date when submitting their Forms I–765, Applications for Employment Authorization.

Will F–2 dependents (spouse or minor children) of F–1 students covered by this Notice be eligible to apply for employment authorization?

No. Pursuant to 8 CFR 214.2(f)(15)(i), an F–2 dependent (spouse or minor children) of an F–1 student, may not accept employment.

Will F–1 students covered by this Notice be required to apply for reinstatement after February 1, 2006?

No. F–1 students, who are granted employment authorization pursuant to this Notice, will be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization, provided such undergraduate level F–1 students remain registered for a minimum of 6 semester/quarter hours of instruction per academic term, and such graduate level F–1 students remain registered for a minimum of 3 semester/quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v). Such F–1 students, therefore, would not be required to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 status.

How long will this Notice remain in effect?

This Notice grants temporary relief to a specific group of F–1 students for the estimated length of the current academic term. As such, this Notice will remain in effect until February 1, 2006. During this period, DHS will continue to monitor the adverse impact of Hurricane Katrina in the affected areas to determine if modification or rescission of these special provisions is warranted. Should these special provisions be modified or rescinded prior to February 1, 2006, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display Control Numbers, and are noted herein. Form I–765, Application for Employment Authorization, OMB Control Number 1615–0040.

Dated: November 17, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–23309 Filed 11–23–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for Schering-Plough Animal Health Corp.

DATES: This rule is effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, has informed FDA of a change of address to 556 Morris Ave., Summit, NJ 07901. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.''

Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Schering-Plough Animal Health Corp.''; and in the table in paragraph (c)(2) by revising the entry for ''000061'' to read as follows.

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901.	000061
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
000061	Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901
* *	* * *

Dated: November 15, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–23296 Filed 11–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Phoenix Scientific, Inc., to IVX Animal Health, Inc. In order to improve the accuracy of the regulations, erroneous entries for Phoenix Pharmaceutical, Inc., are also being removed at this time.

DATES: This rule is effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, has informed FDA that it has changed its name to IVX Animal Health, Inc. Accordingly, the agency is amending the regulations in § 510.600 (21 CFR 510.600) to reflect the change.

In addition, FDA has noticed that Phoenix Pharmaceutical, Inc., is no longer a sponsor of an approved new animal drug application. At this time, § 510.600 is amended to remove entries for this sponsor. This action is being taken to improve the accuracy of the regulations.

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

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entries for ''Phoenix Pharmaceutical, Inc.'' and ''Phoenix Scientific, Inc.'', and by alphabetically adding a new entry for ''IVX Animal Health, Inc.''; and in the table in paragraph (c)(2) by removing the entry for ''057319'' and by revising the entry for ''059130'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
IVX Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503.	059130
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
059130	IVX Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503
* *	* * *

Dated: November 15, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–23297 Filed 11–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Boldenone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health. The supplemental NADA provides for

revised labeling for the veterinary prescription use of injectable boldenone solution in horses.

DATES: This rule is effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *melanie.berson@fda.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, A Division of Wyeth Holdings Corp., P.O. Box 1339, Fort Dodge, IA 50501, filed a supplement to NADA 34–705 that provides for veterinary prescription use of EQUIPOISE (boldenone undecylenate) by injection in horses. The supplemental NADA provides for a revised indication and food safety warning on labeling. The supplemental NADA is approved as of October 7, 2005, and the regulations are amended in 21 CFR 522.204 to reflect the approval and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data. Therefore, a freedom of information summary is not required.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Section 522.204 is revised to read as follows:

§ 522.204 Boldenone.

(a) *Specifications*. Each milliliter of solution contains 25 or 50 milligrams (mg) boldenone undecylenate.

(b) *Sponsor*. See No. 053501 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount*. 0.5 mg per pound body weight by intramuscular injection. Treatment may be repeated at 3-week intervals.

(2) *Indications for use*. As an aid for treating debilitated horses when an improvement in weight, hair coat, or general physical condition is desired.

(3) *Limitations*. Do not administer to horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 15, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–23295 Filed 11–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for the veterinary prescription use of flunixin meglumine solution by intramuscular injection for the control of pyrexia associated with swine respiratory disease.

DATES: This rule is effective November 25, 2005.

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

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed a supplement to NADA 101–479 that provides for the veterinary prescription use of BANAMINE-S (flunixin meglumine) Injectable Solution by intramuscular injection for the control of pyrexia associated with swine respiratory disease. The supplemental NADA is approved as of November 1, 2005, and the regulations are amended in 21 CFR 522.970 and 556.286 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning November 1, 2005.

FDA has determined under § 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Section 522.970 is amended by adding paragraph (e)(3) to read as follows:

§ 522.970 Flunixin.

* * * * *

(e) * * *

(3) *Swine*—(i) *Amount.* Administer 2.2 mg/kg (1.0 mg/lb) of body weight as a single intramuscular injection.

(ii) *Indications for use.* For the control of pyrexia associated with swine respiratory disease.

(iii) *Limitations.* Swine must not be slaughtered for human consumption within 12 days of last treatment.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 4. Section 556.286 is amended by adding paragraph (b)(2) to read as follows:

§ 556.286 Flunixin.

* * * * *

(b) * * *

(2) *Swine.* The tolerance for flunixin free acid (the marker residue) is:

(i) *Liver (the target tissue).* 30 ppb.

(ii) *Muscle.* 25 ppb.

* * * * *

Dated: November 15, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–23294 Filed 11–23–05; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–IN–0007; FRL–7999–3]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving Indiana's April 8, 2005, submittal which revises existing sulfur dioxide (SO_2) emission limits for sources in Dearborn County, makes minor corrections removing obsolete rule language, and updates information for sources listed in the rule. These revisions will not result in an increase in SO_2 emissions in Dearborn County because no emission limits were increased.

DATES: This rule is effective on January 24, 2006, unless EPA receives adverse written comments by December 27, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0007, by one of the following methods:

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

Agency Web site: http://docket.epa.gov/rmepub/. Regional RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: mooney.john@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IN–0007. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information.
- A. Does This Action Apply to Me?
- B. How Can I Get Copies of This Document and Other Related Information?
- C. How and to Whom Do I Submit Comments?

II. What Is EPA Approving?
III. What Are the Changes From the Current Rule?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews.

I. General Information

A. Does This Action Apply to Me?

This action only applies to specific SO_2 sources located in Dearborn County, Indiana.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R05–OAR–2005–IN–0007, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket R05–OAR–2005–IN–0007'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

II. What Is EPA Approving?

EPA is approving revisions to Indiana's SO_2 State Implementation Plan (SIP) for specified existing stationary sources located in Dearborn County, Indiana. The SIP revisions amend Title 326 of the Indiana Administrative Code (IAC), section 7–4–13, by removing obsolete rule language for the Indiana Michigan Power Tanners Creek Station. The SIP revision also updates information for other companies listed in 326 IAC 7–4–13, including adding source identification numbers. Indiana held public hearings on these revisions on May 5, 2004 and October 6, 2004.

III. What Are the Changes From the Current Rule?

Indiana's SO_2 emission limits for Dearborn County are contained in 326 IAC 7–4–13. The current SO_2 emission limitations in 326 IAC 7–4–13 are based on air quality modeling used by the State when EPA approved the SIP in 1987. The SIP revision amends 326 IAC 7–4–13, as described below.

A. Indiana Michigan Power Tanners Creek Station

The SIP revision removes obsolete rule language that included interim requirements restricting the SO_2 emission limits for the Indiana Michigan Power Tanners Creek Station, Unit 4. These interim requirements are no longer necessary, and have been deleted; the rule limits Unit 4 to an SO_2 emission limit of five and twenty-four hundredths (5.24) pounds per MMBTU since August 1, 1991. This revision reflects these changes. This SIP revision also adds source identification number, No. 00002, to the Indiana Michigan Power Tanners Creek Station.

B. Schenley Distillers, Inc.

Schenley Distillers, Inc. closed in 1998 and has been removed from the rule.

C. Joseph E. Seagram and Sons, Inc.

The revision changes the name from Joseph E. Seagram and Sons, Inc. to Pernod Ricard USA, Seagram Lawrenceburg Distillery. The company has removed one boiler listed in the current rule, and renamed the remaining boiler. This revision reflects this change. The revision also adds source identification number, No. 00005, to the Pernod Ricard USA, Seagram Lawrenceburg Distillery.

D. Diamond Thatcher Glass

The furnaces formerly owned by Diamond Thatcher Glass are owned by Anchor Glass Container Corporation, and have been renamed as such. This revision reflects this change. The revision also adds source identification number, No. 00007, to the Anchor Glass Container Corporation.

IV. What Action Is EPA Taking Today?

EPA is approving revisions to 326 IAC 7–4–13, which contains the SO_2 emission limitations for existing stationary sources located in Dearborn County, Indiana. The SIP revision amends 326 IAC 7–4–13, by removing obsolete rule language for the Indiana Michigan Power Tanners Creek Station, and by making minor revisions for other companies listed in 326 IAC 7–4–13, including adding source identification numbers.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective January 24, 2006 without further notice unless we receive relevant adverse written comments by December 27, 2005. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective January 24, 2006.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (*58 FR 51735*, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (*66 FR 28355*, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (*59 FR 22951*, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (*64 FR 43255*, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (*62 FR 19885*, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 24, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and recordkeeping requirements, sulfur oxides.

Dated: November 10, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(171) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(171) On April 8, 2005, Indiana submitted final adopted revisions for the Dearborn County sulfur dioxide emission limitations in 326 IAC 7–4–13 as a requested revision to the Indiana state implementation plan. EPA is approving these revisions, which remove obsolete rule language for Indiana Michigan Tanners Creek Station and updates information for other companies listed in the rule.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 7: Sulfur Dioxide Rules, Rule 4: Emission Limitations and Requirements by County, Section 13: Dearborn County Sulfur Dioxide Emission Limitations. Filed with the Secretary of State on February 14, 2005, and effective March 16, 2005. Published in the Indiana Register on April 1, 2005 (28 IR 2021).

[FR Doc. 05–23277 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–8001–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Amendment

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Final rule; amendment.

SUMMARY: The EPA (also, ''the Agency'' or ''we'') is amending an existing exclusion to reflect changes in ownership and name for the Vulcan Materials Company (Vulcan), Port Edwards, Wisconsin. Today's amendment documents these changes.

DATES: This amendment is effective on November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly by phone at (312) 353–9317, by mail at 77 W. Jackson Blvd., Mail Code DW–8J, Chicago, Illinois 60604, or by e-mail at <*ramaly.todd@epa.gov*>.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect a change in the status of a particular exclusion. The petition process under 40 Code of Federal Regulations (40 CFR) 260.20 and 260.22 allows facilities to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste-specific information provided by the petitioner, EPA granted an exclusion for treated K071, brine purification muds, to Vulcan Materials Company, Port Edwards, Wisconsin (51 FR 41486, November 17, 1986).

On July 12, 2005, the Agency was notified by Vulcan that ownership of the facility in Port Edwards, Wisconsin had been transferred to ERCO Worldwide (USA) Inc. (ERCO). On July 18, 2005, ERCO certified it will meet all terms and conditions set forth in the delisting and will not change the characteristics of the waste or the K071 treatment process at the Port Edwards facility without prior Agency approval. Today's notice documents this change by updating appendix IX to incorporate this change in name.

These changes to appendix IX of part 261 are effective November 25, 2005. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of the Resource Conservation and Recovery Act (RCRA) to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, the facility has certified that it is prepared to comply. Therefore, a six-month delay in the effective date is not necessary in this case. This provides the basis for making this amendment effective immediately upon publication under the Administrative Procedures Act pursuant to 5 United States Code (U.S.C.) 5531(d).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

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

Dated: November 15, 2005.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. Table 2 of Appendix IX of part 261 is amended by removing the ''Vulcan Materials Company'' entry and adding a new entry ''ERCO Worldwide (USA) Inc. (formerly Vulcan Materials Company)'' in alphabetical order by facility to read as follows:

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

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* *	*	* * * * *
ERCO Worldwide (USA) Inc. (formerly Vulcan Materials Company).	Port Edwards, Wisconsin.	Brine purification muds (EPA Hazardous Waste No. K071) generated from the mercury cell process in chlorine production, where separately purified brine is not used after November 17, 1986. To assure that mercury levels in this waste are maintained at acceptable levels, the following conditions apply to this exclusion: Each batch of treated brine clarifier muds and saturator insolubles must be tested (by the extraction procedure) prior to disposal and the leachate concentration of mercury must be less than or equal to 0.0129 ppm. If the waste does not meet this requirement, then it must be re-treated or disposed of as hazardous. This exclusion does not apply to wastes for which either of these conditions is not satisfied.
* *	*	* * * * *

[FR Doc. 05–23230 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–8001–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is taking direct final action in granting a petition to exclude (or ''delist'') up to 3,000 cubic yards of wastewater treatment sludges generated annually from the chemical conversion coating of aluminum generated by the General Motors Corporation (GM) Janesville Truck Assembly Plant (JTAP) in

Janesville, Wisconsin from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

DATES: This rule is effective on January 24, 2006 without further notice unless we receive adverse comment by December 27, 2005. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604. We will stamp comments postmarked after December 27, 2005 as ''late.'' These ''late'' comments may not be considered in formulating a final decision.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly at (312) 353–9317. The RCRA regulatory docket for this final rule, number R5–GMJA–05, is located at the EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. Contact Todd Ramaly for appointments at the address or phone number above, or by email at *ramaly.todd@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What is a delisting petition?
B. What regulations allow a waste to be delisted?
II. GM's Petition to Delist Waste from Janesville Truck Assembly Plant
A. What waste did JTAP petition to delist?
B. What information must the generator supply?
III. EPA's Evaluation
IV. Public Comments Received on the Proposed Exclusion
A. Who submitted comments on the proposed rule?
B. Comments received and responses from EPA
V. Final Rule Granting This Petition
A. What decision is EPA finalizing?
B. When is the delisting effective?
C. What are the terms of this exclusion?
D. How does this action affect the states?
VI. Regulatory Impact

I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR) 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background documents for a listed waste.)

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes and to ensure that future generated wastes meet the conditions set.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a ''generator specific'' basis.

II. GM's Petition To Delist Waste From Janesville Truck Assembly Plant

A. What waste did JTAP petition to delist?

GM petitioned to exclude from the list of hazardous wastes contained in 40 CFR 261.31 wastewater treatment sludges resulting from zinc phosphating (a chemical conversion coating process) on truck bodies which have aluminum components.

B. What information must the generator supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste, and that there are no other factors, including additional constituents, that could cause the waste to be hazardous. To support its petition, GM submitted descriptions and schematic diagrams of its manufacturing processes, historical accounts of waste generation, and the results of chemical analysis of the petitioned waste.

III. EPA's Evaluation

EPA considered the original listing criteria and evaluated additional factors required by the Hazardous and Solid Wastes Amendments of 1984 (HSWA) These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) its persistence in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

Consistent with previous delistings, EPA identified plausible exposure routes (ground water, surface water, air) for hazardous constituents present in the petitioned waste based on improper management of a Subtitle D landfill. To evaluate the waste, we used the Delisting Risk Assessment Software program (DRAS), a Windows based software tool, to estimate the potential release of hazardous constituents from the waste and to predict the risk associated with those releases.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received public comments on the proposed rule from the Alliance of Automobile Manufacturers and GM. Both were generally supportive of the delisting decision with some additional specific comments.

B. Comments received and responses from EPA

(1) *Comment:* EPA should revise the F019 listing via federal rule change to specify that wastewater treatment sludge from chemical conversion coating processes on aluminum where hexavalent chromium and cyanide are not used should not be F019.

EPA Response: The Agency is now considering revising the F019 listing. EPA is examining the data collected as a result of this project, as well as past projects, as a basis for a possible revision to the F019 listing.

(2) *Comment:* Total constituent concentrations should not be used by EPA to set delisting levels for this waste because total concentrations do not indicate the waste's potential to leach and have no scientific correlation with environmental impacts.

EPA Response: EPA evaluates the potential environmental impact of plausible mismanagement of the waste in a solid waste landfill. EPA evaluates the potential off-site migration of waste particles and volatile organic compounds via air and surface water pathways as a result of inadequate cover and runoff control. EPA believes that inadequate daily cover and rainwater runoff control are plausible mismanagement scenarios for a solid waste landfill. Furthermore, since the source of this potential off-site migration is newly deposited waste at the surface of the landfill, total concentrations are appropriate inputs for fate and transport modeling.

(3) *Comment:* It is unclear why a requirement for total chromium has been included as it has not been a constituent requiring analysis for previously granted petitions for this waste.

EPA Response: Total chromium has been included as a constituent requiring analysis for previously granted petitions for this waste (See 69 FR 60557, October 12, 2004). Nevertheless, EPA reevaluated total chromium as a result of the comment and examined the results of the DRAS model version used in support of the proposal. Conservatively assuming that one seventh of the chromium is present as hexavalent chromium, a known human carcinogen by inhalation, the limiting pathway determining the allowable level is inhalation of waste particles emitted from the landfill surface. Two changes were made to the calculation as a result of the reevaluation. An estimate for particle emissions resulting from vehicles driving over the exposed waste contained assumptions that were discovered to be unreasonably conservative for this waste. The number of vehicles driven over the waste was conservatively based on a historical exclusion with a much higher annual waste volume. EPA used a survey of industrial subtitle D facilities and the annual volume of waste requested by GM to derive more appropriate assumptions. It was also discovered that the DRAS program was reducing the uptake of particles inhaled by the receptor to account for an absorption efficiency, when, according to Agency toxicologists, this factor is no longer needed when using the most recent reference values presented in EPA's Integrated Risk Information System (IRIS). A new allowable level for total chromium of 5,300 milligrams per kilogram (mg/kg) was derived using the updated methods, an increase from the proposed value of 3,200 mg/kg. The calculation of changes is documented in the *Docket Report Reevaluating the Proposed Delisting Level for Chromium.*

(4) *Comment:* Quarterly verification sampling is not justified. The sampling frequency should be reduced to annually.

EPA Response: Verification data submitted in conjunction with past delistings of this type of waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

V. Final Rule Granting This Petition

A. What decision is EPA finalizing?

Today the EPA is finalizing an exclusion for up to 3,000 cubic yards of wastewater treatment sludge generated annually at the GM JTAP facility in Janesville, Wisconsin.

GM petitioned EPA to exclude, or delist, the wastewater treatment sludge because GM believed that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by HSWA. See § 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22(d)(2)–(4).

On April 25, 2005 EPA proposed to exclude or delist the wastewater treatment sludge generated at GM's Janesville facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (see 70 FR 21165). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the wastewater treatment sludge from GM's Janesville facility should be excluded from hazardous waste control.

However, because the response to comments resulted in a change in the methodology used to evaluate the petitioned waste and a change in an allowable level under verification sampling, EPA is delaying the effectiveness of the rule to allow for the potential submission of adverse comments, even though the changes are considered noncontroversial and adverse comment is not anticipated. EPA believes the changes are not controversial because the change to the particulate inhalation exposure assessment is really a correction given the way data is developed in IRIS and the assumptions made to the particle emission scenario are more appropriate for this waste.

B. When is the delisting effective?

This rule is effective on January 24, 2006 without further notice unless we receive adverse comment by December 27, 2005. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. If adverse comments are received, they will be addressed as part of a future rulemaking.

HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, can be made effective on January 24, 2006 (unless we receive adverse comment) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

C. What are the terms of this exclusion?

JTAP must dispose of the waste in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste. JTAP must obtain and analyze on a quarterly basis a representative sample of the waste in accordance with the waste analysis plan. JTAP must verify that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion.

The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of constituents at GM–JTAP and at the majority of auto-assembly facilities that already have exclusions granted for F019 (since GM–JTAP certified its process was consistent with the others). This exclusion applies only to a maximum annual volume of 3,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

D. How does this action affect the states?

Today's exclusion is being issued under the Federal RCRA delisting program. Therefore, only states subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in states which have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes Federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

VI. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

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

Dated: November 16, 2005.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. Table 1 of appendix IX of part 261 is amended by adding a new facility in alphabetical order to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
General Motors Corporation, Janesville Truck Assembly Plant.	Janesville, Wisconsin ..	Wastewater treatment sludge, F019, that is generated at the General Motors Corporation (GM) Janesville Truck Assembly Plant (JTAP) at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of January 24, 2006. 1. Delisting Levels: (A) The concentrations in a TCLP extract of the waste measured in any sample may not exceed the following levels (mg/L): antimony—0.49; arsenic—0.22; cadmium—0.36; chromium—3.7; lead—5; nickel—68; selenium—1; thallium—0.21; tin—540; zinc—670; p-cresol—8.5; and formaldehyde—43. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): chromium—5,300; mercury—7; and formaldehyde—540. 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, GM must collect and analyze one representative sample of JTAP's sludge on a quarterly basis.

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

Facility	Address	Waste description
		3. Changes in Operating Conditions: GM must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process at JTAP significantly change. GM must handle wastes generated at JTAP after the process change as hazardous until it has demonstrated that the waste continues to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and GM has received written approval from EPA. 4. Data Submittals: GM must submit the data obtained through verification testing at JTAP or as required by other conditions of this rule to EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. GM must compile, summarize, and maintain at JTAP records of operating conditions and analytical data for a minimum of five years. GM must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. Reopener Language—(a) If, anytime after disposal of the delisted waste, GM possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste at JTAP indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then GM must report such data in writing to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify GM in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days GM presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (e) Maximum Allowable Groundwater Concentrations (mg/L):; antimony—0.006; arsenic—0.005; cadmium—0.005; chromium—0.1; lead—0.015; nickel—0.750; selenium—0.050; tin—23; zinc—11; p-Cresol—0.190; and formaldehyde—0.950.
*	*	* * * * *

[FR Doc. 05–23229 Filed 11–23–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–1428–F3]

RIN–0938–AM80

Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2005 Rates: Fire Safety Requirements for Religious Non-Medical Health Care Institutions: Correction To Reinstate Requirements for Written Fire Control Plans and Maintenance of Documentation

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

ACTION: Final rule; correcting amendment.

SUMMARY: In the August 11, 2004 issue of the **Federal Register** (69 FR 48916), we published the Hospital Inpatient Prospective Payment System final rule. This correcting amendment reinstates paragraphs (a)(2) and (a)(3) in 42 CFR 403.744 (Condition of participation: Life safety from fire), which were accidentally deleted by that rule. Those paragraphs relate to requirements for fire control plans and maintenance of documentation in religious non-medical health care institutions. The effective date was October 1, 2004.

EFFECTIVE DATE: This correcting amendment is effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Janice Graham, (410) 786–8020; Danielle

Shearer, (410) 786–6617; or Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION:

Need for Corrections

On November 30, 1999, we published an interim final rule with comment period titled ''Religious Nonmedical Health Care Institutions and Advance Directives'' (64 FR 67028) to adopt the 1997 edition of the Life Safety Code (LSC) for religious non-medical health care institutions (RNHCIs). We adopted the 1997 edition of the LSC because we believed that it provided the highest available level of protection for patients, staff, and the public at that time. The regulation also permitted a RNHCI to meet a fire and safety code imposed by State law if we found that the State-imposed code adequately protected patients. This interim final rule also added paragraphs (a)(2) and (a)(3) to the Life Safety from Fire Condition of Participation at 42 CFR 403.744. These paragraphs were added in order to ensure that RNHCIs had adequate fire plans in case of a fire emergency and to ensure that RNHCIs documented the fire safety inspections and approvals related to their State or local fire control agencies.

On January 10, 2003, we issued a final rule titled ''Fire Safety Requirements for Certain Health Care Facilities'' (68 FR 1374) amending the fire safety standards for RNHCIs that adopted, with certain exceptions, the 2000 edition of the LSC published by the National Fire Protection Association (NFPA). One of the exceptions to the 2000 edition of the LSC concerned the use of roller latches in health care facilities, including RNHCIs. In the 2003 final rule, we prohibited health care facilities, including RNHCIs, from having roller latches. The final rule provided a 3-year phase-in period to allow facilities time to replace their roller latches.

On August 11, 2004, we published the Hospital Inpatient Prospective Payment System (IPPS) final rule (69 FR 48916). In this final rule, we clarified the phase-in date of the roller latch provision, and accidentally deleted paragraphs (a)(2) and (a)(3), which stated:

- (a)(2) The religious non-medical health care institution (RNHCI) must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, staff, and the public; evacuation; and cooperation with fire fighting authorities.
- (a)(3) The RNHCI must maintain written evidence of regular inspection and approval by State or local fire control agencies.

This correcting amendment re-incorporates paragraphs (a)(2) and (3), which were inadvertently deleted from the regulations by the 2004 IPPS rule.

Collection of Information Requirements

This document does contain information collection requirements as summarized below. However, we believe the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 403.744(a)(2) states that the RNHCI must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, staff and the public; evacuation; and cooperation with fire fighting authorities.

Section 403.744(a)(3) states that the RNHCI must maintain written evidence of regular inspection and approval by State or local fire control agencies.

Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. We also ordinarily provide a 30-day delay in the effective date of the provisions of a rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. We can waive both the notice of proposed rulemaking and the 30-day delay in effective date, however, if the Secretary finds good cause that a notice-and-comment procedure and a 30-day delay in the effective date are impracticable, or contrary to the public interest and incorporates a statement of the finding and the reasons in the rule issued.

We believe that proceeding with notice and comment procedures and delaying the effective date are impracticable, and contrary to the public interest.

The notice and comment procedures and delay in the effective date are impracticable because delaying implementation of these provisions would hinder our ability to provide continuous safety standards for RNHCI patients. These requirements were established in order to protect the patients, facility staff, and the public, and they continue to be necessary in order to ensure that RNHCIs provide safe care.

Proceeding with notice and comment rulemaking and delaying the effective date would delay the restoration of these two paragraphs. During this delay, fire safety could be compromised because providers would not be required to maintain their written fire control plans or document their inspection and approval by State or local fire control agencies, two requirements that are key to ensuring patient safety. In addition, our ability to ensure compliance with § 403.738 would be impeded if facilities did not maintain documentation of their compliance with State or local inspections and approval processes, as required by applicable State or local laws, regulations, and codes.

Publishing a proposed rule and delaying the effective date are contrary to the public interest because of the imminent danger to life posed by failing to enforce the requirements of § 403.744(a)(2) and (a)(3). One of the major responsibilities of a RNHCI is to provide an environment for their patients, staff, and the public that includes safety measures as outlined in its fire safety plan. These requirements re-enforce the importance of continually providing and maintaining a safe environment for RNHCI patients.

Therefore, we find good cause to waive the notice of proposed rulemaking and delayed effective date and to issue this correcting amendment.

Corrections to Regulations Text

List of Subjects in 42 CFR Part 403

Grant programs-health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments:

PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citations for part 403 continues to read as follows:

Authority: 42 U.S.C. 1395b–3 and Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 403.744 is corrected by adding paragraphs (a)(2) and (a)(3) to read as follows:

§ 403.744 Condition of participation: Life safety from fire.

(a) * * *

(2) The RNHCI must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing

fires; protection of patients, staff, and the public; evacuation; and cooperation with fire fighting authorities.

(3) The RNHCI must maintain written evidence of regular inspection and approval by State or local fire control agencies.

* * * * *

(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: November 21, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–23289 Filed 11–23–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–0008–F]

RIN 0938–AM22

Medicare Program; Electronic Submission of Medicare Claims

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

ACTION: Final rule.

SUMMARY: This final rule adopts as final, and makes amendments to, the interim final rule published on August 15, 2003. That interim final rule implemented the statutory requirement that claims for reimbursement under the Medicare Program be submitted electronically as of October 16, 2003, except where waived. These regulations identify those circumstances for which mandatory submission of electronic claims to the Medicare Program is waived.

DATES: Effective date: These regulations are effective on December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Kathleen Simmons, (410) 786–6157. Stewart Streimer, (410) 786–9318.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Administrative Simplification Compliance Act (ASCA), Pub. L. 107–105, was enacted by the Congress to improve the administration of the Medicare Program by facilitating program efficiencies gained through the electronic submission of Medicare claims. Section 3 of ASCA amends subsection (a) of section 1862 of the Social Security Act (the Act) (42 U.S.C. 1395y(a)) and adds a new subsection (h) to section 1862 (42 U.S.C. 1395y). The amendment to subsection (a) requires the Medicare Program, subject to subsection (h), to deny payment under Part A or Part B for any expenses for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Subsection (h) provides that the Secretary shall waive such denial in two types of cases and may also waive such denial ''in such unusual cases as the Secretary finds appropriate.''

Section 3 of ASCA operates in the context of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191. Those provisions require the Secretary to adopt, among other standards, standards for financial and administrative transactions for the health care industry, including health claims transactions (see section 1173(a) of the Act). In the August 17, 2000 **Federal Register** (65 FR 50311), the Secretary of Health and Human Services (the Secretary) published a final rule (generally known as the Transactions Rule) that adopted standards for eight electronic transactions. The transactions standards adopted by that final rule, as subsequently modified by final rule published on February 20, 2003 (68 FR 8381), are codified at 45 CFR part 162, subparts A and I through R.

The HIPAA standards apply to health plans, health care clearinghouses, and certain health care providers; collectively, these entities are known as ''covered entities.'' An additional category of covered entities—prescription drug card sponsors—was added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Pub. L. 108–173. Covered entities are required to comply not only with the standards established by the Transactions Rule, but also with those established via other HIPAA Administrative Simplification rules—such as the Privacy Rule, the Employer Identifier Rule, the Security Rule, and the National Provider Identifier Rule—by the respective applicable compliance dates specified in those rules.

Compliance with the standards for the electronic transactions established by the Transactions Rule was required for all covered entities other than small health plans by October 16, 2002; compliance by small health plans was required by October 16, 2003. However, section 2 of ASCA extended the October 16, 2002 compliance deadline to October 16, 2003 for covered entities that were not small health plans and that submitted a compliance plan by October 15, 2002. In accordance with 45 CFR 162.900(c), covered entities that were not small health plans and that did not timely submit a compliance plan under ASCA were required to comply by October 16, 2002. Thus, all covered entities, regardless of type, were required to be in compliance no later than October 16, 2003.

Since a significant number of covered entities had expressed strong concern over the health care industry's state of readiness to conduct fully compliant HIPAA transactions and we wanted to promote compliance while ensuring that cash flow and health care operations would not be unnecessarily disrupted, the Department of Health and Human Services (HHS) issued guidance on the approach CMS would take to enforce the HIPAA electronic transactions and code sets provisions. In accordance with the July 24, 2003 guidance, the Secretary explained that we would focus on voluntary compliance, use a complaint-driven approach, and would not impose penalties on covered entities that deployed temporary contingency plans, if they made reasonable and diligent efforts to become compliant and, in the case of health plans, facilitated the compliance of their trading partners.

By statute, the Medicare Program is a health plan under HIPAA (see section 1171(5)(D) of the Act). It is, therefore, a covered entity. In 45 CFR 160.102(a)(3), we specify that, in accordance with section 1172(a)(3) of the Act, health care providers are covered entities if they transmit health information in electronic form in connection with a transaction for which the Secretary has adopted a standard (covered transaction). In 45 CFR 162.923(a), we specify that if a covered entity electronically conducts a covered transaction with another covered entity, it must conduct it as a standard transaction.

Approximately 86.1 percent of claims submitted to the Medicare Program are submitted electronically, which means that approximately 139 million claims are submitted on paper per year (fiscal year (FY) 2002). Section 3 of ASCA required Medicare providers to submit Medicare claims electronically by October 16, 2003, unless one of the specified grounds for waiver applies. As the October 16, 2003 deadline approached, we made the decision to implement our own contingency plan after reviewing statistics showing that an unacceptably low number of Medicare providers would likely be capable of submitting compliant claims

by the compliance date. Concerned that many of its trading partners were still completing their transition to HIPAA-compliant transactions, Medicare implemented a contingency plan permitting the submission and processing of claims in electronic formats that were then in use and giving providers additional time to complete the testing processes. Neither CMS's contingency plan for Medicare nor HHS's enforcement guidance modified the October 16, 2003 compliance date for HIPAA transactions.

Section 3 of ASCA, thus, in general has the effect of requiring Medicare providers that are not already covered entities to conduct a covered transaction (the health claim transaction) electronically and, thereby, become covered entities. In submitting claims electronically, the providers are required to comply with the applicable HIPAA standard for the health claim transaction. Thus, section 3 of ASCA promotes the submission of standard transactions and will further the goal of improved health care delivery by reducing the administrative burden and paperwork associated with Medicare claims submissions.

Although 86.1 percent of Medicare claims are submitted electronically, the volume of Medicare claims submitted in paper form is substantial. Moving from paper to electronic submission has the potential for significant savings and efficiencies for Medicare physicians, practitioners, facilities, suppliers, and other health care providers, as well as for the Medicare program itself. Although these Medicare physicians, practitioners, facilities, suppliers, and other health care providers would incur a cost to comply with the mandatory electronic billing requirement, we believe their savings will offset the costs they incur. Further, the use of the HIPAA electronic claim standards could result in additional savings if these entities begin electronically billing other payers. However, the statute recognizes that certain circumstances may effectively prevent some providers from transacting claims with Medicare electronically or as standard transactions. ASCA, thus, identifies exceptions to the mandatory submission of electronic Medicare claims. This final rule reiterates and interprets these exceptions.

We considered whether the amendment to section 1862(a) of the Act in section 3 of ASCA could be interpreted to apply to payments made by Medicare + Choice (M+C) organizations to providers for services provided to Medicare beneficiaries. (Note: The MMA, enacted December 8, 2003, changed and renamed M+C to Medicare Advantage. For discussion purposes and to remain consistent with the interim final rule, the term ''M+C'' will continue to be used in this preamble.) The question was raised by the provision in section 4 of ASCA that expressly adds Medicare Part C, found in Part C of Title XVIII, to the definition of Medicare ''health plans'' found in section 1171(5)(D) of the Act.

The plain language of section 1862(a) of the Act, however, provides that ''payment may not be made under Part A or Part B'' for a number of activities. The Congress could have amended this provision, just as it amended section 1171(5) of the Act, if it had wanted to prohibit M+C organizations from paying for claims for services given to M+C enrollees by the M+C organization's participating providers if those claims were not submitted electronically. The fact that it did not so amend this provision indicates that it did not intend to apply the ASCA payment prohibition to the M+C organizations. The Congress's intent to apply the broader definition of ''health plan'' in section 4 of ASCA solely to the Administrative Simplifications provisions of HIPAA and not to the electronic submission requirement for Medicare claims is further suggested by the title of section 4 of ASCA: ''Clarification with Respect to Applicability of Administrative Simplification Requirement to M+C Organizations.''

The M+C organizations, as health plans for the purposes of HIPAA Administrative Simplification, were required to come into compliance with the regulatory requirements related to transactions no later than October 16, 2003. We understand that all M+C organizations properly filed ASCA compliance plans before October 16, 2002. Therefore, they obtained extensions and had a compliance date of October 16, 2003.

An M+C organization that pays a non-compliant electronic claim after October 16, 2003, would accordingly be out of compliance with the HIPAA transactions regulations, but would not violate the provisions of section 1862(a)(22) of the Act or the requirements of this regulation. This final rule applies only to providers, practitioners, and suppliers who submit claims under Part A or Part B of Medicare. It does not apply to the submission of claims by providers to M+C organizations. Moreover, the waiver provisions for small providers, practitioners, and suppliers established by section 3 of ASCA and this regulation do not extend to claims submitted by these providers to any health plans other than Medicare.

Section 902 of the MMA amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of OMB, to establish and publish timelines for the publication of Medicare final regulations based on the publication of Medicare proposed or interim final regulations. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years from the previous publication of the proposed or interim final rule, except under exceptional circumstances.

The MMA also introduced Part D of the Medicare Program. Future rulemaking may be needed to explore the applicability of section 3 of ASCA to Part D. We will initiate such rulemaking, if needed, upon further evaluation as we get closer to the Part D implementation date.

We note that this rule finalizes the provisions of the August 15, 2003 interim final rule. The final rule is, thus, being published within the 3-year time period identified in section 902 of the MMA.

II. Provisions of the Interim Final Rule

Section 3 of ASCA established the requirements and exceptions under the Medicare Program for the mandatory submission of claims in electronic form. In the August 15, 2003 **Federal Register** (68 FR 48805), we published an interim final rule that implemented these statutory requirements.

A. Definitions Used for Electronic Claim Submission

The interim final rule added a new paragraph (d) to § 424.32. Section 424.32(d)(1) specified the following definitions for the purposes of paragraph (d): Claim; electronic claim; direct data entry; electronic media; initial Medicare claim; physician, practitioner, facility, or supplier; provider of services; and small provider of services or small supplier. We defined ''claim'' to mean the transaction defined at 45 CFR 162.1101(a) (that is, ''health care claim''). We specified the definition of ''electronic claim'' to mean a claim that is submitted via electronic media. In addition, we specified that the definitions of ''direct data entry'' and ''electronic media'' are defined as those terms are defined in 45 CFR 162.103 and 160.103, respectively.

In § 424.32(d)(1)(v) of the interim final rule, we defined an ''initial Medicare claim'' as a claim submitted to Medicare for payment under Part A or Part B of the Medicare Program for the first time for processing, including claims sent to

Medicare for the first time for secondary payment purposes. This definition also specified that an initial Medicare claim excludes any adjustment or appeal of a previously submitted claim. This final rule adds the phrase ''for initial processing'' to the definition of ''initial Medicare claim'' to clarify that the requirement for electronic submission applies to claims that have been previously rejected before being accepted into the Medicare processing system.

In § 424.32(d)(1)(vi), we defined a ''physician, practitioner, facility, or supplier'' as a Medicare provider other than a provider of services. The final rule adds the words ''or supplier'' to make the definition precise, so that the term is defined as ''a Medicare provider or supplier other than a provider of services.'' In § 424.32(d)(1)(vii), we defined a ''provider of services'' as a provider of services as defined in section 1861(u) of the Act. In § 424.32(d)(1)(viii), we defined a ''small provider of services or small supplier'' as a provider of services with fewer than 25 full-time equivalent employees; or a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

B. Submission of Electronic Claims Required

Electronic submission of Medicare claims is required for initial Medicare claims, including initial claims with paper attachments, submitted for processing by the Medicare fiscal intermediary (FI) or carrier that serves the physician, practitioner, facility, supplier, or other health care provider. No other transactions, including changes, adjustments, or appeals to the initial claim, are required to be submitted electronically in accordance with ASCA.

In § 424.32(d)(2), we specified that, except for claims to which § 424.32(d)(3) or (d)(4) applies, an initial Medicare claim under Part A or Part B or both may be paid only if submitted as an electronic claim for processing by the Medicare FI or carrier that serves the physician, practitioner, facility, supplier, or other health care provider. This requirement does not apply to any other transactions, including adjustment or appeal of the initial Medicare claim.

C. Exceptions to Requirement To Submit Electronic Claims

The regulations at 45 CFR 162.923 state that, ''except as otherwise provided in this part, if a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction.'' HIPAA does not require that a health plan be able to accept claims via every type of electronic media, only that claims received via such media comply with the standard format and content requirements of HIPAA (*www.wpc-edi.com/HIPAA*). The reference in section 3 of ASCA to the filing of claims ''in electronic form'' does not dictate the use of a particular electronic form. Thus, the Medicare program will continue to accept only those forms identified in Chapter 24 of the Medicare Internet Only Claims Processing Manual (IOM Pub. L. 100–04) that we issue. At present, Medicare does not accept claims via the Internet, an extranet or, in many cases, via removable/transportable storage media. This final rule does not change this Medicare policy. The interim final rule stated that an advance notice of any future plans for expansion or contraction in the electronic media accepted for submission of Medicare claims would be published in Medicare program instructions and via routine contractor notification and instructional media.

In the interim final rule, we specified that we will consider claims submitted via a direct data entry screen maintained for Medicare, and as permitted by 45 CFR 162.923, to be electronic claims for purposes of this requirement. Also, we stated that claims transmitted to a Medicare contractor using the free or low cost claims software issued by Medicare fee-for-service plans will be considered electronic claims for purposes of this requirement.

The ASCA provided for exceptions to the requirement for mandatory electronic submission of Medicare claims. In accordance with ASCA, the interim final rule established that the Secretary of HHS could waive the application of the electronic claim requirement in specific cases. To implement the statutory mandate, we provided more explicit requirements that are specified in § 424.32(d). Specifically, § 424.32(d)(3) states that there are two exceptions to electronic submission of initial Medicare claims.

The first exception, specified in § 424.32(d)(3)(i), applies when there is no method available for the submission of an electronic claim. For example, we could not reasonably expect Medicare beneficiaries to submit electronic claims. Even though the statute requires, with very few exceptions, that providers of health care bill Medicare on behalf of a beneficiary (sections 1814(a) and 1848(g)(4) of the Act), some beneficiaries will still submit claims to Medicare. However, those relatively few beneficiaries who submit claims are not likely to possess the capability to submit a HIPAA compliant claim. Further, there are situations in which the standard adopted by the Secretary at 45 CFR 162.1102 does not support all of the information necessary for payment of the claim. We identified three other situations that fall into this category:

- Roster billing of vaccinations covered by the Medicare Program. In order to promote an increase in the flu vaccinations for Medicare beneficiaries, since 1993 Medicare has allowed mass immunizers to bill the program using a single claim form with an attached list of beneficiaries to whom a flu vaccine was administered. Many mass immunizers bill electronically, but in a non-standard format. This roster billing simplifies provider billing but is not available in electronic form under the Transactions Rule.
- Claims for payment under Medicare demonstration projects. Medicare demonstration projects often allow for unusual situations not normally handled by the transactions standards; and
- Claims where more than one health plan is responsible for payment before Medicare. The interim final rule indicated that efforts were underway to resolve the confusion in the reporting of per service payments by more than one primary payer and allowed these claims to continue to be submitted to Medicare on paper for the time being. Although a number of alternatives were considered, a clear process for electronic billing of Medicare in this case is not yet finalized. Once a solution is reached, we will then notify the public of the effective date of the change.

Providers to whom an exception does not apply will then be required to submit Medicare claims electronically. In the interim final rule, we established that specific program guidance would be issued to Medicare providers concerning submission of these claims on paper effective October 16, 2003. We stated that we would also issue specific guidance or regulations, as necessary, informing covered entities if this or another exception no longer applies.

The second exception, described in § 424.32(d)(3)(ii), provided that electronic submission would be waived when the entity submitting the claim is a small provider of services or small supplier. The statute is quite specific as to the size requirements, and the interim final rule simply incorporated the statutory requirements. This final rule

makes a slight technical revision, in order to use a defined term consistently.

D. Unusual Cases

In the interim final rule, we established that the Secretary may waive the electronic submission requirement in certain unusual situations as the Secretary finds appropriate. In § 424.32(d)(4), we specified that such an exception would exist in the following three situations:

- The submission of dental claims. This exception is being included because, under HIPAA, dentists who are covered entities are required to submit electronic transactions to other payers in a format different from that generally used in the Medicare Program. Since Medicare does not generally cover dental services, this exception is added to minimize the burden on dentists who may, at times, need to bill the Program.
- A service interruption in the mode of submitting the electronic claim that is outside of the control of the entity submitting the claim, for the period of the interruption. This exception would apply only if the physician, practitioner, facility, supplier, or other health care provider temporarily loses electricity, or telephone or other communication service. If electricity, telephone, or other communication services exist, but one or the other is unavailable for a period of time (for example, because of inclement weather or due to telephone company technical breakdowns), paper claims will be accepted during the period of disrupted power or communication service.
- On demonstration, satisfactory to the Secretary, of other extraordinary circumstances precluding submission of electronic claims.

The interim final rule specified that entities would not generally need to make a special request to determine whether an exception applies that would make them eligible for a mandatory waiver under § 424.32(d)(3) or a discretionary waiver under § 424.32(d)(4). A special request would have to be submitted to a Medicare FI or carrier when an entity did *not* meet the mandated exceptions at § 424.32(d)(3), or the specified discretionary waiver criteria at § 424.32(d)(4)(i) and (d)(4)(ii), but believed there were other extraordinary circumstances that precluded its submission of electronic claims. We also proposed to issue program guidance to Medicare FIs and carriers to enable them to handle, on a case-by-case basis, requests for relief in extraordinary circumstances. This program guidance was issued on December 19, 2003 (Transmittal 44, CR 2966, Instructions for the Mandatory Electronic Submission of Medicare Claims), and may be found at *www.cms.hhs.gov/manuals/*. Publication of this final rule will result in some changes to Transmittal 44, CR 2966, which will be reissued following publication of this final rule.

This final rule adds two more unusual situations under § 424.32(d)(4) for which an exception would exist. Specifically, the requirement to submit electronic claims may be waived when the entity submitting the claim (1) submits, on average, less than 10 claims per month, or (2) furnishes services only outside of the U.S. territory. See our response to comments in section III of this preamble for further discussion regarding these additional exceptions.

E. Enforcement

ASCA's amendment to section 1862(a) of the Act prescribes that ''no payment may be made under Part A or Part B of the Medicare Program for any expenses incurred for items or services'' for which a claim is submitted in a non-electronic form. Consequently, absent an applicable exception, paper claims submitted to Medicare will not be paid.

We specified that the Secretary may review entities that bill Medicare non-electronically. We stated that entities determined to be in violation of the statute or the interim final rule would be subject to claim denials, overpayment recoveries, and applicable interest on overpayments.

F. Effective Date

In accordance with section 3(b) of ASCA, we specified, in § 424.32(d)(5) of the regulations, that the effective date for these amendments would be for claims submitted on or after October 16, 2003.

III. Analysis of and Responses to Public Comments

We received 17 timely public comments on the August 15, 2003 interim final rule. Based upon some of the comments we received from members of the health care provider community who bill Medicare, there remain questions about Medicare's electronic claim submission requirement and how this rule applies in certain situations. Additional information was provided through Medicare manual instructions to FIs and carriers (Transmittal 44, CR 2966, December 19, 2003, which may be found at *www.cms.hhs.gov/manuals/*). Several providers are uncertain about how to determine if they meet the definition of ''small provider of services or small supplier,'' especially when deciding who should be included in the ''full time equivalent'' (FTE) employee calculation. Furthermore, some providers have questions concerning whether they are required to submit a request to HHS for a small provider waiver, which would allow them to continue submitting their claims to Medicare on paper.

A. General Issues

Comment: One commenter stated that the August 15, 2003 interim final rule did not provide sufficient time for providers to comply with the October 16, 2003 statutory effective date and that we should change the implementation date.

Response: We understand the commenter's concern. However, we are not able to change the effective date of implementation and compliance, because the October 16, 2003 effective date is mandated by the statute.

B. Determining Small Provider Status

To qualify for a waiver as a small provider of services or small supplier, and thus, be permitted to continue billing Medicare on paper, the entity submitting a claim must be either: (1) A provider of services with fewer than 25 FTEs that submits its claims to a Medicare FI; or (2) a physician, practitioner, facility, or supplier with fewer than 10 FTEs who bills a Medicare carrier or Durable Medical Equipment Regional Carrier (DMERC).

Comment: Several commenters believe many in the provider community remain unaware that providers do not need to request a waiver for a small provider exception from Medicare electronic claims submission. In addition, other commenters requested a small provider waiver.

Response: Providers who in good faith believe they qualify as ''small providers of services or small suppliers'' automatically qualify for the small provider waiver unless, upon subsequent review, the Department determines that the waiver requirements in fact are not met. In that case, if the Department finds that none of the exceptions applies, the provider must submit all claims to Medicare electronically. Providers must assess their own situation and determine for themselves whether they meet the small provider criteria.

Small providers of services and small suppliers may elect to submit some of their claims to Medicare electronically, and some claims on paper. Submission of some claims electronically does not revoke or cancel their status as a small provider of services or small supplier,

nor obligate them to submit all of their claims electronically. (More information about this will be published through the Medicare contractors. The first in a series of publications was Transmittal 44, CR 2966 dated December 19, 2003.)

Comment: Several commenters requested additional guidance on the term ''FTE,'' including direction on who is considered an FTE and how the number of FTEs should be calculated for a small provider of services or small supplier. One commenter suggested that only clinical staff should be included in the FTE count. Other commenters believe owners of practices should not count toward the FTE total.

Response: ASCA and its implementing regulation do not modify pre-existing laws or employer policies defining full-time employment. Employers have established policies and practices, subject to State and Federal laws, which define ''full-time equivalent'' and provide methods for calculating the number of hours their employees must work on average on a weekly, biweekly, monthly, or yearly basis to constitute a ''full-time equivalent'' employee. Some employers classify employees who work an average of 32 hours per week as one FTE, whereas other employers consider only employees who work 35 to 40 hours per week on average as one FTE. An employee who works an average of 40 or more hours a week would virtually always be considered full-time and one FTE, but employees who work fewer hours weekly could also be considered full-time and one FTE according to the policies of, and laws applicable to, a different employer.

Everyone on staff for whom a health care provider withholds taxes and files reports with the Internal Revenue Service (IRS) using an Employer Identification Number (EIN) is considered an employee including, if applicable, the physician(s) who owns a practice and provides hands-on services, and those support staff who do not furnish health care services but do retain records of, perform billing for, order supplies related to, provide personnel services for, and otherwise perform support services to enable the provider to function. Unpaid volunteers would not be considered employees for purposes of calculating FTEs. Individuals who perform services under independent contract for a provider, such as individuals employed by a billing agency or medical placement service, for whom a provider does not withhold taxes, are not considered members of a provider's staff for FTE calculation purposes when determining whether a provider of services or supplier can be considered as ''small'' for electronic billing waiver purposes.

Medical staff members may sometimes work part-time, or may work full-time but their time is split among multiple providers. Part-time employee hours must also be counted when determining the number of FTEs employed by a provider. For example, if a provider has a policy that anyone who works at least 35 hours per week on average qualifies as full-time (that is, as one FTE), and has five full-time employees and seven part-time employees, each of whom works 25 hours a week, that provider would have ten FTEs (5+[7 × 25 = 175 divided by 35 = 5]).

In some cases, the employer identification number (EIN) of a parent company may be used to file employee tax reports for multiple providers under multiple Medicare provider numbers. In that instance, it is acceptable to consider only those staff, or staff hours worked for a particular provider as identified by Medicare provider number to calculate the number of FTEs employed by that provider. For example, ABC Health Care Company owns hospital, home health agency (HHA), ambulatory surgical center (ASC), and durable medical equipment (DME) subsidiaries. Some of those providers bill intermediaries and some carriers. All have separate provider numbers, but the tax records for all employees are reported under the same EIN to the IRS. There is a company policy that staff must work an average of 40 hours a week to be considered full-time.

Some of the same staff split hours between the hospital and the ASC, or between the DME and HHA subsidiaries. To determine total FTEs by provider number, it is acceptable to base the calculation on the number of hours each staff member contributes to the support of each separate provider by provider number. First, each provider would need to determine the number of staff members who work on a full-time basis under a single provider number only; not more than 40 hours a week should be counted for these employees. Then each provider would need to determine the number of part-time hours a week worked on average by all staff who furnished services for the provider on a less than full-time basis, and divide that total by 40 hours to determine their full-time equivalent total. If certain staff members regularly work an average of 60 hours per week, but their time is divided 50 hours to the hospital and 10 hours to the ASC, for FTE calculation purposes, consider the person as one FTE for the hospital and .25 FTE for the ASC.

In some cases, a single provider number and EIN may be assigned, but the entity's primary mission is not as a health care provider. For instance, a grocery store's primary role is the retail sale of groceries and ancillary items including over-the-counter medications, but the grocery store has a small pharmacy section that provides prescription drugs and some DME to Medicare beneficiaries. A large drug store has a pharmacy department that supplies prescriptions and DME to Medicare beneficiaries, but most of the store's revenue and most of their employees are not involved with prescription drugs or DME and concentrate on non-related departments of the store, such as groceries, film development, cosmetics, electronics, cleaning supplies, etc. A county government uses the same EIN for all county employees but their health care provider services are limited to furnishing of emergency medical care and ambulance transport to residents.

For FTE calculation purposes, it is acceptable to include only those staff members of the grocery store, drug store, or county government involved with, or that support the provision of, health care in the FTE count when assessing whether a small provider waiver may apply. Support staff who are to be included in the FTE calculation in these instances include, but are not necessarily limited to, those that restock the pharmacy or ambulance, order supplies, maintain patient records, or provide billing and personnel services for the pharmacy or emergency medical services department if under the same EIN. FTEs should be calculated according to the number of hours on average that each staff member contributes to the department that furnishes the services or supplies for which the Medicare provider number was issued.

Neither unpaid volunteers nor individuals that perform services for a provider under independent contract, such as individuals employed by a billing agency or medical placement service, for whom a provider does not withhold taxes, should be considered toward an entity's FTE count when determining if a provider of services or supplier can be considered as ''small'' for electronic billing waiver purposes.

C. Contingency for Paper Billers

Comment: Several commenters requested that the Medicare HIPAA contingency plan extend to paper claims so as to avoid cash flow problems among providers.

Response: The ASCA enacted on December 27, 2001 (Pub. L. 107–105)

requires the electronic submission of Medicare claims in an electronic form specified by the Secretary of the HHS. The statute waives this requirement only in limited situations, which are detailed in § 424.32 of this regulation. The ''electronic form'' specified by the Secretary generally means the electronic transactions and code sets standards adopted as part of the HIPAA as detailed in 45 CFR parts 160 and 162.

In response to HHS contingency plan guidance for the electronic transactions and code sets standards under HIPAA, issued on July 24, 2003, Medicare announced its HIPAA contingency plans on September 23, 2003. Medicare's contingency plans allowed for the submission of claims in non-compliant electronic formats on and after October 16, 2003, for an unspecified period of time. However, Medicare has revised its contingency plan; it is paying electronic, HIPAA non-compliant claims no sooner than 27 days after receipt, beginning with claims received on or after July 1, 2004. Continued paper submission of Medicare claims is not a part of Medicare's HIPAA transactions contingency plan. The statute affords no latitude for those who do not meet one of the exceptions, but Medicare will take into consideration the good faith efforts by a provider to comply with the electronic billing requirement when enforcing the provision.

Comment: One commenter expressed concerns that Medicare would not be able to handle an increase in paper claims submission if a larger portion of providers eligible for the ''small provider of services or supplier'' waiver opted to continue, or drop back to, paper claims submission.

Response: Approximately 98 percent of claims submitted to FIs, and 83 percent of carrier claims are electronic. With the benefits and efficiencies gained through electronic billing, we do not believe that electronic billers who are eligible to bill on paper will indeed revert to paper. Paper claims are more cumbersome to complete and are paid less timely than electronic claims. Moreover, we do not expect difficulty with Medicare contractors' ability to handle paper claims if there were an increase in volume. Since the interim final rule's October 16, 2003 effective date, Medicare contractors have not experienced any problems in receiving and processing electronic claims, and we have not observed any increase in electronic billers who are eligible to bill by paper reverting to paper claims submissions.

D. Definition of Initial Medicare Claim

We received a number of comments related to our definition of ''initial Medicare claim.'' In the interim final rule, this term was defined in § 424.32(d)(1)(v) as a claim submitted to Medicare for payment under Part A or Part B of the Medicare program for the first time for processing, including for secondary payment purposes. Some disagree with our decision to require electronic submission of Medicare Secondary Payer (MSP) claims. We have responded to comments submitted on this definition below and provided added clarity. Some commenters also expressed concerns with their ability to submit an electronic MSP claim with a paper attachment.

Comment: We received one comment on resubmission of initial Medicare claims. The commenter was concerned that claims submitted before the compliance deadline of October 16, 2003 on paper and then resubmitted after the deadline on paper would be rejected.

Response: We understand the concerns of the provider community regarding resubmission of claims previously submitted on paper in an electronic format; however, the statute does not afford us any flexibility in allowing for paper claims submission following the compliance deadline.

We have interpreted the intent of the statute to mean claims submitted to the Medicare claims processing system for the first time, including claims submitted after having been previously rejected (which were not previously considered as submitted claims since they were never accepted into the processing system), claims with paper attachments, demand bills, claims where Medicare is secondary and there is only one primary payer, and non-payment claims, as claims that must be submitted electronically barring any waiver or exception. Initial Medicare claims do not include adjustments submitted to intermediaries on previously submitted claims or appeal requests.

Comment: One commenter expressed concerns with our inclusion of a claim sent to Medicare for secondary payment (MSP) purposes in our definition of ''initial Medicare claim.'' They argued that although primary claims and MSP claims use the same HIPAA 837 standard, the HIPAA regulations make a distinction between the two transactions and, as a result, MSP claims should be treated differently than other Medicare claims.

Response: While MSP claims were not specifically highlighted, the statutory language does not exclude them from consideration as initial Medicare claims. Furthermore, we do not believe that MSP claims should be treated as a different type of claims transaction for purposes of Medicare electronic claims submission, because submission of a secondary claim would still constitute an initial submission of a claim to Medicare. Therefore, we have interpreted the statute to mean they must not be excluded from the electronic submission requirement. Our definition of an ''initial Medicare claim'' is consistent with this interpretation.

Claims submitted to Medicare when there is more than one primary payer must be submitted on paper as it is difficult to submit service level data for more than one primary payer electronically at this time. The only alternative is for providers to submit those claims to Medicare on paper with copies of the explanation of benefits (EOBs)/remittance advices (RAs) from the primary payers attached.

Comment: We received comments from providers concerning submission of EOBs/RAs. For instance, one commenter was under the impression that an 835 electronic remittance advice transaction is needed to submit an 837 MSP claim. The commenter proposed as an alternative that the electronic submission of claims for which Medicare is secondary be phased in and only required when providers receive an 835.

Response: In order for a provider to be reimbursed for an MSP claim, the provider must submit to Medicare certain payment information contained in the EOB/RA from the primary payer(s). We encourage providers to work with their payers to receive the remittance advice in the 835 electronic format, but that is not mandated by HIPAA or ASCA. A provider may receive this information from the primary payer(s) either on paper or electronically. A provider does not need to receive an 835 electronic remittance advice transaction from a primary payer, however, in order to generate a secondary claim for Medicare.

E. Attachments

Comment: We received some comments on timely reimbursement of electronic claims submitted with paper attachments. In one case, a provider believed that it was unable to receive reimbursement for an electronic claim unless a paper claim was also submitted.

Response: Transmittal 44, CR 2966, December 19, 2003, required Medicare contractors to issue further guidance to providers and submitters on the

submission of electronic claims when there are paper attachments. Providers and submitters who experience difficulty getting their electronic claims that have paper attachments processed must first contact their Medicare contractor. If problems persist, providers and submitters are encouraged to contact their regional CMS office to troubleshoot these issues. Phone numbers for Medicare contractors and CMS regional offices can be found on our Web site at: *http://www.cms.hhs.gov/physicians/default.asp.*

Comment: Another commenter was concerned with Medicare connecting paperwork and hard copy EOBs with an electronic claim, resulting in untimely reimbursement and extra follow-up time.

Response: Once the electronic claims attachment standard is adopted and entities have properly implemented it, this issue will be resolved. In the meantime, and prior to the claims attachment standard compliance date, paper attachments must be properly associated with the corresponding electronic claims by incorporating correct and appropriate data and indicating in the electronic claims transaction that separate paper documentation is being sent. Separate submission of electronic claims and related paper attachments should consequently not cause a discernable delay in payment of claims. Providers and other electronic claim submitters are advised to contact the Medicare contractor to which they submit their claims if they have further questions about the locally published process.

Pending issuance of the future instructions concerning submission of medical records for electronic claims, providers and Medicare contractors can continue current policies and practices regarding submission of attachments with claims, whether in a proprietary format, on paper, via fax, or by other means.

F. Unusual Cases

While commenters expressed their support for electronic claims submission, they were also pleased with the flexibility afforded by the outlined exceptions, which permit continued paper claims submission such as in the case of roster vaccinations billing and certain Medicare demonstration claims. We received a number of comments on ''unusual cases,'' asking for further clarity.

Comment: One commenter stated the interim final rule was unclear concerning whether paper claims would be allowable after the compliance deadline. The commenter proposed designating the HIPAA transition period to a largely electronic submission environment for Medicare, an ''unusual case.''

Response: The ''unusual case'' provision is intended to operate as an exception to a situation in which Medicare providers are generally submitting claims electronically. The commenter, however, proposes making the exception to be the norm, which would appear to be contrary to what the Congress intended.

Comment: Another commenter suggested we expand the criteria for the service interruption to include power outages, which result in a phone or communication service interruption.

Response: We have interpreted an ''unusual case'' exception to be one applied to a temporary situation outside of a provider's control that effectively precludes electronic submission of claims. For a situation to fall under an ''unusual case'' exception, the circumstances must be truly out of the ordinary and they must genuinely prevent the provider from complying with the applicable electronic submission requirement.

In the August 15, 2003 interim final rule, we described three situations that we believe meet the criteria for an unusual case exception. The three situations we listed were submission of dental claims, a service interruption outside the control of the submitter, and other extraordinary circumstances deemed satisfactory to the Secretary.

We also specified that the service interruption exception is limited to submitters who have experienced a loss of phone or communication service. We agree with the commenter that it may be possible for an interruption in the mode of service used to submit a claim to occur resulting from something other than inclement weather or phone company problems. We further recognize that a loss of power could occur that does not result in the loss of the use of a phone or other communication services but precludes or severely inhibits a submitter from sending claims electronically. In this rare and unanticipated situation, a waiver may be granted for service interruption. This is addressed in Medicare manual instructions, Transmittal 44, CR 2966, December 19, 2003.

Based on comments received and our assessment of the reasonableness of an entity's ability to comply, we have identified the following two additional ''unusual case'' situations we consider to be eligible for a waiver under § 424.32(d)(4). First, an unusual case is deemed to exist when an entity submits fewer than 10 claims to Medicare per month on average. We believe entities that submit such low volumes of Medicare claims are ''unusual cases'' in that the volume does not support mandating the acquisition of hardware/software to submit claims electronically. The exception for small providers indicates to us the Congress's intention that the electronic submission requirement not apply to providers for whom the electronic submission requirement of claims would be truly burdensome. This would be the case for providers who submit fewer than 10 claims per month, as the cost of converting their billing systems for so few claims would be uneconomic. If the volume increases, then electronic claim submission would be required, unless another exception applies. This is self-assessable and the entity need not submit a waiver request. Second, it is deemed to be an unusual case when the entity submitting a claim furnishes services only outside of the U.S. territory. The HIPAA transactions and code sets standards are consensus-based, American National Standards Institute (ANSI)-accredited standards that rely upon hardware and software that meet certain specifications, which may not be readily available outside of the U.S. territory. We believe that entities furnishing services solely outside of the U.S. in many cases could not properly submit electronic claims. Moreover, we think those entities are few in number and truly constitute an unusual case. This is also self-assessable and the entity need not submit a waiver request. Section 424.32(d)(4) is revised to include these two additional ''unusual case'' situations.

Instructions to the Medicare contractors that describe how to go about requesting an ''unusual case'' waiver were issued December 19, 2003 (Transmittal 44, CR 2966).

Comment: One commenter urged Medicare contractors to furnish all providers and mass immunizer billers and suppliers with free electronic roster billing software, in order to reduce dependence on paper roster billing and increase cost savings to the program. Another commenter suggested there remains a need for continued outreach to educate providers on these topics.

Response: We are considering these suggestions; however, claims submission for roster billing for vaccinations is still considered exempt from the electronic claims submission requirement. To the extent certain Medicare contractors' software permits electronic submission of roster bills, we

encourage providers to use it; however, it is not required.

We have issued instructions to the Medicare contractors that describe in greater detail how this regulation is operationalized, including instructions for requesting an ''unusual case'' waiver (refer to Transmittal 44, CR 2966, dated December 19, 2003). In addition, Medicare contractors will be instructed to include information on their provider Web sites and in their newsletters that addresses these and other issues pertinent to operationalization of the regulation.

G. Testing With Medicare

Comment: Several commenters expressed concerns regarding low HIPAA transaction testing rates between providers and Medicare.

Response: Medicare testing has increased over the past several months and rose steadily in the weeks leading up to the HIPAA compliance deadline. As of September 10, 2004, approximately 97.7 percent of inbound claims were being submitted to Medicare in the HIPAA-compliant format.

Medicare invoked its HIPAA contingency plan to afford added flexibility to providers and submitters who were not ready to submit claims in the HIPAA electronic format on the deadline of October 16, 2003, to continue to prepare for the electronic claims submission requirement in the adopted formats. Many Medicare contractors were ready to test the 837 and 835 for 6 or more months before the October 16, 2003 deadline. Medicare's revised HIPAA contingency plan encourages further HIPAA compliance because, effective July 1, 2004, non-compliant electronic claims are paid no sooner than 27 days after the date of receipt while compliant claims are paid sooner.

Comment: Another commenter requested that Medicare relax the technical edits to HIPAA transactions so that claims may continue to be processed after the deadline.

Response: We believe that Medicare has tried to make reasonable accommodations regarding its technical edits, while remaining considerate of how changes in its claims processing systems may affect various other submitters (some of whom could be adversely affected by inappropriate technical edits).

H. Impact of HIPAA Standards

Comment: Several commenters expressed concerns surrounding the overall level of readiness by the industry for implementing the HIPAA transaction and code set standards due to possible industry variations in the interpretation of the standards. They were concerned that unresolved questions pertaining to complying with the HIPAA standards could impact a provider's ability to submit claims electronically and, therefore, comply with the Medicare electronic claims submission requirement.

Response: We recognize that a number of HIPAA implementation issues exist and present obstacles to HIPAA compliance; however, these issues and obstacles extend beyond the scope of this regulation. We are addressing these concerns through other channels. Medicare's HIPAA contingency plan may afford some additional latitude to entities as they work toward compliance with the HIPAA standards. In the meantime, Medicare's contingency plan allows for providers, under specified circumstances, to continue to send HIPAA non-compliant electronic claims to Medicare and, therefore, facilitate compliance with the ASCA mandate.

I. Enforcement

Comment: One commenter identified a few issues related to compliance with HIPAA's electronic transactions and code sets standards such as a request for new data elements, which could impact compliance with the Medicare electronic claims submission requirement.

Response: For any change to a standard to become effective and compliance required, the designated standard maintenance organization would first have to hold public hearings and ultimately the Secretary would need to adopt the change formally.

Comment: Another commenter suggested we find an alternate term for ''audit'' when discussing enforcement.

Response: We accept this comment; therefore, in the future we will reference the Secretary's ability to ''audit'' an entity as the ability to ''review'' an entity for compliance. In addition, the preliminary enforcement process will be conducted on a prospective basis and will focus on providers that appear to be submitting extraordinarily high numbers of paper claims. If a review establishes that a provider is submitting paper claims without properly qualifying for a waiver, the provider will be notified that any paper claims submitted after a certain date will be rejected by Medicare. However, providers will be afforded a reasonable amount of time under the circumstances to come into compliance with the electronic claim submission requirement.

A future Medicare manual instruction to Medicare contractors will explain the criteria for review and the enforcement requirements for providers that are determined to have incorrectly submitted paper claims.

J. Costs To Convert From the Submission of ''Paper Claims'' to ''Electronic Claims''

Comment: One commenter requested that we provide a more realistic estimate of the costs associated with converting from paper claims submission to electronic claims submission. Several commenters believe that the requirement to submit Medicare claims electronically represents a costly expense without the potential for reimbursement to providers.

Response: When considering this comment, we reviewed again the basis for the cost estimate and considered further possible paperwork burden and capital investment issues in the impact analysis of the interim final rule. We concluded that the cost estimate remains the most accurate, given the data that were available.

Due to the high number of Medicare claims already submitted electronically and the waivers issued for ''small providers,'' moderately sized providers are most likely to be affected by this requirement. While we do agree that a provider's staff will need some time to become fully familiar and proficient with the use of the free/low cost Medicare billing software, a physician's office (which presently submits claims on paper) can purchase hardware to enable compliance with this requirement for less than $1,000. Although the electronic conversion will not be reimbursed, we continue to believe that we have tried to provide the most economical software for providers, and we will even provide free technical support on the installation and usage through our Medicare contractors.

K. Outside the Scope of This Rule

Comment: One commenter requested that Medicare guidance communications or program changes to physicians be completed on paper rather than electronically.

Response: Although we appreciate this commenter's concern, because these issues were not addressed in the August 15, 2003 interim final rule, we are not able to address this concern in this final rule.

Comment: Another commenter suggested that we reimburse for nursing service claims.

Response: Although we appreciate the commenter's concerns, nursing service claim reimbursement was not covered

in the August 15, 2003 interim final rule. Therefore, we are unable to address this concern in this final regulation.

IV. Provisions of This Final Rule

With some minor editing and modification to include two additional ''unusual cases'' for an automatic exception and changed ''unusual circumstances'' to ''unusual cases'', we are adopting all of the provisions set forth in the August 15, 2003 interim final rule as final.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) 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 PRA 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.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

The information collection requirements and associated burdens in § 424.32 are subject to the PRA. The burden of submitting the information required is addressed under OMB approval number:

0938–0866, HIPAA Standards for Coding Electronic Transactions, with a one-time burden of 34,000,000 hours. The current approval expires 5/31/05.

0938–0279, Medicare Uniform Institutional Provider Bill, with an annual burden of 1,666,208 hours (form CMS–1450). The current approval expires 12/31/05.

0938–0008, Common Claim form, instructions, and supporting regulations at § 414.40, § 424.32, and § 414.40, with an annual burden of 44,189,007 hours (form CMS–1500). The current approval expires 3/31/06.

Approximately 205,409 providers and suppliers will be affected by this final rule and will have to change the format for the claims they submit. They will incur some costs, either that of switching to clearinghouses, which will not affect the time it takes to submit the information for a claim, but may cost them approximately $.30 per claim, or that of purchasing computer equipment, which we estimate at $500 to $1,000.

In the final rule published to implement the electronic transactions and code sets standards, we estimated that it would take an average of 10 hours per entity to switch over to the mandated standard transaction. (The switch could be from paper to electronic or from another electronic format to the standard format.)

For purposes of this discussion, we are estimating that 37.5 percent of the affected providers and suppliers (that is, those not meeting one of the exceptions) already own computers and will not incur capital costs. We are also estimating that 50 percent of the affected providers and suppliers will start using a clearinghouse or billing service, which will not impose any capital costs subject to the PRA. The remaining 12.5 percent (25,676) will buy computers at an average of $750, for a total capital cost of $19.3 million.

On the other hand, the providers and suppliers who own or who will buy a computer will require less time to submit claims. Form CMS–1450 takes approximately 9 minutes to submit in hard copy and 0.5 minutes to submit electronically; form CMS–1500 takes 15 minutes and 1 minute, respectively.

If 50 percent of the entities that will bill us directly are responsible for 25 percent of the paper bills (we assume that half of the bills are submitted by entities that will be excepted from the requirements, and that 25 percent will be submitted through an intermediate party), they will save 7,651,089 million hours for form 1500 and 129,196 hours for form 1450. Mailing costs will be reduced by approximately $.40 per claim on average and the cost of the forms by $.03 for the form 1450 and form 1500 (the third form is furnished by us).

As required by section 3504(h) of the PRA of 1995, we have submitted a copy of the revision to § 424.32 to OMB for its review of the information collection requirements. The revision is not effective until OMB has approved it.

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 and Issuances Group, Attn: Jimmy Wickliffe, CMS–0008–F, Room C5–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, Desk Officer, CMS–0008–F.

Comments submitted to OMB may also be e-mailed to the following address: e-mail: *christophermartin@omb.eop.gov*; or faxed to OMB at (202)395–6974.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

For the purpose of this analysis, we use a pre-statute baseline; therefore, all costs and benefits identified in this impact analysis are attributed to this final rule. Nevertheless, the ASCA mandates most aspects of this final rule. In particular, the ASCA requires Medicare providers to submit claims electronically and stipulates the exceptions that will and may be granted. However, we did have discretion in setting the conditions for exceptions, and believe that these exceptions reduce the burden relative to the burden that was imposed by ASCA without this implementing regulation.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This is not a major rule. While additional costs will be imposed on those entities that do not meet any of the exception requirements and which must purchase the capability to bill Medicare electronically, we estimate the impact to be less than $100 million. Our estimates of the cost impact are based on the following analysis. (Note: The primary sources of data contained herein are the Medicare Program's ''Contractor Reporting of Operational Workload Data'' (CROWD), the ''2002 CMS Statistics'' Handbook, and the Year

2000 ''Statistics of U.S. Business'' issued by the U.S. Census Bureau.)

The Administrative Simplification provisions under HIPAA establish the standards for electronic data transmission when transactions are conducted electronically, but they do not require physicians, practitioners, facilities, suppliers, and other health care providers to transmit claims and other transactions electronically. ASCA, however, does require Medicare physicians, practitioners, facilities, suppliers, and other health care providers (except those for which this rule provides for an exception) to submit claims electronically to Medicare. Consequently, Medicare claims must be submitted in the HIPAA-prescribed electronic format. Thus, this rule will only have an impact on that group of entities that now submit paper claims to the Medicare Program and that do not fall into one of the excepted groups.

Approximately 139 million paper claims were submitted to Medicare in FY 2002. This represents about 13.9 percent of all claims processed. Broken down between paper claims submitted to FIs and carriers, the number of paper claims in FY 2002 was 3.4 million and 136 million, respectively (source of data is CROWD).

Over the past 4 years, Medicare's electronic media claims (EMC) rate has slowly grown at an average of 0.3 percent per year for FIs and 0.9 percent per year for carriers (source of data is CROWD). We do not expect a change in this trend for the immediate future. Therefore, we assume that similar changes will continue for FY 2004, the first year of implementation of mandatory Medicare electronic media claims (EMC). Using workload growth projections from our FY 2004 budget submission to the Congress, we estimate the FY 2004 volume of paper claims impacted by the ASCA, factoring out Medicare's continuing trend of higher EMC rates, will be 2.5 million for Medicare FIs and 133.7 million for carriers. These volumes could be even smaller in FY 2004 due to the simultaneous implementation of HIPAA. However, the impact of HIPAA, coupled with Medicare's EMC trends, cannot be quantified, though the impact would only further reduce the cost/savings impact of ASCA and further support that a RIA is not needed.

We do not know at this time how many providers will be excepted from the ASCA requirements, but projections have been made based upon the percentage of health care providers reported in the Census Bureau's ''Year 2000 Statistics of U.S. Businesses,'' which includes data on the number of health care providers by type with fewer than 20 employees and the numbers of physician, practitioner, and supplier entities with fewer than 10 employees. The Census figures do not differentiate between part-time and full-time employees, and would be expected to result in inflated numbers on the whole when applied to Medicare, but that is acceptable for impact assessment purposes. The Census did not have a category for fewer than 25 employees; fewer than 20 employees was their closest statistic. Overall, the Census data would still be reliable indicators of the anticipated worse case scenario of the maximum number of Medicare providers, physicians, practitioners, and suppliers likely to be impacted by this regulation. The percentages of small providers, physicians, practitioners, and suppliers based on employment numbers for the universe of all U.S. providers, physicians, practitioners, and suppliers should be comparable to the percentage of the subset of those providers that bill the Medicare program.

The Census figures did not include each of the same provider, physician, practitioner, and supplier breakouts as tracked by Medicare's statistics, but the Census figures did include the largest provider, physician, practitioner, and supplier types. The Census figures included 90 percent of all Medicare providers, physicians, practitioners, and suppliers by type. The provider types, tracked differently by the Census Bureau and us, include regional referral centers, Christian Science Sanitoria, rural health clinics, critical access facilities, and hospices. The ''2002 CMS Statistics'' directory (number of providers) and the 2000 Census data health care establishment totals (percentage of providers with less than 20 employees) reported the following:

Provider type	Number of providers	Percentage of providers with less than 20 employees	Likely number excepted
Hospitals	6,031	10.6	639
Home Health Agencies	7,099	69.2	4,913
ESRD Facilities	3,991	16.6	663
Skilled Nursing Facilities	14,841	25.7	3,814
Totals	31,962	31.4	10,029

Type of physician, practitioner or supplier	Number of providers	Percentage of providers with less than 10 employees	Likely number excepted
Clinical Labs	168,333	41.4	69,690
Ambulatory Surgical Centers	3,147	34.9	1,098
Physicians	567,412	70.6	400,593
All Other Practitioners	297,967	71.8	213,940
Totals	1,036,859	66.1	685,321

As there was a 10 percent difference between the Census provider, physician, practitioner, and supplier types and the Medicare provider types, due to differences in type of collection, the numbers impacted would need to be increased by 10 percent to account for the difference. Increased by 10 percent, approximately 11,032 (31.4 percent) of all Medicare providers, and 753,853 (66.1 percent) of all Medicare physicians, practitioners, and suppliers

could qualify for an exception of the electronic claim-filing requirement based on provider size, leaving approximately 24,126 providers and 386,692 physicians, practitioners, and suppliers (a total of 410,818) potentially affected by the ASCA Medicare requirement nationally.

Approximately 98 percent of providers, and 83 percent of physicians, practitioners, and suppliers already submit claims to Medicare electronically, and are expected to continue doing so, so the total impacted must be further reduced to determine the approximate number of current paper claim submitters that would likely be affected. It is reasonable to assume that the majority of the paper claims received by Medicare are submitted by smaller providers, physicians, practitioners, and suppliers. As a result, it would not be accurate to reduce the number of affected providers by the full 98 percent or 83 percent. In the absence of reliable statistics to project the current source of all paper claims, however, the number of providers potentially affected by the mandatory Medicare electronic claim requirement will be conservatively estimated at a maximum of 50 percent of the entities that would not qualify for a waiver. This leaves 12,063 providers and 193,346 physicians, practitioners, and suppliers (a total of 205,409) that would need to begin submitting claims to Medicare electronically.

Statistics collected for PRA clearance of the Medicare paper claim forms and referenced in the ''Collection of Information Requirements'' section of this preamble indicate that, in the absence of a mandatory electronic claim requirement effective for FY 2004, 2.5 million paper claims are expected to be sent to Medicare intermediaries and 133.7 million paper claims are to be sent to Medicare carriers.

Prior to HIPAA, many Medicare providers used billing agents or clearinghouses to bill the Medicare program. Many providers, physicians, practitioners, and suppliers that submitted paper claims indicated anecdotally that they used paper as they would rather avoid the ''hassle'' of dealing with the multiple electronic claim formats required by payers, and the need to have staff keep abreast of the updates to those formats. HIPAA largely eliminates format differences among payers, but there will always be differences concerning use of certain ''situational'' segments and data elements in the formats. It is reasonable to assume that up to half (205,409 × 50 percent = 102,704) of those entities that do not submit claims to Medicare electronically today would prefer to contract with a third party to deal with such differences on their behalf.

A small sampling of Medicare contractors indicated an average cost of $0.30 per claim for billing agent and clearinghouse services. The total cost to physicians, practitioners, facilities, suppliers, and other health care providers to use a billing agent or clearinghouse should not be more than $7,055,895 (that is, $.30 × {the sum of 2.5 million paper claims sent to intermediaries as estimated previously for FY 2004 multiplied by the 68.6 percent of providers that would not meet the exception criteria, plus 133.7 million paper claims estimated to be sent to carriers multiplied by the 33.9 percent of physicians, practitioners, and suppliers that would not meet the exception criteria}).

Finally, in regard to the balance of 102,704 (205,409 × 50 percent) providers, physicians, practitioners, and suppliers that would not be expected to meet the criteria to submit paper claims, we conservatively estimate that approximately 75 percent of these already own personal computers that are used to prepare the paper claim forms they currently submit to Medicare. Very few hand-written or manually typed claims are submitted to Medicare. Although many paper claim submitters have not used personal computers for electronic billing, they have used them for claims preparation, patient scheduling, and other aspects of their practice.

We estimate that, at a maximum, the remaining total of 25,676 (25 percent of 102,704) providers, physicians, practitioners, and suppliers will obtain personal computers to allow them to submit their claims directly to Medicare electronically. A recent review of computer costs in the marketplace indicated that personal computers sufficient to meet the mandatory electronic claim requirement could be obtained for $500 to $1,000 for hardware (personal computer, monitor, printer, and modem). Billing software is available free or at low cost (less than $25 for shipping and handling) from Medicare. At the average rate of $750, it would cost $19.3 million to purchase 25,676 personal computer systems. More expensive equipment and peripherals could be used, but would not be necessary for basic compliance. Therefore, the total maximum cost should be no higher than $26.4 million ($7.1 million for users of clearinghouses or billing services, and $19.3 million for those that obtain personal computers).

Following the HIPAA savings calculation used in the Transaction Rule, but projected to FY 2004 to account for inflation, a savings of $615 per provider could result in a total provider savings of approximately $15.8 million (that is, 25,676 times $615).

We note that the Transaction Final Rule (65 FR 50353 through 50359) used a 10-year timeframe to capture the full extent of costs and savings that could be attributed to the use of the transactions adopted under HIPAA. Data from the 2000 edition of Faulkner and Gray's ''Health Data Directory,'' from a Workgroup for Electronic Data Interchange study report, and from the Department of Labor was used in those calculations to determine total claims in the health care industry, costs to use the transactions electronically, savings expected to be realized, the historical growth rate for claims overall as well as electronic claims, the percentage of electronic health care claims nationally in 2000, and the anticipated inflation rate for the 10-year period.

Thus, we estimate that the total cost-plus savings would be approximately $42.2 million, which is less than the $100 million threshold for an RIA. Again, these total costs and savings attributable to ASCA could be even less if we were able to factor in the impact HIPAA may have on electronic billing growth.

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. According to the Small Business Administration's (SBA's) data, approximately 95 percent of offices of physicians are considered small businesses (see the Small Business Administration's final rule titled ''Small Business Size Standards, Health Care,'' published in the **Federal Register** on November 17, 2000, 65 FR 69432). Most practitioners, facilities, suppliers, and other providers are small entities either because of nonprofit status or because of having revenues of $6 million to $29 million or less in any 1 year. For purposes of the RFA, all physicians, practitioners, facilities, suppliers, and other health care providers that serve Medicare beneficiaries are considered to be small entities. However, as stated earlier, this rule in and of itself does not impose a regulatory burden. The ASCA mandates most aspects of this rule, in particular, the ASCA requires Medicare providers to submit claims electronically and stipulates the exceptions that will and may be granted. We did have discretion however, in setting conditions for exceptions, and believe these exceptions reduce the burden relative to the burden

that may have been imposed by ASCA without this implementing regulation. If this final rule has an average annual impact that exceeds 3 to 5 percent of total costs or revenues, it would be considered significant according to the Department of Health and Human Services (HHS) Guidelines. However, at a cost of $750 per computer and savings of $615 ($750–$615), we expect this to fall significantly below the revenue rule given by the HHS. Therefore, we have determined that this rule will not have a significant economic impact on a substantial number of small entities. Individuals and States are not considered small entities. Therefore, no regulatory relief options are considered.

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. As indicated above, this rule could have an impact on those small rural hospitals that bill Medicare and that do not meet one of the exceptions. However, we do not believe the impact is significant since the cost of compliance is relatively small ($500 to $1,000) and small rural hospitals may be able to qualify for the small provider exception. Therefore, no regulatory impact analysis is required as the impact on small rural hospitals is not significant.

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 final rule will not have an impact of that size on State, local, or tribal governments or on the private sector. Instead, the primary impact on State, local, or tribal governments, or the private sector will be that entities that must begin billing Medicare electronically as a result of the ASCA are likely to use that capability to also bill other payers (such as State, local, or tribal governments and the private sector).

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State or local governments for the reasons noted in this section of this final rule.

B. Anticipated Effects

1. Effects on Beneficiaries, Physicians, Practitioners, Facilities, Suppliers, and Other Health Care Providers

The anticipated effects on Medicare's beneficiaries will be that additional attention and services may be provided by their health care physician because, for example, electronic billing should reduce administrative paperwork. (This assertion was made by the medical community in numerous forums over the years, although documentation to this effect is not available.)

The anticipated effects on the entities required to bill electronically will reduce or eliminate paper in their administrative operations, realizing increased efficiencies and indeterminable savings. These savings may be increased by the fact that the Administrative Simplification provisions of HIPAA mandate a standard transaction for electronic claim submissions, and this will facilitate electronic claims submissions to all health care payers. At this time, we do not have additional data to estimate those savings to Medicare physicians, practitioners, facilities, suppliers, and other healthcare providers. As previously stated, there will be a cost incurred by those entities that cannot satisfy one of the exceptions and would be required to bill Medicare in electronic form.

2. Effects on the Medicare and Medicaid Programs

Implementation of this final rule will result in a savings to the Medicare program. If the FY 2004 projected paper claims submissions of 136.2 million (HHS FY 2004 Budget submission to the Congress and estimated electronic media claims rate), are reduced by half and we assume a savings of $1.40 per claim as a result, the program could realize administrative savings of over $95 million per year. (Note: The $1.40 per claim savings is our estimate of savings based upon a 1990 Industrial Engineering Study, contracted by CMS (then HCFA). The study documented that FI paper claims cost about $3.30 more to process than electronic claims and, similarly, carrier paper claims cost about $1.00 more to process than electronic claims. Weighing these differences by the 2004 workloads and combining them yields the $1.40 estimated per claim savings.)

We might expect similar types of savings for the States, which administer the Medicaid Program. That is, Medicare providers who become electronic billers due to ASCA may decide to begin billing Medicaid electronically as well. However, this would depend on which of the affected Medicare physicians, practitioners, facilities, suppliers, and other healthcare providers also bill Medicaid. Again, the fact that the Administrative Simplification provisions of HIPAA mandate a standard transaction for electronic claim submissions will facilitate electronic claims submissions to all health care payers.

C. Alternatives Considered

Section 3 of the ASCA mandated that all Medicare claims on or after October 16, 2003, be submitted electronically. Since the statute requires the electronic submission of claims, no alternatives to electronic submission were considered. However, we are interpreting the statutory provisions of the ASCA to allow for reasonable and limited exceptions to the electronic submission requirement.

D. Conclusion

As described above in section VI.A., this final rule establishes the requirements for implementing the statutory provisions under section 3 of the ASCA. The statute requires, with few exceptions, that physicians, practitioners, facilities, suppliers, and other health care providers that bill Medicare do so electronically. Coupled with the electronic standard transaction requirements under HIPAA, this rule facilitates greater administrative efficiencies for the Medicare program as well as for those that bill Medicare. There will be a cost incurred for those entities that are unable to meet one of the statutory exceptions, but we expect these initial costs to be offset by increased efficiencies and lower ongoing costs attributable to Medicare claims processing.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this regulation.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements

■ For the reasons set forth in the preamble, the interim rule amending 42 CFR part 424 that CMS published on August 15, 2003 (68 FR 48805) is adopted as a final rule with the following amendments:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Amend § 424.32 by—

■ A. Revising paragraphs (d)(1)(v); (d)(1)(vi); (d)(3)(ii), and (d)(4) introductory text.

■ B. Redesignating (d)(4)(iii) as paragraph (d)(4)(v).

■ C. Adding paragraphs (d)(4)(iii) and (iv).

The revisions and additions read as follows:

§ 424.32 Basic requirements for all claims.

(d) * * *

(1) * * *

(v) *Initial Medicare claim* means a claim submitted to Medicare for payment under Part A or Part B of the Medicare Program under title XVIII of the Act for initial processing, including claims sent to Medicare for the first time for secondary payment purposes. Initial Medicare claim excludes any adjustment or appeal of a previously submitted claim, and claims submitted for payment under Part C of the Medicare program under title XVIII of the Act.

(vi) *Physician, practitioner, facility, or supplier* is a Medicare provider or supplier other than a provider of services.

* * * * *

(3) * * *

(i) * * *

(ii) The entity submitting the claim is a small provider of services or small supplier.

(4) *Unusual cases.* The Secretary may waive the requirement of paragraph (d)(2) of this section in unusual cases as the Secretary finds appropriate. Unusual cases are deemed to exist in the following situations:

* * * * *

(iii) The entity submitting the claim submits fewer than 10 claims to Medicare per month, on average.

(iv) The entity submitting the claim only furnishes services outside of the U.S. territory.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 2, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 15, 2005.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the **Federal Register** on November 17, 2005.

[FR Doc. 05–23080 Filed 11–23–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

45 CFR Parts 144, 146, 148, and 150

[CMS–4091–F]

RIN 0938–AN35

Federal Enforcement in Group and Individual Health Insurance Markets

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

ACTION: Final rule.

SUMMARY: This rule makes final an interim final rule that details procedures we use for enforcing title XXVII of the Public Health Service Act as added by the Health Insurance Portability and Accountability Act of 1996, and as amended by the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, and the Women's Health and Cancer Rights Act of 1998. Specifically, we are responsible for enforcing title XXVII requirements in States that do not enact the legislation necessary to enforce those requirements, or otherwise fail to substantially enforce the requirements. We are also responsible for taking enforcement actions against non-Federal governmental plans. The regulation describes the process we use in both enforcement contexts. This final rule deletes an appendix to the interim rule that listed examples of violations of title XXVII and corrects the description of a cross-reference, but makes no substantive changes to the interim final rule.

DATES: These regulations are effective on December 27, 2005.

FOR FURTHER INFORMATION CONTACT: David Mlawsky (877) 267–2323, ext. 61565.

SUPPLEMENTARY INFORMATION

I. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) created a new title XXVII of the Public Health Service (PHS) Act (42 U.S.C. 300gg, *et seq.*) that requires group health plans and health insurance issuers to provide certain guarantees for availability and renewability of health coverage in the group and individual health insurance markets.

HIPAA created a series of parallel provisions that were placed in the Employee Retirement Income Security Act (ERISA), which is within the jurisdiction of the Department of Labor; the Public Health Service (PHS) Act, which is within the jurisdiction of the Department of Health and Human Services; and the Internal Revenue Code, which is within the jurisdiction of the Department of the Treasury. These ''shared provisions'' set forth Federal requirements relating to portability of and access to group health plan coverage, as well as group health insurance coverage provided by issuers. The shared provisions contain rules limiting the use of preexisting condition exclusion periods, and prohibiting discrimination against participants and beneficiaries based on health status.

Section 104 of Title I of HIPAA requires that the Secretaries of the three Departments ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. The Secretaries of the three departments signed and published the MOU in 1999 (64 FR 70164).

HIPAA also added certain provisions governing insurance in the group and individual markets, and with respect to non-Federal governmental plans, which are contained only in the Public Health Service Act and are not within the regulatory jurisdiction of the Department of Labor or the Department of the Treasury.

Under section 101(b) of HIPAA the Department of Labor is not authorized to enforce any of the portability requirements of part 7 of ERISA (the ''shared'' provisions) against a health insurance issuer offering health

insurance coverage in connection with a group health plan, although individuals covered under ERISA can bring suit against the issuer. Also, governmental plans, while they are defined in section 3(32) of ERISA, are exempt from ERISA requirements. (See section 4(b)(1) of ERISA.) Thus, the scope of the MOU is limited, with respect to coordination of enforcement activities, to enforcement of shared provisions. Enforcement of these provisions constitutes only a relatively small portion of our responsibilities.

The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) amended the PHS Act and ERISA (with corresponding provisions in the Tax Code) to provide protections for mothers and their newborn children with regard to the length of hospital stay following childbirth. The Mental Health Parity Act of 1996 (MHPA) further amended the PHS Act and ERISA (with corresponding provisions in the Tax Code) to provide for parity in the application of certain annual and lifetime dollar limits on mental health benefits with annual and lifetime dollar limits on medical/surgical benefits. The Women's Health and Cancer Rights Act of 1998 (WHCRA) amended the PHS Act (and ERISA) to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy. (As used hereafter in this preamble, ''HIPAA'' refers to title XXVII of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996, and later amended by MHPA, NMHPA, and WHCRA).

HIPAA added two preemption provisions to the PHS Act. With respect to HIPAA's preexisting condition exclusion rules, and the special enrollment rights contained in section 2701 of the PHS Act, State law cannot differ in any way from the Federal requirements, except to expand the protections in one of several ways specifically permitted by the statute. (See section 2723(b) of the PHS Act.) With respect to HIPAA's other requirements (except for NMHPA and WHCRA), including the non-discrimination provisions in section 2702 of the PHS Act, State laws are preempted only to the extent they prevent the application of any requirement of HIPAA. (See section 2723(a) of the PHS Act.) In addition, the NMHPA does not apply to health insurance issuers in States that have certain types of laws regulating coverage for the length of post-childbirth hospitalization. WHCRA does not preempt State laws in effect on the date of WHCRA's enactment with respect to health insurance coverage that requires coverage of at least the coverage of reconstructive breast surgery otherwise required under WHCRA.

HIPAA affirms that the States are the primary regulators of health insurance coverage in each State. However, in the event that a State either does not enact legislation that meets or exceeds the Federal requirements, or if it otherwise fails to substantially enforce the HIPAA standards, we enforce the HIPAA requirements that apply to health insurance issuers offering coverage within that State.

We are also responsible for enforcing the HIPAA requirements with respect to non-Federal governmental plans. Non-Federal governmental plans that self-insure, rather than purchasing health insurance coverage may elect exemption from one or more requirements of HIPAA, but must comply with requirements regarding certification and disclosure of creditable coverage.

II. Provisions of the Interim Final Regulations

Subpart A—General Provisions

Section 150.101 Basis and Scope

On April 8, 1997, we published regulations to implement HIPAA by adding 45 CFR parts 144, 146, and 148. Included in those regulations were enforcement provisions. After gaining some experience with direct Federal enforcement in some States, we determined that it was necessary to provide more detail on the procedures that will be used to enforce HIPAA when a State does not do so. Therefore, on August 20, 1999, we published interim final regulations (HCFA–2019–IFC) (64 FR 45786) that added a new part that revised and expanded the provisions contained in § 146.184, § 148.200, and § 148.202. Those sections were deleted.

That new part, 45 CFR part 150, consists of four subparts. Subpart A explains the basis and scope of the regulation and presents definitions that supplement definitions located in 45 CFR 144.103 and 148.103. Subpart B describes how we determine whether to assume enforcement authority in a State and explains the process for transferring authority back to the State. Subpart C describes procedures for assessing civil money penalties. Examples of specific situations that may trigger the assessment are listed in Appendix A to subpart C. Subpart D describes the administrative appeals process.

We refer the reader to the August 20, 1999, interim final rule with comment period for greater detail.

III. Analysis of and Responses to Public Comments

We received no public comments on the August 20, 1999 interim final rule.

IV. Provisions of the Final Regulations

The provisions of this final rule are identical to the provisions of the August 20, 1999, interim final rule with comment period, except that we have deleted the appendix to subpart C that listed examples of specific situations that may trigger the assessment of civil money penalties. We believe the inclusion of that document is unnecessary, in light of the fact that assessments are triggered by breaches of the provisions within the regulation itself.

Additionally, in § 150.311(e), the cross-reference made to the document described in § 150.307 incorrectly identified that document as the notice of intent to assess a penalty. We are correcting that cross-reference in 150.311(e) so it references the notice to the responsible entity or entities described in § 150.307.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

In drafting the interim regulation that this regulation finalizes, we had examined the impacts of the interim final regulation as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. We published a Regulatory Impact Statement addressing all those impacts in the preamble to the interim regulation (64 FR 45786, 45792). This regulation merely finalizes that interim final regulation, and makes no substantive changes to it. Therefore, that Regulatory Impact Statement applies to this final regulation as well, and we refer the reader to it. However, we note that under Executive Order 12866 (58 FR 551735, October 4, 1993), the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory

action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. We have determined that this action is not economically significant for the reasons stated in the preamble to the interim final regulation. The action also does not create any serious inconsistency or interfere with another agency's action or planned action, nor does it materially alter any budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof. Additionally, because this final regulation merely keeps in force an interim regulation already in effect before the publication of this final regulation, and makes no substantive changes to it, this final regulation does not raise any novel legal or policy issues.

We also note that Executive Order 12612 (''Federalism'') has been revoked subsequent to the issuance of the interim final regulation, and has been replaced by Executive Order 13132 (''Federalism''). Executive Order 13132 outlines fundamental principles of Federalism. It requires adherence to specific criteria by federal agencies in formulating and implementing policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Department's view, these final regulations have Federalism implications because they may have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This is because the process set forth in these regulations impacts the relationship between national government and the States. However, in the Department's view, the Federalism implications of these final regulations are minimal. This is evidenced by the fact that no State submitted any comments on the interim final regulations suggesting that the regulations would in fact materially impact States' relationship with the national government, or would unduly infringe on States' historical function of regulating health insurance issuers. Additionally, the Department notes that the PHS Act provides that the States may enforce the provisions of title XXVII as they pertain to issuers, but that the Secretary of Health and Human Services must enforce any provisions that a State fails to substantially enforce. Currently, HHS enforces the title XXVII group market portability and nondiscrimination provisions in only one State [1] in accordance with that State's specific request to do so. Additionally, HHS enforces the NMHPA provisions in title XXVII in one State [2] that has not enacted conforming legislation, and has varying levels of direct enforcement responsibility in four States [3] with respect to the WHCRA provisions in title XXVII. In these instances, the Department complied with the procedures set forth in the interim final regulation (and this regulation) before assuming such enforcement responsibilities.[4] When exercising its responsibilities in this regard, HHS works cooperatively with the State for the purpose of addressing the State's concerns and avoiding conflicts with the exercise of State authority.

In compliance with Executive Order 13132's requirements that agencies examine closely any policies that may have Federalism implications or limit the policymaking discretion of the States, HHS has engaged in numerous efforts to consult and work cooperatively with affected State and local officials. For example, the Department has worked closely with State insurance regulators and the National Association of Insurance Commissioners (NAIC). The NAIC is a non-profit corporation established by the insurance commissioners of the 50 States, the District of Columbia, and four U.S. territories. In most States the insurance commissioner is appointed by the Governor, in approximately 14 States, the insurance commissioner is an elected official. Among other activities, it provides a forum for the development of uniform policy when uniformity is appropriate. Its members meet, discuss and offer solutions to mutual problems. The NAIC sponsors quarterly meetings to provide a forum for the exchange of ideas and in-depth consideration of insurance issues by regulators, industry representatives and consumers. CMS staff have been consistently attending these quarterly meetings to listen to the concerns of the State Insurance Departments regarding HIPAA enforcement and other issues. In addition to the general discussions, committee meetings, and task groups, the NAIC sponsors the standing CMS/Department of Labor meeting on HIPAA issues for members during the quarterly conferences. This meeting provides CMS (and the Department of Labor) with the opportunity to provide updates on enforcement actions, regulations, bulletins, and outreach efforts regarding, among other things, title XXVII of the PHS Act.

The Department has also cooperated with the States in several ongoing outreach initiatives, through which information on, among other things, title XXVII of the PHS Act, is shared among Federal regulators, State regulators, and the regulated community. In particular, CMS has sponsored conferences with the States—the consumer Outreach and Advocacy conferences in March 1999 and June 2000, and the Implementation and Enforcement of HIPAA National State-Federal Conferences in August 1999, 2000, 2001, 2002, and 2003. Furthermore, CMS websites offer links to important State websites and other resources, facilitating coordination between State and federal regulators and the regulated community. Throughout the process of developing these regulations, to the extent feasible, the Department has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to ensure federal enforcement of the provisions of title XXVII in instances where a State fails to substantially enforce those provisions.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these final regulations, the Department certifies that the CMS has complied with the requirements of Executive

[1] Missouri.

[2] Wisconsin.

[3] Colorado, Massachusetts, Rhode Island, and Wisconsin.

[4] Additionally, HHS applied the process set forth in the interim final regulation (and in this final regulation) with regard to several other States that had not enacted legislation conforming to NMHPA, WHCRA and MHPA. Largely as a result of initiating that process and working cooperatively with those States, every one of them enacted conforming legislation.

Order 13132 for the attached final regulation, Federal Enforcement in Group and Individual Health Insurance Markets (RIN 09–38–AN35), in a meaningful and timely manner.

In accordance with Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

45 CFR Parts 144 and 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 150

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth in the preamble, the interim final rule with comment period adding 45 CFR Part 150, Subparts A through D, which was published on August 20, 1999, in the **Federal Register** at 64 FR 45786 through 45807, is adopted as a final rule, with the following amendments:

PART 150—CMS ENFORCEMENT IN GROUP AND INDIVIDUAL INSURANCE MARKETS

■ 1. The authority citation for part 150 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

§ 150.307 [Amended]

■ 2. In § 150.307, paragraph (a) is amended by removing the parenthetical ''(See Appendix A to this subpart for examples of violations.)''

§ 150.311 [Amended]

■ 3. In § 150.311, paragraph (e) is amended by removing the phrase ''of intent to assess a penalty'' and adding in its place the phrase ''to the responsible entity or entities''.

Appendix A To Subpart C [Removed]

■ 4. In Part 150, ''Appendix A To Subpart C Of Part 150—Examples Of Violations'' is removed.

Dated: January 19, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicare Services.

Dated: August 15, 2005.

Michael O. Leavitt,

Secretary, Department of Health & Human Services.

Editorial Note: This document was received at the **Federal Register** on November 17, 2005.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 05–191]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules that expand the reach of the Emergency Alert System (EAS), as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio. This *First Report and Order* is the most recent in a series of proceedings in which the Commission has sought to contribute to an efficient and technologically current public alert and warning system.

DATES: *Effective Date:* The rules set forth in the *First Report and Order* shall become effective for digital television broadcasters, digital audio broadcasters, digital cable systems and SDARS licensees on December 31, 2006, and for DBS providers on May 31, 2007, except §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55 and 11.61 which contains information that has not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective dates of these sections.

Comment Date: Written comments by the public on the new and/or modified information collection requirements are due January 24, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit your Paperwork Reduction Act (PRA) comments by electronic mail or U.S. mail. To submit your PRA comments by electronic mail, send comments to: *PRA@fcc.gov.* To submit your PRA comments by U.S. mail, mark them to the attention of Judith B. Herman and address them to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Senior Counsel, Office of Homeland Security, Enforcement Bureau, at (202) 418–1199. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in EB Docket No. 04–296, FCC 05–191, adopted November 3, 2005, and released November 10, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.* This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 24, 2006. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

In this present document, the Commission has assessed the effects of expanding the reach of EAS to cover DTV, DAB, digital cable, DBS and SDARS providers, and finds that this imposes minimal regulation on small entities to the extent consistent with the Commission's goal of advancing its public safety mission.

Synopsis of the First Report and Order

1. *Background.* In the Notice of Proposed Rulemaking (NPRM) (69 FR 16193, August 30, 2004), the Commission sought comment on whether the EAS in its present form is the most efficient mechanism for warning the American public of an emergency and, if not, on how the Emergency Alert System (EAS) can be improved. The main objective of the NPRM was to seek comment on whether the EAS as currently constituted is the most effective and efficient public warning system that best takes advantage of appropriate technological advances and best responds to the public's need to obtain timely emergency information. The NPRM sought comment on the current efficacy of EAS in an age when the communications landscape has evolved from what it was when EAS predecessors, and EAS itself, were originally conceived.

2. *Introduction.* In the *First Report and Order*, the Commission takes steps to advance its important public safety mission by adopting rules that expand the reach of EAS, as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio.

3. *Discussion.* The Commission's immediate concern, and the subject of this *First Report and Order*, is to ensure that increasingly popular digital technologies deliver some level of basic national or regional warning now, while more sophisticated alert and warning systems are being developed. It is an essential element of the Commission's mission to ensure that the American public receives public alerts and warnings. For the reasons indicated below, the Commission believes that the current EAS is overall the most effective way to provide such a basic level of warning as the Commission transitions to more sophisticated systems. Accordingly, the Commission adopts rules to ensure that digital television (DTV), digital audio broadcasting (DAB), digital cable, direct broadcast satellite (DBS) and satellite digital audio radio service (SDARS) consumers are provided with effective, basic alert and warning information now, in a manner that will neither interfere with nor impede the ongoing development of a fully integrated state of the art warning system. The Commission seeks to facilitate this steady transition to a digital warning system by extending the EAS obligations of analog broadcasters and cable systems to these additional digital communications systems.

4. The Commission believes that the benefits of requiring DTV, DAB, digital cable, DBS and SDARS licensees to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that provides effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. The Commission agrees with those commenters who argue that EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this *First Report and Order* either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with reasonable cost. Accordingly, based on the Commission's examination of the record in this proceeding, it does not believe that requiring these digital services to install and use EAS equipment will impose undue regulatory or financial burdens. The Commission will continue, along with other agencies and industry, to explore ways in which emergency information might be made available in a more efficient, effective, and technologically current fashion.

5. *Digital Television.* Television broadcasting in the United States is in the midst of a conversion from analog to digital technology. The majority of television stations serving all markets in the United States are already airing DTV programming, and the Commission set a target date of December 31, 2006 for the completion of the DTV transition. When the DTV transition is complete, some of the spectrum currently used for broadcast television will be reclaimed and put to other uses, notably public safety. The Commission has adopted standards and rules that address the transition of the nation's television broadcasters from analog to DTV, which are set forth in Part 73 of the Commission's rules. None of these rules, however, have addressed EAS participation.

6. In the NPRM, the Commission sought comment on whether to make participation compulsory. The Commission asked commenters to address the possibility that when television stations turn off their analog signals as part of the DTV transition, they could leave a market devoid of an EAS participating broadcaster. The Commission also noted that DTV broadcasters have the ability to multicast, *i.e.*, to transmit more than one program stream on their assigned channel. The Commission sought comment on whether DTV broadcasters should be required to transmit EAS messages on all program streams, or whether they should be permitted to transmit on only one stream and force tune receivers to that stream.

7. Based on the record before the Commission, the Commission finds that revising its EAS rules to apply to DTV broadcasters furthers the public interest by ensuring that the public—regardless of the form of technology used—receives emergency information. Accordingly, the Commission will require DTV broadcasters to comply with the Commission's part 11 rules. DTV broadcasters must participate in all national EAS activations. Participation in state and local EAS activations will remain voluntary, but if DTV broadcasters choose to transmit state and local EAS messages they must comply with the Commission's part 11 rules governing those messages. Essentially, DTV providers will now have the same EAS obligations as analog television broadcasters, including, *inter alia*, the obligations to install ENDEC units so that the monitoring and transmitting functions are available during the times stations are in operation and transmit EAS test messages. These requirements will be effective on December 31, 2006.

8. In addition, the Commission concludes that when a DTV broadcaster participates in EAS activations, it must provide the EAS message to viewers of all program streams that the DTV broadcaster provides over a particular channel. All DTV viewers should have access to the potentially life-saving emergency information contained in EAS messages. The Commission concludes that all viewers should be informed of critical emergency information regardless of which program stream they are viewing.

9. *Digital Cable.* Cable systems, like broadcasters, are required to carry Presidential EAS messages, and permitted to transmit state and local EAS messages on a voluntary basis. In 1997, the Commission extended EAS requirements to wireless cable systems. The Commission's EAS requirements do not specifically refer to digital cable, which was not in widespread use in 1994 when EAS was implemented. In the NPRM, the Commission sought comment on whether it should extend EAS obligations to digital media, including digital cable television. In addition, the Commission raised technical questions regarding digital cable service participation in EAS.

10. Digital cable offers a number of advantages over analog cable. For instance, the digital format eliminates unwanted noise and interference from programming. Further, digital compression allows more than five times the number of stations to be delivered via the same bandwidth, on additional channel capacity that allows digital cable operators to deliver ''near on-demand'' programming by staggering the start times of programs on different channels. Because of these advantages, digital cable is increasingly deployed with analog cable in the marketplace. By 2005, more than 23 percent of TV households subscribed to digital cable.

11. The Commission specifically extends the EAS obligations set forth in Part 11 of its rules to digital cable systems. For purposes of this *First Report and Order* and Part 11 of the Commission's rules only, the term ''digital cable systems'' is defined as the portion of a cable system that delivers channels in digital format to subscribers. Essentially, digital cable systems will now have the same EAS obligations as analog cable systems. Specifically, the Commission will require digital cable systems to participate in national level EAS activations. Participation in state and local EAS activations will continue to be voluntary, but digital cable systems that choose to participate must comply with the part 11 rules.

12. The Commission will permit digital cable systems that are participating in EAS activations to determine the method they will use to distribute EAS messages to viewers of digital cable channels as long as all viewers receive the complete EAS message on the channel that they are watching. For example, digital cable systems may transmit EAS messages on all digital channels or transmit EAS messages on a single channel and force tune all receivers to that channel. Under the rules adopted in the EAS First Report and Order, digital cable systems with fewer than 5,000 subscribers must, like analog and wireless cable systems with fewer than 5,000 subscribers, provide a video interruption and an audio alert message on all channels and the EAS message on at least one channel.

13. *Digital Audio Broadcasting.* Radio stations using in-band, on-channel (IBOC) digital audio broadcasting (DAB) technology are able to provide enhanced sound fidelity, improved reception, multiple audio streams, and new data services to digital-ready radio receivers. This technology makes use of the existing AM and FM bands (In-Band) by adding digital carriers to a radio station's analog signal, allowing broadcasters to transmit digitally on their existing channel assignments (On-Channel) while simultaneously maintaining their analog service. Thus, IBOC permits the transmission of both analog and digital signals within the spectral emission mask of a single AM or FM channel, placing digital information on frequencies immediately adjacent to the analog signal. This technology allows new radios to receive both digital broadcasts and analog broadcasts from stations that have not yet converted to digital. This system is designed to blend to analog when digital reception fails. Radio stations will eventually convert to all-digital modes of operation. DAB does not require use of additional spectrum and there is no statutory mandate to convert to a digital format.

14. The Commission revises its part 11 EAS rules to apply to DAB broadcasters. The Commission will require DAB broadcasters to air all national EAS messages. Participation in state and local EAS activations will be voluntary, as it is for analog radio broadcasters. If DAB broadcasters choose to participate in state and local EAS activations, they must comply with the Commission's part 11 EAS rules. Essentially, DAB providers will now have the same EAS obligations as analog radio broadcasters. The Commission will also require DAB broadcasters to transmit all EAS messages that they air on all audio streams. Because DAB broadcasters will face similar burdens of equipment purchase, installation and training as DTV and digital cable providers, the Commission will apply the same date of compliance that it applied for DTV and digital cable. Accordingly, these rules will be effective December 31, 2006.

15. The Commission agrees with commenters who argue that EAS requirements should apply to all audio streams because the goal of EAS as a public warning system is to reach as many people as possible with lifesaving information and to do otherwise would result in the reduced effectiveness of EAS as digital radio listenership increases. All listeners should be informed of critical emergency information regardless of which audio stream they are listening to. The Commission sees no reason to exempt subscription-based streams. Further, as the Commission afforded to DTV broadcasters, the Commission affords DAB broadcasters more than a year to comply with these rules and grant DAB broadcasters the flexibility to determine the method they will use to distribute EAS messages to listeners of all audio streams as long as all listeners receive the complete and timely EAS message on the stream that they are listening to.

16. *Satellite Digital Audio Radio Service.* Governed by part 25 of the Commission's rules, SDARS provides a wide variety of digital radio programming on a subscription basis to subscribers throughout the contiguous United States. Most SDARS programming is created in the licensees' central headquarters in New York City (Sirius) and Washington, DC (XM), but SDARS licensees also re-transmit the programming of third-party content providers. Content is currently transmitted exclusively on a nationwide basis. SDARS licensees have recently begun providing metropolitan area traffic and weather updates on a round-the-clock basis by means of dedicated channels, but all subscribers receive each of these channels on a nationwide basis. SDARS, however, is not a broadcast service, and is not currently required to participate in EAS. In the NPRM, the Commission sought comment on whether it should adopt rules extending EAS obligations to other digital networks, such as SDARS.

17. The Commission amends part 11 of its rules to require that all SDARS licensees participate in EAS. The new rules will require SDARS licensees to transmit national level EAS messages on all channels. The Commission will require that SDARS licensees receive national EAS messages through an encoder/decoder (ENDEC) unit, the same manner as currently required of broadcasters and cable systems, from which they must directly monitor at least two sources, including one PEP station, or must directly monitor FEMA. This should not be difficult to accomplish as XM currently already monitors EAS alerts from an LP–1 station through an ENDEC unit located at its Washington, D.C. headquarters. The Commission strongly encourages SDARS licensees to have the ability to receive EAS alerts from state and local emergency managers and the ability to disseminate state and local EAS warnings on local traffic and weather channels that the SDARS licensees provide. The Commission will require SDARS licensees to inform their customers of the channels that will and will not be capable of supplying state and local EAS messages. Finally, the Commission will require SDARS licensees to test their ability to receive and distribute EAS messages in the same manner required of other EAS participants in section 11.61 of the Commission's rules and to keep records of all tests. Because SDARS licensees will face burdens of equipment

purchase, installation and/or training similar to those of DTV and DAB broadcasters and digital cable providers, these new rules will also take effect December 31, 2006.

18. The Commission will allow SDARS licensees that choose to implement the ability to receive state and local EAS warnings to develop the methods by which they can receive state and local EAS messages. In addition, the Commission encourages SDARS licensees that choose to implement the ability to receive and transmit state and local EAS warnings to develop additional ways of distributing EAS messages to the appropriate listeners, regardless of the channel they are listening to. Finally, the Commission requires SDARS licensees to inform their customers of the channels that will and will not supply state and local EAS messages. This information should be provided on the SDARS licensee's website and also distributed in writing to customers at least annually.

19. To alert listeners to an emergency announcement that may interest them, Sirius also suggested exploring the possibility of pre-empting the text box that normally contains the channel name and current programming, to announce the state or region and type of alert, and the channel number transmitting detailed information. The Commission strongly encourages such developments, and the use of the SDARS and DAB text box to display entire EAS messages, which the Commission hopes to see included in any next generation public alert and warning system.

20. *Direct-to-Home Satellite Services.* DTH satellite services include DBS and Home Satellite Dish (HSD) services. Under the Commission's current part 11 rules, DBS providers and HSD providers are not required to participate in EAS, but may participate on a voluntary basis. The Commission has encouraged such participation. For purposes of this *First Report and Order*, DBS providers include the entities set forth in section 25.701(a) of the Commission's rules. Accordingly, DBS providers include: (1) Entities licensed to operate satellites in the 12.2 to 12.7 GHz DBS frequency bands; (2) entities licensed to operate satellites in the Ku band fixed satellite service (FSS) and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set aside of at least one channel of non commercial programming pursuant to section 25.701(e) of the Commission's rules, or (3) non U.S. licensed satellite operators in the Ku band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set aside of one channel of non commercial programming pursuant to section 25.701(e) of the Commission's rules. This definition ensures that the EAS rules apply to the vast majority of existing DTH satellite services, particularly those for which viewers may have expectations as to available warnings based on experience with broadcast television services. The use of this definition will make the EAS obligations applicable to DTH–FSS licensees, including those who provide capacity to video programming distributors.

21. HSD providers originally supplied satellite television; however, currently, DBS providers serve most satellite television consumers. Over the past 5 years, the number of DBS subscribers has steadily increased from almost 13 million in June 2000 to over 27 million in June 2005. During the same time period, the number of HSD subscribers has steadily decreased from almost 1.5 million to fewer than 150,000. DTH satellite service provides multi-channel video programming and now reaches almost 25% of U.S. households with a television. DTH satellite providers receive programming from national programmers, such as HBO, ESPN, and CNN, and from local channels, such as the broadcast affiliates in a particular area, and then transmit these programs to customers' receivers. Because of this pass-through system, a satellite television customer receives EAS messages only if he receives the local broadcast stations as part of his programming package, and those stations carry the EAS message.

22. In the NPRM, the Commission sought comment on: (1) Whether it should adopt rules extending EAS obligations to DBS; (2) whether it serves the public interest to continue to exempt such satellite services that reach increasingly larger numbers of Americans from any requirement to provide public warning; (3) what burdens extending the EAS obligations would place on such services and whether the benefits outweigh the burdens; and (4) technical issues involved with requiring DBS providers to comply with the Commission's EAS rules.

23. In order to ensure that DBS subscribers receive an EAS message from the President in the event of a national emergency, the Commission modifies its EAS rules to require DBS providers to participate in national EAS activations by discontinuing regular programming and providing the national EAS message to viewers of all channels. Accordingly, DBS providers will be required to comply with the Commission's part 11 EAS rules. DBS providers must install equipment capable of encoding and decoding the EAS protocol and generating and detecting all EAS codes. DBS providers may install this equipment at the location most convenient to their system designs. In addition to ensuring that EAS equipment complies with Commission rules, providers must also monitor two EAS sources upon receipt of an emergency action notification and ensure that their EAS monitoring equipment is operational. Finally, the Commission will require DBS licensees to test their ability to receive and distribute EAS messages. The Commission concludes that extending national level EAS requirements to DBS providers serves the public interest by ensuring that the significant portion of the American public that are DBS subscribers have access to this critical emergency information.

24. Although participation in state and local EAS activations remains voluntary, the Commission will require DBS providers to pass through all EAS messages aired on local channels to subscribers receiving those channels. Therefore, subscribers viewing local channels through DBS services will receive all EAS messages transmitted over those local channels. Additionally, the Commission concludes that DBS providers must be capable of receiving (from state and local emergency managers) and distributing state and local EAS messages or they must disclose their inability to do on their Web site and in writing to their customers at least annually. Most emergencies originate at the state and local level and the current EAS system includes an interface for state and local emergency managers, providing a way to access the system and originate and relay EAS messages. The Commission encourages DBS licensees to design their systems to include this capability and, specifically, to design their converter boxes to be capable of receiving the appropriate regional, state and local EAS messages. Any future Public Alert and Warning System will likely include EAS and may require DBS licensees to increase participation in regional, state and local EAS activations.

25. The Commission acknowledges that there are technical issues that will need to be resolved in order for DBS licensees to make the necessary changes to their systems and wishes to give maximum flexibility to DBS providers. Accordingly, the Commission will permit DBS providers to determine the method they will use to distribute EAS messages to viewers, as long as all viewers receive national EAS messages regardless of the channel that they are watching. Because of the complexity associated with ensuring that national alert messages will be transmitted on all channels that do not originate at local broadcast stations, the Commission is providing DBS providers more time to comply with these rules. DBS providers will need to modify their satellite uplink facilities at multiple locations. DBS providers will also need to develop and implement technologies within each of several dozen different satellite transponder data streams. Estimates indicate that such efforts will likely require approximately 18 months to implement fully. Accordingly, these rules will take effect May 31, 2007. The Commission encourages DBS providers that have the capability to participate in EAS activations to do so as soon as possible.

26. The Commission will require DBS licensees to test their ability to receive and distribute EAS messages in a manner similar to that required of other EAS participants in section 11.61 of its rules and to keep records of all tests. DBS licensees should monitor a state or local primary source to participate in testing. Accordingly, the Commission will require that DBS providers conduct EAS tests each month on at least 10 percent of the total channels they provide. For purposes of this calculation, the total number of channels should not include those channels that the DBS provider passes through with the embedded national, state or local EAS message. The channels tested should vary each month, and over the course of a year all channels should be tested. DBS providers must log receipt of weekly tests in their records. Requiring that only 10 percent of channels be tested each month and that weekly tests must only be logged in records should reduce the burdens associated with EAS testing for DBS providers. Any remaining burdens are outweighed by the public interest benefits of testing which ensures that DBS providers are able to receive and transmit EAS messages. These testing requirements are no more onerous to DBS providers than those required of any other EAS participant. Due to the potential technical difficulties and costs associated with transmission of weekly tests, in the *Further Notice*, the Commission seeks comment regarding weekly test transmission requirements for DBS providers.

27. Although the Commission encourages participation by HSD providers, the Commission will not require their participation in EAS because: (1) There were only approximately 145,000 HSD users in June 2005 and that number continues to decrease; and (2) as HSD users receive programming directly from programmers, it would be very burdensome for HSD providers to distribute EAS messages to subscribers.

28. *Administrative Matters.* The Commission receives numerous questions about and requests for clarification and corrections of its EAS rules. The Commission finds that several minor administrative changes to the EAS rules are in order. Accordingly, the Commission amends its EAS rules to delete all reference to the ''FCC EAS mailing list'' which the Commission no longer maintains. EAS information may now be obtained from the Web site *http://www.fcc.gov/eb/eas* and from the general FCC information number 1888–CALL–FCC. Further, the Commission amends section 11.41 to change ''Operating Handbook'' to ''EAS Operating Handbook.'' In section 11.52(b) of the Commission's rules, the Commission will change the reference to 11.51(j)(2) to 11.51(m)(2). Section 11.53(c) provides that, prior to commencing operations, broadcast stations must determine whether the EAS has been activated by monitoring the assigned EAS sources. In order to clarify how EAS monitoring assignments are determined, the Commission amends this section to add the following to the end of section 11.53(c): ''as specified in their State or Local plan.'' Finally, because section 76.305 no longer exists, the reference to that section in 11.54(b)(13) is changed to the correct reference: section 76.1711.

29. *Conclusion.* The Commission expands the reach of EAS, as currently constituted, to ensure that more Americans are able to receive national and/or regional public alerts and warnings. Digital technologies are rapidly becoming the norm for communications technologies and public alert and warning must keep pace with this digital revolution. Government and industry are engaged in the early stages of efforts to develop a fully integrated, state of the art, digitally-based public alert and warning system for the American public. Increasingly popular digital technologies must have the ability to deliver some level of basic national or regional warning now, during the time that more sophisticated alert and warning systems are being developed. Further, the Commission amends its EAS rules to ensure that persons with disabilities have equal access to public warnings.

Final Paperwork Reduction Act Analysis

30. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 24, 2006.

Final Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

32. Today's Order establishes rules that expand the reach of the Emergency Alert System (EAS), as currently constituted, to cover the following digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio. As noted in the Order, one of the most fundamental and significant statutory mandates of the Commission is the promotion of safety of life and property through the use of wire and radio communication. Clearly, some level of EAS participation must be established for new digital services to ensure that large portions of the American public are able to receive national and/or regional public alerts and warnings.

33. This Order is a follow-up to the NPRM that was issued last year. In the NPRM, the Commission solicited comment on an array of questions and potential rule changes to contribute to an efficient and technologically current public alert and warning system. The NPRM also solicited comments and participation of state and local

emergency planning organizations and all telecommunications industries to develop a more effective EAS. The EAS First Report and Order takes initial steps to resolve the issues raised in the NPRM.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

34. There were no comments filed that specifically addressed the IRFA. Nonetheless, the agency considered the potential impact of the rules discussed in the IRFA on small entities and reduced the compliance burden for all small entities (as discussed in Appendix A of the NPRM) in order to reduce the economic impact of the rules enacted herein on such entities.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

35. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

36. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

37. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $12 million or less in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting images together with sound. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimates, therefore, likely overstate the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the SBA size standard.

38. *Radio Stations.* The revised rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6 million or less. The Commission notes, however, that many radio stations are affiliated with much larger corporations having much higher revenue. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by this action.

39. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having $12.5 million or less in annual receipts. According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999. Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

40. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The Commission has estimated that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

41. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues

exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

42. *Multipoint Distribution Systems*. The established rules apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined ''small entity'' for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees.

43. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, the Commission estimates that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

44. *Instructional Television Fixed Service*. The established rules would also apply to Instructional Television Fixed Service facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, the Commission does not collect annual revenue data for ITFS licensees and is not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, the Commission tentatively concludes that at least 1,932 are small businesses and may be affected by the established rules.

45. *Satellite Telecommunications and Other Telecommunications*. The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

46. The second category—*Other Telecommunications*—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

47. In the Order, the Commission takes steps to advance its public safety mission by adopting rules that expand the reach of EAS, as currently constituted, to cover the following digital communications technologies: digital television and radio, digital cable, and satellite television and radio.

48. As indicated above, the Commission has revised its EAS rules to make them apply to DTV broadcasters. The Order requires that DTV broadcasters comply with the Commission's part 11 rules. Thus, DTV broadcasters must participate in all national EAS activations. Participation in state and local EAS activations will remain voluntary, but if DTV broadcasters choose to transmit state and local EAS messages they must comply with the Commission's part 11 rules governing those messages. Essentially, DTV providers will now have the same EAS obligations as analog television broadcasters. In addition, the Order requires that, when DTV broadcasters participate in EAS activations, they must provide the EAS message to viewers of all program streams.

49. The Commission has revised its EAS rules to require digital cable systems to participate in national level EAS activations. Digital cable systems will now have the same EAS obligations as analog cable systems. Participation in state and local EAS activations will continue to be voluntary, but digital cable systems that choose to participate must comply with the part 11 rules. The Order requires that digital cable systems with fewer than 5,000 subscribers must, like analog and wireless cable systems with fewer than 5,000 subscribers, provide a video interruption and an audio alert message on all channels and the EAS message on at least one channel.

50. The Commission also has revised its EAS rules to make them apply to digital audio broadcasting (DAB) providers. The Order requires digital audio broadcasters to air all national EAS messages. Participation in state and local EAS activations will be voluntary, as it is for analog radio broadcasters. If DAB providers choose to participate in state and local EAS activations, they must comply with part 11 of the Commission's rules. DAB providers will now have the same EAS obligations as analog radio broadcasters. The Order also requires DAB providers to transmit all EAS messages that they air on all audio streams.

51. The Commission has revised its EAS rules to require that all Satellite Digital Audio Radio Service (SDARS) licensees participate in EAS in its current form. The Order requires SDARS licensees to transmit national level EAS messages on all channels.

52. The Commission also strongly encourages SDARS licensees to have the ability to receive EAS alerts from state and local emergency managers and the ability to disseminate state and local EAS warnings on any local traffic and weather channels that the SDARS licensees provide. The Commission has required SDARS licensees to inform their customers of the channels that will and will not supply state and local EAS messages. This information should be provided on the SDARS licensee's Web site and should also be distributed in writing to customers at least annually.

53. In addition, in order to ensure that DBS satellite subscribers receive an EAS message from the President in the event of a national emergency, the Commission has revised its EAS rules to require that DBS satellite service providers participate in national EAS activations. For purposes of this Order, DBS providers include the entities set forth in section 25.701 of the Commission's rules. The Order permits DBS satellite service providers to determine the method they will use to distribute EAS messages to viewers, as long as all viewers receive the national EAS message on the channel they are watching. The Commission notes that SBCA commented that DBS operators need additional development time to participate in national EAS activations. SBCA focuses on the technical and operational difficulties involved in investing in new hardware and software, but has provided no cost estimate. However, DIRECTV commented that it was prepared to commit the assets to develop the systems and procedure necessary to deliver National EAS messages. The Commission has determined that the public safety benefit that would result from imposing a timely public alert and warning obligation on DBS providers far outweighs the burdens to such providers from implementing these new requirements.

54. Although participation in state and local EAS activations remains voluntary, the Commission has required DBS providers to pass through all EAS messages aired on local channels to subscribers receiving those channels so that subscribers viewing local channels through DBS services will receive all EAS messages transmitted over those local channels. The Commission has also required DBS providers to be capable of receiving (from state and local emergency managers) and distributing state and local EAS messages or they must disclose their inability to do on their website and in writing to their customers at least annually.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

56. The NPRM invited Comments on a number of alternatives to the imposition of EAS obligations on the digital communications technologies discussed in this Order that are increasingly being used by the American public. For example, the NPRM specifically sought comment on the technical alternatives to providing EAS messages. In particular, the NPRM sought comment on whether the EAS system could be made more efficient. Should it be phased out in favor of a new model? If so, what would the new model look like? If a new model were to be adopted, what legal and practical barriers would have to be overcome to ensure its implementation and effectiveness? What technologies should serve as the basis for such a model? Alternatively, should EAS requirements be extended to other services such as cellular telephones?

57. The Commission has considered each of the alternatives described above, and in the EAS First Report and Order imposes minimal regulation on small entities to the extent consistent with the Commission's goal of advancing its public safety mission by adopting rules that expand the reach of EAS. The affected service providers have generally expressed their willingness to cooperate in a national warning system, and the Commission anticipates that this addition of new providers to EAS can be accomplished swiftly and smoothly. The Commission believes that the benefits of requiring DTV, DAB, digital cable, satellite DTH and SDARS providers to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that is able to provide effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. The Commission agrees with those commenters who argue that EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this Order either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with minimal cost. As indicated above, the Commission will continue, along with other agencies and industry, to explore ways in which emergency information might be made available in an efficient, effective, and technologically current fashion.

Report to Congress

58. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Report and Ordering Clauses

59. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 303(r), 403, 554(g) and 606, the *First Report and Order* in EB Docket No. 04–296 *is adopted*, and that part 11 of the Commission's rules, 47 CFR part 11, is revised as set forth in the rule changes. The rules set forth in the *First Report and Order* shall become effective for digital television broadcasters, digital audio broadcasters, digital cable systems and SDARS licensees on December 31, 2006, and for DBS providers on May 31, 2007, except §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55 and 11.61 which contains information that has not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective dates of these sections.

60. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *First Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

■ 2. Revise § 11.1 to read as follows:

§ 11.1 Purpose.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for analog AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.

■ 3. Amend § 11.11 by revising paragraphs (a), (b) and (e) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; analog television broadcast stations including Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in 47 CFR 25.701(a) (including certain Ku-band Fixed-Satellite Service Direct to Home providers); SDARS, as defined in 47 CFR 25.201; participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. These rules in this part are effective on December 31, 2006 for DTV, DAB, digital cable and SDARS providers, and on May 31, 2007 for DBS providers. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates listed above in this paragraph and in the following tables:

ANALOG AND DIGITAL BROADCAST STATIONS

EAS equipment requirement	AM & FM	Digital	TV AM & FM	DTV	FM Class D [1]	LPTV [2]	LPFM [3]	Class A TV [4]
Two-tone encoder [5] [6]	Y	Y 12/31/06	Y	Y 12/31/06	N	N	N	
EAS decoder	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
EAS encoder	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	N	N	N	
Audio message	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
Video message	N/A	N/A	Y 1/1/97	Y 12/31/06	N/A	Y 1/1/97	N/A	

[1] Effective December 31, 2006, digital FM Class D stations have the same requirements.
[2] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. Effective December 31, 2006, digital LPTV stations have the same requirements.
[3] LPFM stations must install a decoder within one year after the FCC publishes in the FEDERAL REGISTER a public notice indicating that at least one decoder has been certified by the FCC. Effective December 31, 2006, digital LPFM stations have the same requirements.
[4] Effective December 31, 2006, digital Class A TV stations have the same requirements.
[5] Effective July 1, 1995, the two-tone signal must be 8–25 seconds.
[6] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

ANALOG CABLE SYSTEMS

[A. Analog cable systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels_including the required testing_by October 1, 2002, or comply with the following EAS requirements. All other analog cable systems must comply with B.]

	System size and effective dates		
B. EAS equipment requirement	>=10,000 subscribers	>=5,000 but <10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS decoder [3]	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder [2]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels,[3] Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

WIRELESS CABLE SYSTEMS (BRS/EBS STATIONS)

[A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.]

	System size and effective dates	
B. EAS equipment requirement subscribers	>=5,000 subscribers	<5,000
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder [1] [2]	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels [3]	Y 10/1/02	N
Video interrupt and audio alert message on all channels; [4] Audio and Video EAS message on at least one channel	N	Y 10/1/02

[1] The two-tone signal is used only to provide an audio alert to an audience prior to an EAS emergency message or to the Required Monthly Test (RMT) under § 11.61(a)(1). The two-tone signal must be 8–25 seconds in duration.

[2] Wireless cable systems serving < 5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

[3] All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

[4] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data services such as Internet.

DIGITAL CABLE SYSTEMS

[A. Digital cable systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing by December 31, 2006, or comply with the following EAS requirements. All other digital cable systems must comply with B.]

	System size and effective dates	
B. EAS equipment requirement	>=5,000 subscribers	<5,000 subscribers
Two-tone signal from storage device [1]	Y 12/31/06	Y 12/31/06
EAS decoder [3]	Y 12/31/06	Y 12/31/06
EAS encoder [2]	Y 12/31/06	Y 12/31/06
Audio and Video EAS Message on all channels [4]	Y 12/31/06	N
Video interrupt and audio alert message on all channels,[3] Audio and Video EAS message on at least one channel	N	Y 12/31/06

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

[2] Digital cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

[4] All digital cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

Note: Programmed channels do not include channels used for the transmission of data such as interactive games or the transmission of data services such as Internet.

SDARS AND DBS

EAS equipment requirement	SDARS	DBS
Two-tone signal [1]	Y 12/31/06	Y 5/31/07
EAS decoder	Y 12/31/06	Y 5/31/07
EAS encoder	Y 12/31/06	Y 5/31/07
Audio message on all channels [2]	Y 12/31/06	Y 5/31/07
Video message on all channels [2]	N/A	Y 5/31/07

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

[2] All SDARS and DBS providers may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages or by any other method that ensures that viewers of all channels receive the EAS message.

(b) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog LPFM stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, analog LPTV stations as defined in § 74.701(f), and digital LPTV stations as defined in § 74.701(k) of this chapter are not required to comply with § 11.32. Analog and digital LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part. International

broadcast stations as defined in § 73.701 of this chapter are not required to comply with the requirements of this part. Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.

* * * * *

(e) Organizations using other communications systems or technologies such as low earth orbit satellite systems, paging, computer networks, etc. may join the EAS on a voluntary basis by contacting the FCC. Organizations that choose to voluntarily participate must comply with the requirements of this part.

■ 4. Revise § 11.13 to read as follows:

§ 11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).

(a) The Emergency Action Notification (EAN) is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency.

(b) The Emergency Action Termination (EAT) is the notice to all EAS Participants and to the general public that the EAN has terminated.

■ 5. Revise § 11.15 to read as follows:

§ 11.15 EAS Operating Handbook.

The EAS Operating Handbook states in summary form the actions to be taken by personnel at EAS Participant facilities upon receipt of an EAN, an EAT, tests, or State and Local Area alerts. It is issued by the FCC and contains instructions for the above situations. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.

■ 6. Revise § 11.19 to read as follows:

§ 11.19 EAS Non-participating National Authorization Letter.

This authorization letter is issued by the FCC to EAS Participants that have elected not to participate in the national level EAS. It states that the EAS Participant has agreed to go off the air or discontinue programming on all channels during a national level EAS message. For licensees this authorization will remain in effect through the period of the initial license and subsequent renewals from the time of issuance unless returned by the holder or suspended, modified, or withdrawn by the Commission.

■ 7. Revise § 11.21 introductory text and paragraph (a) to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans must be reviewed and approved by the Director, Office of Homeland Security, Enforcement Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, and EAS Participants' personnel to transmit emergency information to the public during a State emergency using the EAS.

* * * * *

■ 8. Amend § 11.31 by revising the format code for LLLLLLLL in paragraph (c), revising paragraph (d), and revising the footnotes in paragraphs (e) and (f) to read as follows:

§ 11.31 EAS protocol.

* * * * *

(c) * * *

LLLLLLLL—This is the identification of the EAS Participant, NWS office, etc., transmitting or retransmitting the message. These codes will be automatically affixed to all outgoing messages by the EAS encoder.

* * * * *

(d) The only originator codes are:

Originator	ORG code
EAS Participant	EAS
Civil authorities	CIV
National Weather Service	WXR
Primary Entry Point System	PEP

(e) * * *

[1] Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their existing EAS equipment to add these event codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003 must be capable of receiving and transmitting these event codes. EAS Participants that install or replace their EAS equipment after February 1, 2004 must install equipment that is capable of receiving and transmitting these event codes.

(f) * * *

[1] Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their existing EAS equipment to add these marine area location codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003, must be capable of receiving and transmitting these marine area location codes. EAS Participants that install or replace their EAS equipment after February 1, 2004, must install equipment that is capable of receiving and transmitting these location codes.

■ 9. Amend § 11.33 by revising paragraphs (a)(4) and (b) introductory text to read as follows:

§ 11.33 EAS Decoder.

(a) * * *

(4) *Display and logging.* A visual message shall be developed from any valid header codes for tests and national activations and any preselected header codes received. The message shall include the Originator, Event, Location, the valid time period of the message and the local time the message was transmitted. The message shall be in the primary language of the EAS Participant and be fully displayed on the decoder and readable in normal light and darkness. All existing and new models of EAS decoders manufactured after August 1, 2003 must provide a means to permit the selective display and logging of EAS messages containing header codes for state and local EAS events. Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their decoders on an optional basis to include a selective display and logging capability for EAS messages containing header codes for state and local events. EAS Participants that install or replace their decoders after February 1, 2004 must install decoders that provide a means to permit the selective display and logging of EAS messages containing header codes for state and local EAS events.

* * * * *

(b) *Attention Signal.* EAS Decoders shall have detection and activation circuitry that will demute a receiver upon detection of the two audio tones of 853 Hz and 960 Hz. To prevent false

responses, decoders designed to use the two tones for receiver demuting shall comply with the following:

* * * * *

■ 10. Amend § 11.34 by revising paragraph (e) to read as follows:

§ 11.34 Acceptability of the equipment.

* * * * *

(e) Waiver requests of the Certification requirements for EAS Encoders or EAS Decoders which are constructed for use by an EAS Participant, but are not offered for sale will be considered on an individual basis in accordance with part 1, subpart G, of this chapter.

* * * * *

■ 11. Revise § 11.35 to read as follows:

§ 11.35 Equipment operational readiness.

(a) EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§ 73.1820 and 73.1840 of this chapter for all broadcast streams and cable system records as specified in §§ 76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any tests were not received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.

(b) If the EAS Encoder or EAS Decoder becomes defective, the EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system records, and records of other EAS Participants, as specified in paragraph (a) of this rule, showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) If repair or replacement of defective equipment is not completed within 60 days, an informal request shall be submitted to the District Director of the FCC field office serving the area in which the EAS Participant is located, or in the case of DBS and SDARS providers to the District Director of the FCC field office serving the area where their headquarters is located, for additional time to repair the defective equipment. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

■ 12. Revise § 11.41 to read as follows:

§ 11.41 Participation in EAS.

(a) All EAS Participants specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be Non-Participating (NN) sources.

(b) An EAS Participant may submit a written request to the FCC asking to be an NN source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation after transmitting specified information.

(1) An EAS Participant that is an NN source under § 11.18(f) that wants to become a PN source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of EAS Participant management and should comply with State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook.

■ 13. Amend § 11.42 by revising paragraphs (a)(1), (a)(2), (b), and (c) to read as follows:

§ 11.42 Participation by communications common carriers.

(a) * * *

(1) An originating source from the nearest service area to a selected Test Center and then to the EAS Participant for the duration of the emergency, provided an Emergency Action Notification is issued by the White House and the originating source has a local channel from the originating point to the nearest service area.

(2) An independent broadcast station to the radio and television broadcast networks and any other EAS Participant provided the station has in service a local channel from the station's studio or transmitter directly to the broadcast source.

(b) Upon receipt of the Emergency Action Termination, the common carriers shall disconnect the originating source and the participating independent stations and restore the networks and other EAS Participants to their original configurations.

(c) During a National level EAS Test, common carriers which have facilities in place may, without charge, connect an originating source from the nearest exchange to a selected Test Center and then to any EAS Participant. Independent stations will not be connected during the test unless authorized by the FCC. Upon test termination, EAS Participants shall be restored to their original configurations.

* * * * *

■ 14. Amend § 11.44 by revising paragraph (d) to read as follows:

§ 11.44 EAS message priorities.

* * * * *

(d) During a national emergency, the facilities of all EAS Participants must be reserved exclusively for distribution of Presidential Messages. NIC messages received from national networks which are not broadcast at the time of original transmission must be recorded locally by LP sources for transmission at the earliest opportunity consistent with the message priorities in paragraph (b) of this section.

■ 15. Revise § 11.46 to read as follows:

§ 11.46 EAS public service announcements.

EAS Participants may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public. Such announcements and programs may not be a part of alerts or tests, and may not simulate or attempt to copy alert tones or codes.

■ 16. Revise § 11.47 to read as follows:

§ 11.47 Optional use of other communications methods and systems.

(a) Analog and digital broadcast stations may additionally transmit EAS messages through other communications means. For example, on a voluntary basis, FM stations may use subcarriers to transmit the EAS codes including 57 kHz using the RBDS standard produced by the National Radio Systems Committee (NRSC) and television stations may use subsidiary communications services.

(b) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Office of Homeland Security, Enforcement Bureau, or their State

Emergency Communications Committee for information and guidance.

■ 17. Revise § 11.51 to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) Analog and digital broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) codes using the EAS Protocol. The Attention Signal must precede any emergency audio message. After January 1, 1998, the shortened Attention Signal may only be used as an audio alert signal and the EAS codes will become the minimum signaling requirement for National level messages and tests.

(b) When relaying EAS messages, EAS Participants may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Pauses in video programming before EAS message transmission should not cause television receivers to mute EAS audio messages. No Attention Signal is required for EAS messages that do not contain audio programming, such as a Required Weekly Test.

(c) By the effective dates provided in § 11.11(a), all analog and digital radio and television stations shall transmit EAS messages in the main audio channel. Effective December 31, 2006, all DAB stations shall also transmit EAS messages on all audio streams. Effective December 31, 2006, all DTV broadcast stations shall also transmit EAS messages on all program streams.

(d) By the effective dates provided in § 11.11(a), analog and digital television broadcast stations shall transmit a visual message containing the Originator, Event, Location and the valid time period of an EAS message. If the message is a video crawl, it shall be displayed at the top of the television screen or where it will not interfere with other visual messages.

(e) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, analog low power TV (LPTV) stations as defined in § 74.701(f) of this chapter, and digital LPTV stations as defined in § 74.701(k) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

(f) Analog and digital broadcast station equipment generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other EAS Participants alerts them that the EAS is being activated or tested at the National, State or Local Area level. The minimum level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output required in § 11.32(a)(4), shall modulate the transmitter at the maximum possible level, but in no case less than 50% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

(g) Analog cable systems and digital cable systems with fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention Signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

(1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in § 76.605 of this chapter,

(2) Must provide a video interruption and an audio alert message on all channels. The audio alert message must state which channel is carrying the EAS video and audio message,

(3) Shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(5) Wireless cable systems and digital cable systems with a requirement to carry the audio and video EAS message on at least one channel and a requirement to provide video interrupt and an audio alert message on all other channels stating which channel is carrying the audio and video EAS message, may comply by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

(h) Analog cable and digital cable systems with 10,000 or more subscribers; analog cable and digital cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and wireless cable systems with 5,000 or more subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention Signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

(1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers. Wireless cable systems and digital cable systems shall also provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) Shall transmit the EAS audio message required in paragraph (a) of this section on all downstream channels.

(3) Shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(5) Wireless cable systems and digital cable systems with a requirement to

carry the audio and video EAS message on all downstream channels may comply by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

(i) Effective December 31, 2006, SDARS licensees shall transmit national audio EAS messages on all channels in the same order specified in paragraph (a) of this section.

(1) SDARS licensees must install, operate, and maintain equipment capable of generating the EAS codes.

(2) SDARS licensees may determine the distribution methods they will use to comply with this requirement.

(j) Effective May 31, 2007, DBS providers shall transmit national audio and visual EAS messages on all channels in the same order specified in paragraph (a) of this section.

(1) DBS providers must install, operate, and maintain equipment capable of generating the EAS codes.

(2) The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(3) DBS providers may determine the distribution methods they will use to comply with this requirement. Such methods may include distributing the EAS message on all channels, using a means to automatically tune the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages, and/or passing through the EAS message provided by programmers and/or local channels (where applicable).

(k) If manual interrupt is used as authorized in paragraph (m) of this section, EAS Encoders must be located so that EAS Participant staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(l) EAS Participants that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or systems with one EAS Encoder. The requirements of § 11.32 must be met by the combined facility.

(m) EAS Participants are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the EAS Participant retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, EAS Participants shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or system community or city. Other location codes may be included upon approval of station or system management. EAS messages may be transmitted automatically or manually.

(1) Automatic interrupt of programming and transmission of EAS messages are required when facilities are unattended. Automatic transmissions must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and include the minimum information required for EAS video messages.

(n) EAS Participants may employ a minimum delay feature, not to exceed 15 minutes, for automatic interruption of EAS codes. However, this may not be used for the EAN event which must be transmitted immediately. The delay time for an RMT message may not exceed 60 minutes.

(o) Either manual or automatic operation of EAS equipment may be used by EAS Participants that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and it must directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS alert. EAS Participants may change back and forth between automatic and manual operation.

■ 18. Revise § 11.52 to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) EAS Participants must be capable of receiving the Attention Signal required by § 11.32(a)(9) and emergency messages of other broadcast stations during their hours of operation. EAS Participants must install and operate during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code. EAS Participants must comply with these requirements by the dates set forth in § 11.11.

Note to Paragraph (a): The two-tone Attention Signal will not be used to actuate two-tone decoders but will be used as an aural alert signal.

(b) If manual interrupt is used as authorized in § 11.51(m)(2), decoders must be located so that operators at their normal duty stations can be alerted immediately when EAS messages are received.

(c) EAS Participants that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facility.

(d) EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) The management of EAS Participants shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) EAS Participants are required to interrupt normal programming either automatically or manually when they

receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location.

(1) *Automatic* interrupt of programming is required when facilities are unattended. Automatic operation must provide a permanent record of the EAS message that contains at a minimum the following information: Originator, Event, Location and valid time period of the message.

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and recorded as specified in §§ 11.35(a) and 11.54(b)(13). Decoders must be programmed for the EAN and EAT Event header codes for National level emergencies and the RMT and RWT Event header codes for required monthly and weekly tests, with the appropriate accompanying State and State/county location codes.

■ 19. Amend § 11.53 by revising paragraphs (a) introductory text and (c) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

* * * * *

(a) *National Level.* The EAN is issued by the White House. The EAN message is sent from a government origination point to broadcast stations and other entities participating in the PEP system. It is then disseminated via EAS Participants.

* * * * *

(c) Analog and digital broadcast stations must, prior to commencing routine operation or originating any emissions under program test, equipment test, experimental, or other authorizations, determine whether the EAS has been activated by monitoring the assigned EAS sources as specified in their State or Local plan.

■ 20. Amend § 11.54 by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

* * * * *

(b) Immediately upon receipt of an EAN message, EAS Participants must:

(1) Monitor the two EAS sources assigned in the State or Local Area plan or FCC Mapbook for any further instructions. SDARS licensees and DBS providers may choose their two EAS sources, one of which must be a PEP station.

(2) Discontinue normal programming and follow the transmission procedures in the appropriate section of the EAS Operating Handbook. Announcements may be made in the same language as the primary language of the EAS Participant.

(i) Key EAS sources (National Primary (NP), Local Primary (LP), State Primary (SP), State Relay (SR) and Participating National (PN) sources) follow the transmission procedures and make the announcements in the National Level Instructions of the EAS Operating Handbook.

(ii) Non-participating National (NN) sources follow the transmission procedures and make the sign-off announcement in the EAS Operating Handbook's National Level Instructions section for NN sources. After the sign-off announcement, NN sources are required to remove their carriers or services from the air and monitor for the Emergency Action Termination message. NN sources using automatic interrupt under § 11.51(m)(1), must transmit the header codes, Attention Signal, sign-off announcement and EOM code after receiving the appropriate EAS header codes for a national emergency.

(3) After completing the above transmission procedures, key EAS and Participating National sources must transmit a common emergency message until receipt of the Emergency Action Termination Message. Message priorities are specified in § 11.44. If LP or SR sources of a Local Area cannot provide an emergency message feed, any source in the Local Area may elect to provide a message feed. This should be done in an organized manner as designated in State and Local Area EAS Plans.

(4) The Standby Script shall be used until emergency messages are available. The text of the Standby Script is in the EAS Operating Handbook's section for Participating sources.

(5) Analog and digital TV broadcast stations shall display an appropriate EAS slide and then transmit all EAS announcements visually and aurally as specified in §§ 11.51(a) through (e) and 73.1250(h) of this chapter.

(6) Analog cable systems, digital cable systems, and wireless cable systems shall transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h).

(7) DBS providers shall transmit all EAS announcements visually and aurally as specified in § 11.51(j).

(8) Announcements may be made in the same language as the primary language of the EAS participant.

(9) Analog and digital broadcast stations may transmit their call letters and analog cable systems, digital cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and Local Area identifications must be given as provided in State and Local Area EAS plans.

(10) All analog and digital broadcast stations and analog cable systems, digital cable systems and wireless cable systems operating and identified with a particular EAS Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

(11) Analog and digital broadcast stations, except those holding an EAS Non-participating National Authorization letter, are exempt from complying with §§ 73.62 and 73.1560 of this chapter (operating power maintenance) while operating under this part.

(12) National Primary (NP) sources must operate under the procedures in the National Control Point Procedures.

(13) The time of receipt of the EAN and Emergency Action Termination messages shall be entered by analog and digital broadcast stations in their logs (as specified in §§ 73.1820 and 73.1840 of this chapter), by analog and digital cable systems in their records (as specified in § 76.1711 of this chapter), by subject wireless cable systems in their records (as specified in § 21.304 of this chapter), and by all other EAS Participants in their records as specified in § 11.35(a).

(c) Upon receipt of an Emergency Action Termination Message, EAS Participants must follow the termination procedures in the EAS Operating Handbook.

(d) EAS Participants originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by section 325(a) of the Communications Act of 1934, 47 U.S.C. 325(a), to other EAS Participants.

(e) During a national level EAS emergency, EAS Participants may transmit in lieu of the EAS audio feed an audio feed of the President's voice message from an alternative source, such as a broadcast network audio feed.

■ 21. Amend § 11.55 by revising paragraphs (a), (c) introductory text, (c)(4) and (c)(7) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State and Local Area levels by EAS Participants at their discretion for day-to-day emergency situations posing a

threat to life and property. Examples of natural emergencies which may warrant activation are: Tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc. Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

(1) DBS providers shall pass through all EAS messages aired on local television broadcast stations carried by DBS providers under the Commission's broadcast signal carriage rules to subscribers receiving those channels.

(2) SDARS licensees and DBS providers may participate in EAS at the state and local level and make their systems capable of receiving and transmitting state and local level EAS messages on all channels. If an SDARS licensee or DBS provider is not capable of receiving and transmitting state and local EAS message on all channels, it must inform its subscribers, on its website and in writing on an annual basis, of which channels are and are not capable of supplying state and local messages.

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message, EAS Participants participating in the State or Local Area EAS must do the following:

* * * * *

(4) EAS Participants participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area plans. Analog and digital television broadcast stations must comply with § 11.54(b)(5); analog cable systems, digital cable systems, and wireless cable systems must comply with § 11.54(b)(6); and DBS providers must comply with § 11.54(b)(7). EAS Participants providing foreign language programming should comply with § 11.54(b)(8).

* * * * *

(7) The times of the above EAS actions must be entered in the EAS Participants' records as specified in §§ 11.35(a) and 11.54(b)(13).

* * * * *

■ 22. Revise § 11.61 to read as follows:

§ 11.61 Tests of EAS procedures.

(a) EAS Participants shall conduct tests at regular intervals, as specified in paragraphs (a)(1) and (a)(2) of this section. Additional tests may be performed anytime. EAS activations and special tests may be performed in lieu of required tests as specified in paragraph (a)(4) of this section. All tests will conform with the procedures in the EAS Operating Handbook.

(1) Required Monthly Tests of the EAS header codes, Attention Signal, Test Script and EOM code.

(i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM and analog and digital LPTV stations are required to transmit only the test script.

(ii) Effective May 31, 2007, DBS providers must comply with this section by monitoring a state or local primary source to participate in testing. Tests should be performed on 10% of all channels monthly (excluding local-into-local channels for which the monthly transmission tests are passed through by the DBS provider), with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested.

(2) Required Weekly Tests:

(i) EAS Header Codes and EOM Codes:

(A) Analog and digital AM, FM, and TV broadcast stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times. Effective December 31, 2006, DAB stations must conduct these tests on all audio streams. Effective December 31, 2006, DTV stations must conduct these tests on all program streams.

(B) Analog cable systems and digital cable systems with 5,000 or more subscribers per headend and wireless cable systems with 5,000 or more subscribers must conduct tests of the EAS Header and EOM Codes at least once a week at random days and times on all programmed channels.

(C) Analog cable systems and digital cable systems serving fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers must conduct tests of the EAS Header and EOM Codes at least once a week at random days and times on at least one programmed channel.

(D) SDARS providers must conduct tests of the EAS Header and EOM codes at least once a week at random days and times on all channels.

(ii) DBS providers, analog and digital class D non-commercial educational FM stations, and analog and digital LPTV stations are not required to transmit this test but must log receipt, as specified in §§ 11.35(a) and 11.54(b)(13).

(iii) The EAS weekly test is not required during the week that a monthly test is conducted.

(iv) EAS Participants are not required to transmit a video message when transmitting the required weekly test.

(3) *Periodic National Tests.* National Primary (NP) sources shall participate in tests as appropriate. The FCC may request a report of these tests.

(4) *EAS activations and special tests.* The EAS may be activated for emergencies or special tests at the State or Local Area level by an EAS Participant instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (a)(2)(i) of this section, activation must include transmission of the EAS header and EOM codes. Analog and digital television broadcast stations, analog cable systems, digital cable systems, wireless cable systems, and DBS providers shall comply with the aural and visual message requirements in § 11.51. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in EAS Participant records, as specified in §§ 11.35(a) and 11.54(b)(13).

[FR Doc. 05–23271 Filed 11–23–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 909 and 970

RIN 1991–AB64

Acquisition Regulation: Work for Others

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting as final without change an Interim Final Rule amending the Department of Energy Acquisition Regulation (DEAR) to provide policy and procedures regarding work for non-DOE entities performed by DOE contractors who manage and operate DOE-owned or DOE-leased facilities and to make an administrative change concerning debarment and suspension officials.

EFFECTIVE DATE: The interim final rule published December 15, 2004 (69 FR 75001) was effective January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Geary, Office of Procurement and Assistance Management (MA–62), 202–287–1507; *Andrew.Geary@hq.doe.gov*

SUPPLEMENTARY INFORMATION: DOE is adopting as final the Interim Final Rule published on December 15, 2004, at 69 FR 75001 amending the DEAR at Part 909 to state separate debarring and suspending officials for the National Nuclear Security Administration (NNSA) and DOE and adding policy and procedures to Part 970 including a standard contract clause for the performance of work for others by DOE management and operating contractors.

Background

DOE, including NNSA, owns or sponsors major scientific research and development, and manufacturing facilities throughout the United States that are managed and operated by contractors. DOE permits these contractors to perform non-DOE work for other Federal agencies and non-Federal entities on a fully reimbursable basis when such work is authorized by law and the work requires DOE's unique technologies and capabilities.

Performance of this work is conducted under DOE's Work for Others Program. The Work for Others Program makes available for use special or unique services or facilities that are otherwise unavailable in the private sector. The Work for Others Program requires that funding for Work for Others projects be provided by a non-DOE sponsor. Performance of this work has allowed DOE and its management and operating contractors to assist other Federal agencies in accomplishing their missions and has provided assistance to non-Federal entities to solve complex and challenging technological issues.

The purpose of this rule is to establish a uniform contract clause that will provide authority to DOE's management and operating contractors to perform fully reimbursable work under the terms and conditions set forth in their contracts.

This rule amends Part 970 of the DEAR that governs DOE contracts with entities that manage and operate DOE-owned or -leased facilities. The rule applies to contracts when the contractor performs fully reimbursable work for other Federal agencies and non-Federal entities and does not relate to the expenditure of DOE's appropriated funds.

DOE is also making a technical amendment to 48 CFR part 909 to identify an NNSA official as the debarment and suspension official for NNSA contracts.

DOE invited comments from the public, which were to be submitted on or before January 14, 2005. No comments were received. DOE has determined that no changes are needed to the Interim Final Rule and adopts the DEAR amendments as final without change.

Issuance of this Final Rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 904 and 970

Government procurement.

Issued in Washington, DC, on November 17, 2005.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ Accordingly, the interim final rule amending 48 CFR parts 904 and 970 which was published at 69 FR 75001 on December 15, 2004, is adopted as a final rule without change.

[FR Doc. 05–23286 Filed 11–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 112105A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl, pot, jig and hook-and-line gear to catcher processor vessels using hook-and-line gear in the BSAI. These actions are necessary to allow the 2005 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective November 21, 2005, until 2400 hours, Alaska local time, December 31, 2005.

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

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

The 2005 Pacific cod TAC in the BSAI is 190,550 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). Pursuant to § 679.20(a)(7)(i)(A), 3,811 mt was allocated to vessels using jig gear, 97,181 mt to vessels using hook-and-line or pot gear, and 89,559 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 3.3 percent to catcher/processor vessels using pot gear; 15 percent to catcher vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)(C)).

On April 13, 2005, 1,150 mt of Pacific cod from the A season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear (70 FR 19708, April 14, 2005). On May 17, 2005, 350 mt of Pacific cod from the B season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear (70 FR 28486, May 18, 2005). On August 5, 2005, an additional 500 mt of Pacific cod from the B season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear (70 FR 46436, August 10, 2005). On October 5, 2005, 17,962 mt of Pacific cod allocated to trawl vessels and 1,611 mt of Pacific cod allocated to jig vessels was reallocated to vessels using hook-

and-line gear and vessels using pot gear (70 FR 58983, October 11, 2005).

As of November 14, 2005, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher vessels will not be able to harvest 243 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B). The Regional Administrator has also determined that catcher vessels using pot gear will not be able to harvest 2,410 mt and catcher vessels using hook-and-line gear will not be able to harvest 60 mt. Also catcher/processor vessels using pot gear will not be able to harvest any additional Pacific cod. Therefore, in accordance with § 679.20(a)(7)(ii)(C), NMFS apportions 2,713 mt of Pacific cod to catcher/processor vessels using hook-and-line gear.

The Regional Administrator has also determined that vessels using jig gear will not harvest 34 mt of their Pacific cod allocation by the end of the year. Also, catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest 753 mt. Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*) and § 679.20(a)(7)(ii)(B), NMFS is reallocating the unused amount of 787 mt of Pacific cod allocated to vessels using jig gear and catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear to catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 166 mt to vessels using jig gear, 99,519 mt to catcher/processor vessels using hook-and-line gear, 12,828 mt to catcher vessels using pot gear, 230 mt to catcher vessels using hook-and-line gear, 35,847 mt to catcher vessels using trawl gear, and 2,601 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of projected unused amounts of Pacific cod in the BSAI. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of November 15, 2005.

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

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

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

Dated: November 21, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23283 Filed 11–21–05; 3:11 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 226
Friday, November 25, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2004P–0183]

Food Labeling: Nutrient Content Claims, Expansion of the Nutrient Content Claim ''Lean''

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations for the expanded use of the nutrient content claim ''lean'' on the labels of foods categorized as ''mixed dishes not measurable with a cup'' that meet certain criteria for total fat, saturated fat, and cholesterol content. This proposal responds to a nutrient content claim petition submitted by Nestlé Prepared Foods Co. (Nestlé) under the Federal Food, Drug, and Cosmetic Act (the act). This action also is being taken to provide reliable information that would assist consumers in maintaining healthy dietary practices.

DATES: Submit written or electronic comments by February 8, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2004P–0183, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1774.

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I. Background

On November 8, 1990, President George H.W. Bush signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535), which amended the Federal Food, Drug, and Cosmetic Act (the act). Section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), which was added by the 1990 amendments, states that a food is misbranded if it is intended for human consumption which is offered for sale and for which a claim is made in its label or labeling that expressly or implicitly characterizes the level of any nutrient of the type required to be declared in nutrition labeling, unless such claim uses terms defined in regulations by FDA under section 403(r)(2)(A) of the act.[1] In 1993, FDA established regulations that implemented the 1990 amendments (58 FR 2066 through 2941, January 6, 1993). Among these regulations, § 101.13 (21 CFR 101.13) sets forth general principles for nutrient content claims (see 58 FR 2302, January 6, 1993). Other sections in part 101, subpart D (21 CFR part 101, subpart D), define specific nutrient content claims, such as ''free,'' ''low,'' ''reduced,'' ''light,'' ''good source,'' ''high,'' and ''more,'' for a variety of nutrients and include several synonyms for each of the defined terms. In addition, § 101.69 outlines the procedures for petitioning the agency to authorize additional nutrient content claims.

In the 1991 proposed rule for ''Nutrient Content Claims, General Principles, Petitions, Definition of Terms'' (the general principles proposal) (56 FR 60421, November 27, 1991), FDA did not include a definition for ''lean.'' However, in the same issue of the **Federal Register**, the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) issued a proposed rule that included a definition for ''lean'' for labeling individual foods and meal-type products (a collective term used for meal and main dish products)

[1] The requirements in section 403(r)(2) of the act, for all nutrient content claims, apply to foods and food labeling unless an exemption applies for the food or the claim under section 403(r)(2) of the act, another section of the act, or FDA regulations.

containing meat and poultry (56 FR 60302, November 27, 1991).[2] After evaluating the comments to the general principles proposal, FDA determined that seafood, game meat, meal products, and main dish products that it regulated had a contribution to the diet that was similar to the USDA-regulated products and that FDA should establish a definition for ''lean'' for such products. Consequently, FDA defined ''lean'' for seafood, game meat, meal, and main dish products (§ 101.62(e)) in the final rule for nutrient content claims (58 FR 2302) using the same criteria that USDA used in its final rule for the ''lean'' claim (58 FR 632, January 6, 1993).[3] FDA's definition of ''lean'' includes flesh foods, such as seafood and game meat products, which are foods that are similar to USDA-regulated meat and poultry products, and also includes meal-type products (i.e., main dishes and meal products) which are included in the USDA definition. FDA's definition of ''lean,'' however, does not extend to other individual foods including ''mixed dishes not measurable with a cup.'' Such dishes, e.g., burritos, egg rolls, enchiladas, pizza, quiches, and sandwiches, are generally similar to the foods subject to the definition of ''main dish'' (§ 101.13(m)) but do not meet the weight criterion for ''main dish'' foods (6 ounces (oz) per labeled serving). The reference amount customarily consumed (RACC) for ''mixed dishes not measurable with a cup'' is 140 grams (g) (5 oz) (§ 101.12(b), table 2), which is 1 oz less than the 6 oz per labeled serving required to qualify as a ''main dish.''[4] Thus, food products that are categorized as ''mixed dishes not measurable with a cup'' and that weigh less than 6 oz are not eligible to bear a ''lean'' nutrient content claim under § 101.62(e).

FDA has authority to define the nutrient content claim ''lean'' for foods categorized as ''mixed dishes not measurable with a cup.'' FDA may take this action under section 403(r) of the act. FDA, by regulation, may define terms to be used for nutrient content claims that characterize the level of total fat, saturated fat, and cholesterol in these foods. Section 403(r) of the act authorizes the agency to issue regulations defining terms for use in nutrient content claims and establishes a process through which a person can petition the agency to define terms to characterize the level of a nutrient for use in a nutrient content claim (see section 403(r)(2)(A)(i) and (r)(4) of the act). Section 403(r)(1)(A) of the act states that a food is misbranded if it bears a claim that characterizes the level of a nutrient of the type required to be in nutrition labeling unless the claim uses terms which are defined in FDA regulations adopted under section 403(r)(2) of the act. The proposed rule, if finalized as proposed, will define the term ''lean'' for use on ''mixed dishes not measurable with a cup'' that are regulated by FDA and that meet the criteria in the rule for total fat, saturated fat, and cholesterol.

II. Petitions and Grounds

FDA received a nutrient content claim petition from Nestlé (Docket No. 2004P–0183) (Ref. 1) requesting that the agency amend the nutrient content claim regulation for ''lean'' (§ 101.62(e)) to include ''mixed dishes not measurable with a cup'' as defined in the ''reference amounts customarily consumed per eating occasion'' regulation (§ 101.12), based on certain qualifying criteria for total fat, saturated fat, and cholesterol. Nestlé submitted the petition on January 9, 2004, under section 403(r)(4) of the act and § 101.69. In accordance with section 403(r)(4)(A)(i) of the act and § 101.69(m)(3), FDA filed the Nestlé petition on April 22, 2004. This proposed rule responds to Nestlé's request that FDA define the term ''lean'' for ''mixed dishes not measurable by a cup.''

In its petition, Nestlé contended that American eating habits have changed significantly since FDA authorized the ''lean'' claim in 1993. Nestlé argued that, in the past decade, convenience has been an emerging theme with consumers and cited market research studies by NPD Group showing that the percentage of meals that are completely homemade has decreased, while the use of ready-to-eat and frozen foods has steadily risen. Nestlé also cited a 2003 survey by the market research group Information Resources, Inc. (IRI), in which consumers identify ''speed/ease of preparation'' as the most important factor in their food choices and assert that this is even more important than price. Nestlé presented additional data from IRI and NPD Group showing that consumers are eating fewer complete traditional meals, eating more snacks, and spending less time preparing meals at home. Nestlé also suggested that consumers are more interested in nutrition and healthy foods, as evidenced by an increased consumer demand for nutritious food selections. Nestlé cited surveys by the Natural Marketing Institute (NMI) in which two-thirds of Americans indicate they are eating healthier than they used to and that one-third of Americans choose food primarily based on nutritional content. One of the surveys indicated that 54 percent of adults read nutrition labels most or all of the time.

Furthermore, Nestlé cited a trend in substantially increased portion sizes over the past 30 years, as determined by USDA data from the Nationwide Food Consumption Survey and the Continuing Survey of Food Intake by Individuals. This trend, they said, is demonstrated by the increase in sizes of food items such as cheeseburgers, increasing from 5.8 oz to 7.2 oz, and salty snacks, increasing from 1.0 oz to 1.6 oz, between 1977 and 1996. Nestlé suggests that allowing a ''lean'' nutrient content claim on foods in the category of ''mixed dishes not measurable with a cup'' that have smaller portion sizes than many other food alternatives would provide consumers with readily recognizable healthful alternatives to other foods with larger portion sizes. Nestlé argued that manufacturers who want to encourage portion control by marketing healthier food options with smaller portion sizes are hindered by the current FDA regulations limiting the ''lean'' nutrient content claim to seafood, game meat, main dish, and meal products. These regulations do not allow for foods that may be similar to main dish and meal products but with slightly smaller portion sizes (e.g., ''mixed dishes not measurable with a cup'') to have a ''lean'' claim. Because of this, Nestlé believes that the number of healthy, portable food options available to consumers has been limited. The FDA regulations, Nestlé stated, have acted as an impediment for consumers to choose healthy foods that are similar to meal-type products but, because of their smaller portion sizes, do not qualify as meal-type products that are eligible for the ''lean'' nutrient content claim. Nestlé asserted that these trends of convenience and healthier eating call for an expansion of the ''lean'' definition to include foods identified as ''mixed dishes not measurable with a cup'' and also that this expansion may offer consumers healthy food options that do not have increasingly larger portion sizes.

[2] USDA also defined ''extra lean,'' which FDA later defined by regulation, in addition to ''lean.'' However, Nestlé did not request a definition for ''extra lean'' in its petition.

[3] Specifically, in order to be eligible to bear a claim, seafood and game meat products must contain less than 10 grams (g) total fat, 4.5 g or less of saturated fat, and less than 95 milligrams (mg) cholesterol per reference amount customarily consumed (RACC) and per 100 g, and for meals and main dishes, per 100 g and per labeled serving.

[4] If the ''mixed dish not measurable with a cup'' food were packaged in a way such that it met all of the requirements for a main dish, as specified in § 101.13(m), it could be considered a ''main dish'' and would be eligible to bear a ''lean'' claim under FDA's current regulations.

In its petition, Nestlé also pointed out the lack of consistency between FDA and USDA regulations regarding the claim ''lean.'' Nestlé stated that USDA-regulated individual foods and meal-type products, which contain meat and poultry, are permitted to bear the ''lean'' claim under USDA regulations (9 CFR 317.362(e) and 381.462(e), respectively). Nestlé noted that, unlike FDA, USDA does not limit the use of the ''lean'' claim to specific individual foods. Thus, any meat or poultry product subject to USDA regulation, including those that are similar to foods in FDA's category of ''mixed dishes not measurable with a cup'' category and that meet the USDA nutrient requirements, may bear the ''lean'' claim. Nestlé asserted that, although there is a distinction between the types of foods regulated by the USDA and FDA, consumers are unlikely to be aware of such a distinction. Therefore, Nestlé stated that there should be some consistency across the requirements for nutrient content claims. It contended that an amended definition for ''lean'' for use on ''mixed dishes not measurable with a cup'' would reduce the disparity between FDA and USDA regulations. Nestlé also stated that the expansion of the ''lean'' claim advances the FDA ''Initiative on Consumer Health Information for Better Nutrition'' by contributing to the goal of making sure that consumers have access to the latest information when making decisions about their diet.

To accomplish the request to include ''mixed dishes not measurable with a cup'' in an amended definition of ''lean'' in § 101.62(e), Nestlé suggested two different possible methods for determining the criteria that could apply for the total fat, saturated fat, and cholesterol content of such dishes eligible to bear the claim. For each of these methods, Nestlé took into consideration the reference intakes for fat for adults and for children that were established by the Institute of Medicine (IOM) of the National Academies, i.e., acceptable macronutrient distribution ranges of 20 to 35 percent of energy intake from fat for adults and 25 to 40 percent intake from fat for children (IOM, Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids, 2002). Nestlé also considered the FDA-established daily reference value (DRV) for total fat of 65 g, which is based on a reference caloric intake of 2,000 calories, that is used in nutrition labeling (§ 101.9(c)(9)). With regard to saturated fat and cholesterol, Nestlé considered the IOM's recommendation ''that saturated fatty acids * * * and cholesterol consumption be as low as possible while consuming a nutritionally adequate diet,'' as well as the FDA-established DRV for saturated fatty acids of 20 g and the DRV for cholesterol of 300 mg, based on a reference caloric intake of 2,000 calories, that is used in nutrition labeling (§ 101.9(c)(9)).

The first possible method suggested by Nestlé uses the existing ''lean'' nutrient criteria for main dishes as the basis of the definition. Nestlé proposes new criteria for total fat, saturated fat, and cholesterol based on the percentage of the proportion of an estimated weight for ''mixed dishes not measurable with a cup'' and the minimum weight of a main dish product that is eligible for a ''lean'' claim. In short, Nestlé stated that the reduction in the nutrient criteria would be in proportion to the reduction in weight between the average weight of ''mixed dishes not measurable with a cup,'' which is 132.53 g in their estimation, and the minimum weight of a meal-type product, which is 6 oz (170.1 g). The percentage of the proportion of these weights (132.53 g / 170.1 g x 100) equals 0.78 or 78 percent. Seventy-eight percent of the current nutrient criterion value for fat (10 g fat multiplied by 78 percent) would result in nutrient value of 7.8 g fat. Seventy-eight percent of the current nutrient criterion value for saturated fat (4.5 g sat fat multiplied by 78 percent) equals 3.5 g saturated fat. Seventy-eight percent of the current nutrient criterion value for cholesterol (95 milligrams (mg) cholesterol multiplied by 78 percent) equals 74.1 mg cholesterol. This would translate into unrounded criteria for ''lean'' for ''mixed dishes not measurable by a cup'' of: 7.8 g total fat, 3.5 g saturated fat, and 74.1 mg cholesterol. Nestlé applied these criteria on a per-RACC basis. Nestlé stated that the foods in this category play a smaller role in the diet compared to meal-type products and believed that the more restrictive ''lean'' criteria in its petition were appropriate. The RACC for ''mixed dishes not measurable with a cup'' is 140 g. Thus, the practical effect of applying Nestlé's suggested nutrient criteria on a per-RACC basis makes the levels more restrictive (proportionally) for ''mixed dishes not measurable with a cup'' than for main dishes. For example, the 7.8 g total fat per 140 g would be equivalent, proportionally, to 5.6 g fat per 100 g. The current main dish total fat criterion is 10 g per 100 g and per labeled serving.

The second possible method suggested by Nestlé would determine the nutrient criteria for ''lean'' according to Nestlé's estimated calorie contribution of ''mixed dishes not measurable with a cup'' in the total diet. Nestlé looked at 34 grocery store-bought food items categorized as ''mixed dishes not measurable with a cup'' and determined that the average number of calories per 100 g was 214.41 calories. Taking the current dietary recommendation of 30 percent[5] of calories from fat, Nestlé established that 30 percent of calories from fat in ''mixed dishes not measurable with a cup'' (214.41 calories multiplied 30 percent) would equal 64.32 calories per 100 g from fat. The calories from fat converted to grams of fat (64.32 calories from fat / 9 calories of fat per g) would equal 7.15 g of fat per 100 g. Following the same calculation for determining total fat, 10 percent of calories from saturated fat[6] (214.41 calories multiplied by 10 percent) equals 21.441 calories per 100 g and converted to saturated fat grams (21.441 calories / 9 calories saturated fat per g) equals 2.382 g saturated fat per 100 g. There are no cholesterol intake guideline criteria expressed as a percentage of calories comparable to the fat and saturated fat guidelines, thus, the cholesterol criteria would be derived from the current main dish criteria in the same way described in the first method, which equaled 74.1 mg cholesterol. This would translate into criteria for ''lean'' for ''mixed dishes not measurable by a cup'' as follows: 7.15 g total fat (7 g rounded), 2.382 g saturated fat (2.5 g rounded), and 74.1 mg cholesterol (75 mg rounded). Although Nestlé calculated the criteria using this method on a per-100 g basis, Nestlé applied the criteria for purposes of determining eligibility of foods to bear the ''lean'' claim on a per-RACC basis. The criteria are proportionally more restrictive for ''mixed dishes not measurable with a cup'' than for main dishes, and slightly more restrictive than the other method Nestlé set forth in its petition. For this method, 7 g total fat per 140 g would be equivalent, proportionally, to 5 g fat per 100 g.

[5] Nestlé refers to the IOM AMDRs for current dietary recommendations (see Attachment 20 of the petition (Ref. 1)). The AMDR for total fat intake is between 20 and 35 percent of calories for adults. This range also corresponds to the recommendations provided in the 2005 Dietary Guidelines for Americans (Ref. 2). Nestlé noted that the midpoint is 27.5 percent and rounds this number up to 30 percent. This value of 30 percent is consistent with the current DRV for fat established by FDA.

[6] Nestlé refers to the dietary recommendation provided by the NIH, NHLBI, National Cholesterol Education Program (see Attachment 25 of the petition (Ref. 1)).

III. Proposed Action

A. Need for Regulations

As stated earlier, in the proposed rule for nutrition labeling (56 FR 60302, November 27, 1991), FSIS proposed the ''lean'' claim for meat and poultry products. Because all the products that USDA regulates with regard to nutrition labeling consist in whole or in part of meat and poultry (with certain exceptions for some egg products), USDA permits use of the term ''lean'' across the spectrum of foods whose nutrition labeling it regulates (provided they meet the nutrient requirements for the claim). FDA adopted a regulation similar to the FSIS regulation for the nutrient content claim ''lean'' for use on seafood, game meat, meal products, and main dish products (§ 101.62(e)). The current FDA regulations do not allow for use of the claim ''lean'' on ''mixed dishes not measurable with a cup'' because they are considered individual foods for which there is no ''lean'' definition other than for seafood and game meat. Moreover, the FDA regulations do not allow for the use of the claim ''lean'' on a food in the category of ''mixed dishes not measurable with a cup'' when the product as packaged does not meet the minimum weight criterion to qualify as a ''main dish.'' The current FDA regulations thus prohibit a manufacturer from labeling FDA-regulated ''mixed dishes not measurable with a cup'' with a ''lean'' claim, while manufacturers are able to use the claim on such foods that are regulated by USDA. For example, a food such as a starch based wrap, with chicken, broccoli, and cheddar cheese that is subject to USDA regulation, is able to bear a ''lean'' claim under USDA regulations, but a similar wrap with just broccoli and cheese and without chicken, that would not be subject to USDA regulation, could not bear a ''lean'' claim under current FDA regulations.

FDA has reviewed Nestlé's petition and appreciates its concerns about the differences between current FDA and USDA regulations as to the eligibility for a ''lean'' nutrient content claim for foods in the category of ''mixed dishes not measurable with a cup.'' In the nutrient content claims final rule (58 FR 2302 at 2343), in providing a definition for the term ''lean'' for seafood and game meat and meal-type products, the agency stated that such a definition would enable consumers to compare the nutritional values of products that may serve as substitutes for one another in creating a balanced diet. Because of the requirement in § 101.13(m) that, among other things, products must weigh a minimum of 6 oz in order to be considered main dish products, and that by current regulation only seafood and game meat and meals and main dish products may bear the ''lean'' claim, FDA acknowledges that a whole group of products (namely ''mixed dishes not measurable with a cup'') may be prohibited from bearing the ''lean'' claim because of the prohibition on using the claim on individual foods other than seafood and game meat that do not meet the criteria for main dishes, including the 6 oz weight criterion.

FDA acknowledges Nestlé's argument, as demonstrated by the data submitted in the petition, that these types of products, which include egg rolls, burritos, and other handheld sandwich-like products, have found their way into the American diet and serve as a convenient ''meals-on-the-go'' eating option that is consistent with America's changing lifestyle. They provide a ''heat and eat,'' no-utensils-required, alternative to other types of food products. As market research by ACNielsen Syndicated Data indicates,[7] the sandwiches/snacks category has seen significant growth in the past 5 years, with a 43-percent increase in dollar sales since 1999. As such, this category has become a well established product category that consumers have come to rely on.

FDA also acknowledges Nestlé's arguments that there is a growing interest in healthful alternatives to traditional food options, including vegetarian alternatives. This interest is demonstrated by a 30-percent increase in sales in the past year, according to ACNielsen, in the ''Frozen Sandwich and Snack, Nutrition category'' and even by the increasing markets for ''meal-replacement bars'' and ''liquid meal-replacements.'' Although not included in the ''mixed dishes not measurable with a cup'' category of foods, the increasing markets for the meal-replacement bars and liquid meal-replacement foods support the trend of Americans choosing more portable foods, especially foods that consumers consider healthful alternatives.

In evaluating the information that Nestlé presented in its petition, FDA acknowledges that portable food products, particularly those that are nutrient (i.e., fat, saturated fat, and cholesterol) and portion controlled, serve a useful purpose in assisting consumers in selecting a diet that is consistent with current dietary recommendations (i.e., IOM acceptable macronutrient distribution ranges, DRVs established by FDA, and the 2005 Dietary Guidelines for Americans).

The agency has tentatively concluded that providing for a ''lean'' claim on ''mixed dishes not measurable with a cup'' will provide consumers with a means to distinguish, in this well established category, among the variety of portion controlled products so that they may select those products that are limited in fat, saturated fat, and cholesterol as opposed to their ''full fat'' alternatives. The agency acknowledges the potential that ''mixed dishes not measurable with a cup'' that are eligible to bear a ''lean'' claim offer in delivering a convenient food that can provide nutritional benefits and help improve the quality of Americans' diets.

In its petition, Nestlé suggested that by allowing ''mixed dishes not measurable with a cup'' to bear a ''lean'' claim, these products would provide a way of addressing ever-expanding portion sizes and the accompanying increase in caloric levels by allowing manufacturers to encourage portion control by marketing healthier food options with smaller portion sizes. Nestlé suggested that this category of product will offer more choices to consumers looking for healthful foods with small portion sizes. More healthful food choices in this category may encourage the consumption of small portions and thus aid in addressing the problem of excess calorie intake.

As opposed to frozen entrees that qualify as meal-type products which are limited in size with the entire package and contain as few as 6 oz, however, many ''mixed dishes not measurable by a cup'' are packaged two to a package, or about 10 oz per package. Consequently, the agency is concerned that rather than eating just one of the portions provided, thus limiting portion size, consumers may instead consume the entire package, thus doubling their caloric and nutrient intake as opposed to lowering it. The agency particularly seeks information and data, as comments to this proposed rule, about whether consumers may eat an entire package of these multi-pack ''mixed dishes not measurable with a cup'' that may result in excess calorie intake, rather than improved portion control of healthier food options that is a desired outcome of this proposed rule, if finalized as proposed.

The agency has tentatively concluded that providing a ''lean'' definition for ''mixed dishes not measurable with a cup'' will provide more consistency with similar USDA products and help consumers construct a diet that is consistent with current dietary recommendations (i.e., keeping dietary

[7] ACNielsen Syndicated Data, see Attachment 7 of the petition (Ref. 1).

intake of total fat, saturated fat, and cholesterol limited). Therefore, as discussed in the following section, the agency is proposing such a definition.

B. Proposed Amendments

In proposing a definition for the use of the nutrient content claim ''lean'' by eligible foods classified as ''mixed dishes not measurable with cup,'' the agency considered the following options: (1) Require the existing FDA nutrient requirements used by other FDA-regulated foods that are eligible for a ''lean'' claim, such as meal-type products; (2) require the existing USDA requirements for individual foods that are eligible to bear a ''lean'' claim (such foods would include foods in the ''mixed dishes not measurable with a cup'' category); (3) require either of the two methods for determining nutrient values proposed by the petitioner; or (4) require new nutrient requirements for ''mixed dishes not measurable with a cup.''

In evaluating the various options, FDA considered whether it was appropriate to apply the nutrient criteria to only the RACC for ''mixed dishes not measurable with a cup'' and not to both the RACC and per 100 g as is currently used for seafood and game meat. Foods in the ''mixed dish not measurable with a cup'' category have a single RACC. Foods considered ''seafood'' or ''game meat'' have multiple RACCs that differ depending on their use. The requirements for a ''lean'' claim for seafood or game meat are on a per-RACC and per-100 g basis. The use of the 100 g basis, in addition to the per-RACC basis, prevents some of the inconsistency that could occur within an entire category of products with multiple RACCs (i.e., canned fish with a 55 g RACC and a fish entrée that has a much larger 140 g RACC do not end up with the same exact nutrient requirements). The ''mixed dish not measurable with a cup'' category of individual foods, however, has only one RACC and does not need to have an additional 100 g basis requirement to insure consistency of application. Thus, the agency tentatively concludes that the requirements for a ''lean'' claim for foods considered ''mixed dishes not measurable with a cup'' will need to be based on a per-RACC basis only.

The agency first considered the options of requiring the existing nutrient requirements for other FDA-regulated foods that are eligible to bear the ''lean'' claim and the USDA nutrient requirements for a ''lean'' claim for individual foods. The agency decided not to propose these options. The current nutrient criteria for these options are less than 10 g fat, 4.5 g or less saturated fat, and less than 95 mg of cholesterol per RACC and per 100 g for seafood and game meat or for meal-type products, per 100 g and per labeled serving. As explained in the following paragraphs, the agency determined that it would be appropriate to consider nutrient criteria that differ from the current requirements. In addition, when establishing nutrient criteria for the category of ''mixed dishes not measurable with a cup'' that are eligible to bear the ''lean'' claim, the agency determined that it would only apply the nutrient criteria to the RACC (140 g) and not to both the RACC and per 100 g as it does for the individual foods (seafood and game meat) currently eligible to bear the ''lean'' claim. Further, when applying the current nutrient criteria to the RACC of 140 g, the agency determined that the nutrient criteria for fat, saturated fat, and cholesterol would be more restrictive than necessary for these foods to be considered ''lean'' when considered in the context of the total daily diet. Therefore, the agency decided not to propose the current nutrient criteria to the RACC for ''mixed dishes not measurable with a cup.''

FDA adopted the USDA nutrient requirements for ''lean,'' in the 1993 nutrient content claim final rule (58 FR 2302 at 2342), for seafood and game meats and for meal-type and main dish products because, in part, the agency recognized that seafood and game products play a comparable role in the diet to that of meat and poultry products and like meat and poultry products, contribute to the total dietary intake of fat, saturated fat, and cholesterol. In addition, FDA-regulated meal-type products are consumed in the same manner as USDA-regulated meal-type products covered by the FSIS rule on the ''lean'' claim. FDA determined that the equivalent definition of these terms would enable consumers to compare the nutritional values of meat products and meal-type products that may serve as substitutes for one another in a balanced diet (58 FR 2302 at 2343). The levels of total fat and saturated fat that were chosen by USDA for the ''lean'' criteria were based on a ratio of saturated fat to total fat that would be 40 percent, which is representative of the ratio of saturated fat to total fat inherent in ruminant muscle (58 FR 2302 at 2342).

The agency has concluded, however, that not all of the factors considered in the 1993 final rule apply to the foods in the FDA-regulated category ''mixed dishes not measurable with a cup.'' The ''mixed dishes not measurable with a cup'' category may not play a comparable role in the diet to that of meat and poultry products; may not contribute to the total dietary intake of fat, saturated fat, and cholesterol like meat and poultry products; and may not be consumed in the same manner as USDA-regulated meal-type products. FDA-regulated ''mixed dishes not measurable with a cup,'' which are similar in composition to meal and main dish products (i.e., they are multi-component products), are smaller in size compared to the meal-type products. The agency believes that, although similar in composition to meal-type products, the restriction in size of the products in this category results in a different role in the diet than meal-type products. These foods are likely to be chosen by consumers to reduce portion sizes of meals for a reduced calorie contribution, or as healthy snack alternatives to those ''mixed dishes not measurable with a cup'' that are higher in fats. Because of their size requirements, meal-type products comprise a larger percent (in weight and in calories) of the daily diet than ''mixed dishes not measurable'' do. Further, the foods that FDA regulates in this category include those that have no meat, poultry, seafood, or game meat as ingredients and, therefore, it would be appropriate for these foods to have lower fat criteria than foods in those categories, based on their dissimilar ingredient contents and smaller calorie contribution. While it is possible that foods in the ''mixed dishes not measurable with a cup'' category could have similar nutrient profiles to USDA-regulated meat and poultry products (e.g., an entrée-type turnover containing cheese), many foods that fall into this category, especially those foods that do not contain any cheese, would have very different total fat, saturated fat, and cholesterol profiles. Therefore, because foods in the category of ''mixed dishes not measurable with a cup'' may not make the same contribution to the total dietary fat, saturated fat, and cholesterol and have a different role in the total diet as other FDA-regulated foods in this category or as other USDA-regulated individual foods in this category, FDA has tentatively concluded that the nutrient criteria ''lean'' for ''mixed dishes not measurable with a cup'' should not necessarily be the same as the criteria used for other individual foods and for meal-type products.

Applying the current nutrient criteria to the RACC for ''mixed dishes not measurable with a cup'' (i.e., less than 10 g fat per 140 g, 4.5 g or less saturated fat per 140 g, and less than 95 mg cholesterol per 140 g) results in criteria that, proportionally on a per-100 g basis,

are comparable to the two methods proposed by the petitioner. The nutrient criteria for this option, when computed on a per-100 g basis, would be less than 7.1 g fat, 3.2 g or less saturated fat, and less than 68 mg cholesterol. However, a main dish (170 g portion) that met the current nutrient criteria for a ''lean'' claim would contribute less than 5.9 g total fat, 2.6 g or less saturated fat, and less than 56 mg cholesterol per 100 g (see discussion infra in footnote 8 of this document). Given the smaller portion sizes of ''mixed dishes not measurable with a cup,'' different composition than similar USDA-regulated foods, and different contribution to the total daily diet, ''mixed dishes not measurable with a cup'' labeled as ''lean'' should not be contributing proportionally more fat, saturated fat, and cholesterol than a main dish that bears the ''lean'' claim. If ''mixed dishes not measurable with a cup'' did contribute proportionally more fat, saturated fat, and cholesterol per 100 g product consumed, consumers who may include more lean ''mixed dishes not measurable with a cup'' in their diets would inadvertently be consuming more of these fats. Therefore, the agency tentatively decided not to propose this option.

The agency also considered the nutrient criteria based on the two different methods that Nestlé described in its petition to calculate the nutrient requirements for the ''lean'' definition. The agency decided not to propose these options. These methods are described in section II of this document. One method described by Nestlé uses the existing requirements for total fat, saturated fat, and cholesterol content in the nutrient content claim ''lean'' for meal-type products and reduces those requirements for ''mixed dishes not measurable with a cup'' in proportion to the reduction in portion size. ''Mixed dishes not measurable with a cup'' are multi-component foods that are similar to main dish and meal products, but smaller in size. In describing this method in its petition, Nestlé assumed an estimated average weight of 132.53 g for foods in this category compared to the 170.1 g (6 oz) minimum weight criterion for main dishes. This resulted in nutrient criteria of 7.8 g fat, 3.5 g saturated fat, and 74.1 mg cholesterol. These criteria are applied on a per-RACC basis. When the nutrient criteria are applied on a per-RACC basis and then computed on a per-100 g basis to compare with the other options, the nutrient criteria are less than 5.6 g fat per 100 g, 2.5 g or less saturated fat per 100 g, and less than 53 mg cholesterol per 100 g. These values are slightly more restrictive than what the agency is proposing to require and more restrictive than necessary for consumers to be able to maintain a diet that is within the current dietary recommendations for fat, saturated fat, and cholesterol, as discussed in the proposed option. Further, Nestlé did not describe the basis for its estimated average weight of ''mixed dishes not measurable with a cup'' as 132.53 g when calculating the nutrient criteria. Thus, Nestlé provided no rationale for why a portion size of 132.53 g should be used in computing the nutrient criteria in lieu of the RACC of 140 g for ''mixed dishes not measurable with a cup.'' Consequently, for all these reasons, FDA tentatively decided not to propose the nutrient requirements for ''lean'' based on Nestlé's assumed average weight for ''mixed dishes not measurable with a cup.''

The other method suggested by Nestlé determined nutrient values (based on recommended intakes) using an estimated calorie contribution of foods in the ''mixed dishes not measurable with a cup'' category as the basis of the definition. This suggested method relates current dietary recommendations for the percentage of nutrients in the overall diet to the percentage distribution of the nutrients in the individual food item (e.g., the current dietary recommendation of 30 percent fat in the diet would result in the product containing 30 percent of its calories from fat). This method of determining nutrient requirements is problematic for a number of reasons. One reason is that such a method is not one FDA has used to determine nutrient requirements for nutrient content claims. Additionally, recommendations for intake of these nutrients expressed as a percentage of calories are available for only total fat and saturated fat. Intake of cholesterol has no such recommendation. Consequently, this suggested method is used only for determining the requirements of two of the three nutrients, with the cholesterol requirement being determined using the alternate method suggested by Nestlé. Therefore, the determination of the nutrient requirements is not consistent using this method. Also, Nestlé calculated the nutrients on a per-100 g basis but proposed to apply them on a per-RACC basis. It is unclear why Nestlé calculated the requirements in this way, as opposed to originally calculating the requirements on a per-RACC basis (using the RACC of 140 g). To determine the total fat requirement, for example, Nestlé determined how many calories were in 100 g of an average ''mixed dish not measurable with a cup'' (214.4 calories / 100 g), calculated 30 percent of this value (64.32 calories), converted calories to gram weight (7.147 g fat), and applied this value to a per-RACC basis. Using the method as suggested by the petitioner (when the nutrient criteria are applied on a per-RACC basis and then computed on a per-100 g basis to compare with the other options), the nutrient criteria from this method are less than 5 g fat per 100 g, 2.5 g or less saturated fat, and less than 53 mg cholesterol per 100 g. These values are slightly more restrictive than what the agency is proposing to require and more restrictive than necessary for consumers to be able to maintain a diet that is within current dietary recommendations for fat, saturated fat, and cholesterol, as discussed in the proposed option. For all these reasons, the agency tentatively decided not to propose the nutrient criteria derived using this method.

The agency tentatively decided to determine new nutrient requirements specific to the ''mixed dishes not measurable with a cup'' category and to use the RACC for ''mixed dishes not measurable with a cup'' in deriving the nutrient criteria. As discussed earlier in this document, the agency wants to ensure that ''mixed dishes not measurable with a cup'' that are labeled ''lean'' will help consumers construct a diet that is consistent with current dietary recommendations. Thus, consumers who incorporate these products into their diets as healthy snacks or choose smaller portions for controlled calorie intake at meals should be able to keep their dietary intake of total fat, saturated fat, and cholesterol at or below the DRVs established by FDA and within current ranges set forth in the IOM acceptable macronutrient distribution ranges (AMDRs) and the 2005 Dietary Guidelines for Americans. Because FDA-regulated foods within the category ''mixed dishes not measurable with a cup'' do not necessarily contribute to the diet in the same manner as meal-type products regulated by FDA (e.g., they are not used as meal replacements, and would not necessarily have the same fat, saturated fat, and cholesterol content as the USDA-regulated counterparts), we have tentatively concluded that the nutrient criteria should be more restrictive than these other products to reflect the contribution to the overall diet and the different fat content.

FDA determined that it could achieve better criteria, which would enable consumers to maintain intakes of fat within current dietary recommendations without being as restrictive as the other

options, by basing the nutrient criteria for fat, saturated fat, and cholesterol on the current criteria for main dishes, but applying the criteria to the RACC (140 g) for ''mixed dishes not measurable with a cup'' rather than the minimum weight for main dishes (170.1 g). The agency chose the main dish minimum weight requirement of 170.1 g (6 oz) for use in its calculations, rather than the 283.4 g (10 oz) minimum weight requirement for meal products, because main dishes are closer to ''mixed dishes not measurable with a cup'' in portion size and contribution to the overall diet. The current regulations require main dish products bearing a ''lean'' claim to have less than 10 g total fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per 100 g and per labeled serving. Because the minimum weight criterion for main dishes and the RACC for ''mixed dishes not measurable with a cup'' are both considered a serving and much closer in portion size than meal products at 10 oz, the agency decided that using the nutrient criteria based on the minimum weight for main dishes would be appropriate for calculating the criteria for ''mixed dishes not measurable with a cup.'' Further, to be eligible for a ''lean'' nutrient content claim, a main dish must meet the nutrient criteria on a per-labeled-serving basis.[8] Thus, the agency chose the serving size for a main dish that would have to meet the nutrient criteria for ''lean'' (i.e., 170 g) as a basis to establish the criteria for ''mixed dishes not measurable with a cup'' per RACC. The RACC for ''mixed dishes not measurable with a cup'' is 140 g (5 oz).

FDA proposes to establish the fat, saturated fat, and cholesterol criteria for the definition of ''lean'' for ''mixed dishes not measurable with a cup'' by calculating the percent of the proportion of the weight of the RACC for ''mixed dishes not measurable with a cup'' (140 g) to the minimum weight of main dishes (170.1 g) and multiplying the percent by the nutrient criteria for fat, saturated fat, and cholesterol for main dishes. The proportion in weight is 140 g / 170.1 g, which equals 0.82 or 82 percent. Eighty-two percent of the current nutrient criterion value for fat (10 g fat multiplied by 82 percent) equals a nutrient value of 8.2 g fat per RACC. Eighty-two percent of the current nutrient criterion value for saturated fat (4.5 g sat fat multiplied by 82 percent) equals 3.69 g saturated fat. Eighty-two percent of the current nutrient criterion value for cholesterol (95 mg cholesterol multiplied by 82 percent) equals 77.9 mg cholesterol. This proportional reduction results in rounded values of 8 g total fat, 3.5 g saturated fat, and 80 mg cholesterol. Calculating the proposed nutrient criteria for ''mixed dishes not measurable with a cup'' per RACC from the current nutrient content criteria on the minimum weight for main dishes provides proposed criteria for ''mixed dishes not measurable with a cup'' that are comparable in their contribution of fat, saturated fat, and cholesterol on a per-100 g basis to that contributed by main dishes on a per-100 g basis.[9] The proposed nutrient criteria are less restrictive than the other options considered and would potentially allow more foods for increased consumer choice. Consumers could achieve a diet using ''lean'' ''mixed dishes not measurable with a cup'' that is consistent with current dietary recommendations.

Therefore, to bear a ''lean'' claim, FDA proposes in § 101.62(e)(2) that food items falling within the RACC for ''mixed dishes not measurable with a cup'' must have less than 8 g total fat, 3.5 g or less saturated fat, and less than 80 mg cholesterol per RACC. The agency is proposing to revise current § 101.62(e) to include the proposed provision. FDA requests comments on these criteria for ''mixed dishes not measurable with a cup.''

In proposing the nutrient requirements, the agency considered including a requirement for *trans* fat, but decided against including it in this proposal. Currently, there is no daily value for *trans* fatty acids, but it is well known that *trans* fatty acids increase serum total- and LDL-cholesterol levels. FDA has issued an advanced notice of proposed rulemaking (ANPRM) to solicit comments on establishing *trans* fat nutrient content claims; to establish qualifying criteria for *trans* fat in current nutrient content claims for saturated fatty acids and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids; and, in addition, to establish disclosure and disqualifying criteria to help consumers make healthy food choices. The agency also solicited comment on whether it should consider statements about *trans* fat, either alone or in combination with saturated fat and cholesterol, as a footnote in the Nutrition Facts panel or as a disclosure statement in conjunction with claims (68 FR 41507, July 11, 2003). FDA believes that it would be premature to consider a specific *trans* fat nutrient requirement for use of the nutrient content claim ''lean'' by eligible foods classified as ''mixed dishes not measurable with a cup,'' until it has evaluated the merits of a level of *trans* fat based on the data and information it is currently evaluating in the context of the ANPRM.

Pending issuance of a final rule defining the ''lean'' nutrient content claim that characterizes the fat, saturated fat, and cholesterol content in qualifying foods that fall within the RACC established for ''mixed dishes not measurable with a cup,'' FDA intends to consider the exercise of its enforcement discretion on a case by case basis when the ''lean'' nutrient content claim in food labeling is based on the definition in this proposed rule and when the labeling containing such a claim is not otherwise false or misleading. The act's enforcement provisions commit complete discretion to the Secretary (and by delegation to FDA) to decide how and when they should be exercised. *Heckler* v. *Chaney*, 470 U.S. 821 at 835 (1985); *see also Schering Corp.* v. *Heckler*, 779 F.2d 683 at 685–86 (D.C. Cir. 1985) (stating that the provisions of the act ''authorize, but do not compel the FDA to undertake enforcement activity''). Until the agency issues a final rule for the ''lean'' nutrient content claim for foods classified as ''mixed dishes not measurable with a cup,'' the agency believes that its exercise of enforcement discretion will help alleviate consumer confusion by encouraging greater consistency and uniformity in the marketplace for such claims, and thereby assist consumers in making informed dietary choices about their fat, saturated fat, and cholesterol intake.

IV. Preliminary Regulatory Impact Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866. Executive Order 12866 directs

[8] If a food qualifying as a main dish meets the per-labeled-serving basis for a ''lean'' claim, it also meets the per-100 g basis. For example, a main dish with a 170 g labeled serving size containing less than 10 g fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per labeled serving could bear a lean claim because it meets both the per-labeled-serving basis and the per-100 g basis (i.e., the food would contain less than 5.8 g fat, 2.6 g or less saturated fat, and less than 55.9 mg cholesterol per 100 g). However, a food qualifying as a main dish that meets the per-100 g basis for a ''lean'' claim might not meet the per-labeled-serving basis. For example, a main dish containing 10 g fat, 4.5 g saturated fat, and 95 mg cholesterol per 100 g would contain 17 g fat, 7.7 g saturated fat, and 162 mg cholesterol per 170 g labeled serving.

[9] For example, a 170 g main dish that meets the nutrient content criteria of less than 10 g per labeled serving of 170 g, 4.5 or less saturated fat per 170 g, and less than 95 mg cholesterol per labeled serving of 170 g would provide less than 5.8 g fat, 2.6 g or less saturated fat, and less than 55.9 mg cholesterol per 100 g. As a comparison, a mixed dish that contains less than 8 g fat, 3.5 g or less saturated fat, and less than 80 mg cholesterol would provide less than 5.7 g fat, 2.5 g or less saturated fat, and less than 57 mg cholesterol per 100 g.

agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

A. Need for Regulation

Unlike foods classified as either meal products or main dish products, many foods classified as ''mixed dishes not measurable with a cup'' are not currently allowed to make a ''lean'' nutrient content claim because the RACC is less than 6 oz. Allowing a ''lean'' nutrient content claim on the labels of ''mixed dishes not measurable with a cup'' may facilitate more nutritious eating choices by consumers. Moreover, better choices regarding fat, saturated fat, and cholesterol consumption are especially important considering current concern with obesity, other diseases related to being overweight, and heart disease. Finally, USDA currently allows the ''lean'' claim on all foods that they regulate, including individual foods, and allowing the claim on FDA-regulated foods would increase consistency in allowable claims between the two agencies.

B. Regulatory Options

We considered the following regulatory options: (1) Take no new regulatory action; (2) adopt Nestlé's petitioned criteria for fat, saturated fat, and cholesterol; (3) extend the current FDA criteria for making a ''lean'' claim for ''meal products'' and ''main dish products'' to ''mixed dishes not measurable with a cup,'' and (4) adopt the proposed criteria for fat, saturated fat, and cholesterol contents necessary for making a ''lean'' claim for ''mixed dishes not measurable with a cup.'' FDA requests comments on benefits, costs, and any other aspects of these (and any other) alternatives.

Option 1: Take No New Regulatory Action

The first regulatory option, take no action, would require denying the Nestlé petition requesting that FDA authorize a nutrient content claim ''lean'' for ''mixed dishes not measurable with a cup.'' Taking no regulatory action to amend the definition of ''lean'' is the state of the world and our baseline. By convention, we treat the option of taking no new regulatory action as the baseline for determining the costs and benefits of the other options. Therefore, we associate neither costs nor benefits with this option. The consequences of taking no action are reflected in the costs and benefits of the other options.

Option 2: Propose Nestlé's Petitioned Criteria for Fat, Saturated Fat, and Cholesterol

A second option is to allow ''mixed dishes not measurable with a cup'' to make a ''lean'' claim based on criteria derived from the Nestlé petition. In that petition two methods are used to derive the criteria for fat, saturated fat, and cholesterol contents for allowing a ''lean'' claim for ''mixed dishes not measurable with a cup.'' One method is to establish ''lean'' criteria for fat, saturated fat, and cholesterol contents of ''mixed dishes not measurable with a cup'' with an estimated average weight of 132.53 g, proportional to existing criteria for ''lean'' ''meal products'' with minimum weights of 170.1 g. This method produces criteria of 7.8 g of total fat, 3.5 g of saturated fat, and 74.1 milligrams (mg) of cholesterol per RACC (140 g). The second method uses an estimated average calorie contribution of 214 calories from ''mixed dishes not measurable with a cup'' and the recommendations for dietary fat intake reported by IOM and recommendations from the National Cholesterol Education Program on saturated fat intake. This method produces criteria of 7 g of total fat, 2.5 g of saturated fat, and 75 mg of cholesterol per RACC. We use the criteria for fat, saturated fat, and cholesterol contents from the latter, more restrictive method for analyzing the regulatory impact for this option.

This option is the most restrictive of the all options considered in terms of allowable fat, saturated fat, and cholesterol contents and would result in the greatest percent reduction in fat content in the ''mixed dishes not measurable with a cup'' category compared to the other three options. However, the market share of all FDA-regulated ''mixed dishes not measurable with a cup'' expected to make a ''lean'' claim under this option (6 percent) and the reduction in total dietary fat consumption may be the lowest compared to the other options. While the costs of this option would be voluntarily incurred, we estimate the extent of resources allocated to new product development, reformulation, relabeling, and discontinued product lines would be the lowest compared to the other options.

Option 3: Extend the Current Criteria for Fat, Saturated Fat, and Cholesterol for ''Lean''

A third option is to extend the same criteria of less than 10 g of total fat, 4.5 g of saturated fat, and 95 mg of cholesterol per 100 g and per labeled serving currently used to allow the ''lean'' claim for ''meal products'' or ''main dish products,'' to allow ''mixed dishes not measurable with a cup'' to make a ''lean'' claim on a per-RACC basis. This is the least restrictive of the options considered here in terms of allowable fat, saturated fat, and cholesterol content and would result in a smaller percent reduction in fat content in the ''mixed dishes not measurable with a cup'' category than under the other three options. In addition, the market share of all FDA-regulated ''mixed dishes not measurable with a cup'' expected to make a ''lean'' claim under this option (10 percent), and the reduction in total dietary fat consumption may be the highest of the options. While the costs of this option would be voluntarily incurred, we estimate the extent of resources allocated to new product development, reformulation, relabeling, and discontinued product lines to be the highest of the options.

Option 4: The Proposed Regulatory Action

A fourth option is to allow ''mixed dishes not measurable with a cup'' to contain a ''lean'' claim based on the proposed criteria of 8 g of total fat, 3.5 g or less of saturated fat, and 80 mg of cholesterol per RACC. This option may be considered moderately restrictive compared to the other options in terms of allowable fat, saturated fat, and cholesterol content, and may result in a moderate percent reduction in fat content in the ''mixed dishes not measurable with a cup'' category compared with the other three options. In addition, the market share for all FDA-regulated ''mixed dishes not measurable with a cup'' expected to make a ''lean'' claim under this option (8 percent), and the reduction in total dietary fat consumption may be considered moderate compared with the

other options as well. While the costs of this option would be voluntarily incurred, we estimate the resources allocated to new product development, reformulation, relabeling, and discontinued product lines to be moderate relative to the other options.

C. Benefits

The benefits from this proposed rule would derive from the ability of consumers to make healthier dietary choices among the foods in the category of ''mixed dishes not measurable with a cup'' based on the fat content of these foods, when such foods bear the ''lean'' nutrient content claim. The ''lean'' claim makes it easier for consumers to find foods in this category that do not exceed a certain amount of fat, saturated fat, and cholesterol. If consumers substitute ''lean'' ''mixed dishes not measurable with a cup'' for other foods in this category that are higher in fat, we would expect them to benefit from the improved ability to maintain healthy weights and stay within recommended intakes for fat, saturated fat, and cholesterol. We estimate the health benefits from this proposed rule would come from the reduction in total fat, saturated fat, and cholesterol consumption that would result. Reduced fat, saturated fat, and cholesterol consumption would be expected to help consumers maintain healthier body weights.

1. An Overview of Likely ''Lean'' ''Mixed Dishes Not Measurable With a Cup''

The expected effects of the proposed rule would be small because there are a small number of ''mixed dishes not measurable with a cup'' under FDA regulatory authority that would be eligible to make the ''lean'' claim, should one be allowed. Although foods classified as ''mixed dishes not measurable with a cup'' that are subject to USDA regulatory oversight are currently allowed to make a ''lean'' claim, we think that very few foods such as many sandwiches, burritos, pizza pockets, and egg rolls that are currently subject to FDA regulatory oversight, would qualify for the ''lean'' claim based on the criteria in any of the regulatory options. The Nestlé petition identified the rapidly growing frozen sandwich and snack category as containing likely candidate products within ''mixed dishes not measurable with a cup'' for making the ''lean'' claim, should one be allowed. For example, according to the Nestlé petition, growth in ''mixed dishes not measurable with a cup'' that make a ''lean'' claim could likely come from the Weight Watchers Smartwiches, Amy's Pocket Sandwiches, and Nestlé's Lean Pockets product lines (Ref. 1).

2. Structure of the Benefits Analysis

To estimate the reduction in fat consumption that would result from the regulatory options, we first estimate the current share of total food consumption in the ''mixed dishes not measurable with a cup'' category. We estimate the total consumption of all ''mixed dishes not measurable with a cup'' and the total consumption of all food. Total food consumption is from food prepared and consumed in the home as well as from food served and consumed away from home. We then estimate the fraction of that total that would be subject to FDA ''lean'' labeling requirements. We develop a conceptual framework to estimate the share of ''mixed dishes not measurable with a cup'' that is likely to make a new ''lean'' claim, and use published information on the market share of products that make ''fat'' claims to estimate the maximum market share of ''lean'' ''mixed dishes not measurable with a cup.'' We estimate the percent reduction in total dietary fat intake that would result from consuming newly allowed ''lean'' ''mixed dishes not measurable with a cup'' instead of alternative food products. Alternatives to ''mixed dishes not measurable with a cup'' that make the ''lean'' claim could be any other ''mixed dish not measurable with a cup'' including those under the regulatory oversight of USDA. Finally, we discuss important considerations that may affect the distribution of the reduction in dietary fat intake across consumers of different overweight status.

3. Estimating Current Consumption of ''Mixed Dishes Not Measurable With a Cup'' Subject to FDA Regulatory Oversight

We used the data from the 1997 U.S. Economic Census and North American Industry Classification System (NAICS) code 4451 for grocery stores to estimate current consumption of all ''mixed dishes not measurable with a cup'' (Ref. 3). We then refined that estimate so that it includes only those ''mixed dishes not measurable with a cup'' that are subject to FDA regulatory oversight. The use of only NAICS 4451 for this purpose may underestimate true consumption of ''mixed dishes not measurable with a cup'' to the extent that there are other NAICS codes that also contain sales of these products. However, sales of these products reported in other NAICS codes are probably small.

We used merchandise lines 103 (Frozen foods (including packaged foods sold in frozen state)), 106 (Bakery products not baked on the premises, except frozen), and 124 (all other meals and snacks) within NAICS 4451 as the basis to estimate current consumption of ''mixed dishes not measurable with a cup.'' We assume that half of all frozen foods from merchandise line 103 are either frozen meal products and main dish products, or frozen ''mixed dishes not measurable with a cup'' with RACCs of 140 g (about 5 oz); we further assume that two-thirds of that total is for frozen meal products and main dish products and one-third is for frozen ''mixed dishes not measurable with a cup.'' Consequently, we estimate that within merchandise line 103 there were approximately $3.2 billion in annual sales of frozen ''mixed dishes not measurable with a cup'' in 1997.

We used a similar framework to estimate current consumption of ''mixed dishes not measurable with a cup'' with RACCs of 140 g (about 5 oz) for merchandise lines 106 and 124. We assume that three-quarters of the sales reported for NAICS 4451, merchandise line 106, are for cakes, pies, cookies, and related items, while one-quarter of the sales from this line are for ''mixed dishes not measurable with a cup'' (e.g., quiches and entrée-type turnovers). Consequently, we estimate the total annual sales of ''mixed dishes not measurable with a cup'' from that category to be approximately $1.8 billion. Finally, we assume that half of all sales of merchandise line 124 are for ''mixed dishes not measurable with a cup,'' which leads us to estimate that approximately $1.3 billion in annual sales of ''mixed dishes not measurable with a cup'' came from that merchandise line in 1997.

Based on the analysis in the previous paragraphs, our estimate of total consumption of ''mixed dishes not measurable with a cup,'' derived from total sales from that category, is approximately $6.3 billion (i.e., $3.2 billion plus $1.8 billion plus $1.3 billion, rounded to the nearest 100 million) for 1997. We estimate that half of this total is subject to USDA regulatory oversight, while half would be subject to the ''lean'' requirements outlined in the policy options considered in this analysis. Consequently, we estimate that total consumption of ''mixed dishes not measurable with a cup'' subject to FDA regulatory oversight is approximately $3.2 billion (i.e., $6.3 billion / 2, rounded to the nearest 100 million).

4. The Share of Total Food Consumption From ''Mixed Dishes Not Measurable With a Cup'' Subject to FDA Regulatory Oversight

Total food consumption consists of food purchased at retail grocery and other establishments and consumed elsewhere, and food consumed at food service establishments. From the 1997 U.S. Economic Census, total sales of all groceries and other foods for human consumption off-the-premises reported for NAICS 4451 were about $274 billion (Ref. 3). Consequently, we estimate that consumption of ''mixed dishes not measurable with a cup'' subject to FDA regulatory oversight represents approximately 1.2 percent of all consumption of food purchased for consumption off-the-premises ($3.2 billion / $274 billion).

We used USDA data to estimate the fraction of total food consumed (both in-home as well as away-from-home consumption) that is subject to packaged food labeling requirements (in-home consumption exclusively) in order to estimate the percent of total food consumed from ''mixed dishes not measurable with a cup.'' The percentage of food consumed away from home is estimated as 43 percent of total U.S. food consumption expenditures based on the 2003 consumer price index for food computed by the Economic Research Service (Ref. 4). Consequently, we estimate that 57 percent of food consumed is purchased for consumption at home (i.e., 100 percent - 43 percent), and that the universe of ''mixed dishes not measurable with a cup'' that could potentially make a ''lean'' claim accounts for approximately 0.67 percent of total consumption (1.2 percent x 57 percent). For the purpose of this analysis, we assume that the fraction of total food purchases at retail outlets from ''mixed dishes not measurable with a cup'' has not significantly changed since 1997.

5. The Conceptual Model for Estimating Consumption of ''Lean'' ''Mixed Dishes Not Measurable With a Cup''

We assume that the demand for ''mixed dishes not measurable with a cup,'' like that for other food categories, depends on nutrition attributes, consumer taste, and price, and that consumers will optimize their food choices by substituting among these characteristics. A study by Teisl and Levy found evidence that consumers substitute among nutrient, price, and taste characteristics in their food choices (Ref. 5). In general, consumers prefer the taste of foods that are higher in fat content (all else equal), and studies have documented that those foods are lower in cost per calorie compared with foods with lower fat contents (Ref. 6). Drewnowski and Specter report evidence suggesting that nutrition-conscious consumers will pay a premium for food products they perceive as being relatively nutritious at the expense of taste (Ref. 6). These researchers suggest that balanced diets lower in fat and refined sugars are generally more expensive than diets higher in fat and refined sugar.

We estimate that demand for ''mixed dishes not measurable with a cup'' making ''lean'' claims will come from health-conscious consumers who are assumed to value the nutritional characteristics of ''lean'' ''mixed dishes not measurable with a cup'' over the taste characteristics of other ''mixed dishes not measurable with a cup.'' We do not have the quantitative data and other information on consumer preferences for taste and nutritious characteristics that would allow us to directly estimate consumers' substitution between nutrition and taste, but we know that the demand for more nutritious products in the ''mixed dishes not measurable with a cup'' category will increase as the nutritious content of the products increase, assuming that taste characteristics and prices are held constant. Consequently, we estimate that the demand for ''lean'' ''mixed dishes not measurable with a cup'' will depend on the fat, saturated fat, and cholesterol contents relative to that of all other ''mixed dishes not measurable with a cup.''

In this analysis, we isolated fat content as the property of interest. In order to generate a plausible estimate of the demand for ''mixed dishes not measurable with a cup'' under FDA regulatory oversight that would make a ''lean'' claim, we make the following assumptions:

- We assume a positive relationship between fat content and consumer taste, so that near current levels of consumption of ''mixed dishes not measurable with a cup,'' a reduction in fat content leads to a reduction in consumer preference, all else the same.
- We assume a continuum of fat contents in all ''mixed dishes not measurable with a cup'' that make fat claims, and estimate the maximum market share based on where the ''lean'' criteria fall within that continuum. We assume the continuum in fat contents range from a low represented by the low-fat criteria (i.e., 3 g per RACC, or 140 g) to a high represented by the average fat content of ''mixed dishes not eligible to make any fat claim.''
- We assume ''mixed dishes not measurable with a cup'' that make a ''lean'' claim will contain less fat, have different taste characteristics, and be priced at a premium (all else the same) over ''mixed dishes not measurable with a cup'' with higher fat contents, including some that make fat claims but are ineligible to make a ''lean'' claim.
- We assume that the maximum market share for ''lean'' ''mixed dishes not measurable with a cup'' will be proportional to the fat contents of other ''mixed dishes not measurable with a cup'' making fat claims based on where ''lean'' criteria fall within the continuum of fat contents. In other words, we assume that fat content drives market share within the segment of the market making claims about fat.
- We assume that all demand for ''lean'' ''mixed dishes not measurable with a cup'' will come from consumers of similar foods in this category that contain higher fat contents (including those with reduced fat nutrient content claims as well as those that do not make nutrient content claims) and have better taste. Current consumers of similar ''mixed dishes not measurable with a cup'' except for their higher fat contents may prefer ''lean'' mixed dishes because of their more nutritious, lower fat characteristics. Moreover, consumers of similar ''mixed dishes not measurable with a cup'' except for their lower fat contents, such as low-fat products may instead choose similar ''lean'' ''mixed dishes not measurable with a cup'' because of taste.

We estimated the maximum potential market share for ''lean'' ''mixed dishes not measurable with a cup'' using published information on the market share for all FDA-regulated products that make ''fat'' claims. ''Mixed dishes not measurable with a cup'' with fat contents lower than ''lean'' ''mixed dishes not measurable with a cup'' would have smaller market shares, while those that make fat claims but have higher fat contents than ''lean'' mixed dishes not measurable with a cup'' would have greater market shares up to an estimated maximum potential market share. In a study using the 2001 Food Label and Package Survey data, LeGault et al. found that 33.7 percent of all FDA-regulated product sales were from products that had some type of nutrient content claim, and that 17.2 percent of all product sales had some type of reduced fat claim (i.e., fat free, low or reduced fat, lite, etc.) (Ref. 7). We assume that the maximum share of all FDA-regulated ''mixed dishes not measurable with a cup'' that could make a ''lean'' claim is 17.2 percent.

6. Estimating the Market Share of ''Lean'' ''Mixed Dishes Not Measurable With a Cup''

We estimate the market share for ''lean'' ''mixed dishes not measurable with a cup'' based on the lower fat contained in such products that would be eligible to bear the ''lean'' claim under each policy option, compared with the average for ''mixed dishes not measurable with a cup'' that are likely consumption-substitutes. We estimate the average nutrient contents in ''mixed dishes not measurable with a cup'' of likely consumption-substitutes using the nutrient contents of several ''mixed dishes not measurable with a cup'' that are reported in the USDA National Nutrient Database for Standard Reference (Ref. 8). Our sample of likely consumption-substitute ''mixed dishes not measurable with a cup'' is drawn from likely candidate products, similar to those suggested in the Nestlé petition, in the Weight Watchers Smartwich, Amy's Pocket Sandwich, and Nestlé's Lean Pockets product lines. The nutrient contents reported in the table 1 of this document include several different fresh and frozen sandwich products, and are reported on a per-140 g basis rather than per-100 g basis as in the USDA database. This modification allows us to better compare the levels of fat, saturated fat, and cholesterol in these ''mixed dishes not measurable with a cup'' with the ''lean'' requirements specified in each policy option. We implicitly assume that the distribution of nutrient contents of the reported items is representative of that for all likely substitute ''mixed dishes not measurable with a cup.''

To incorporate uncertainty in our estimates we assume that fat, saturated fat, and cholesterol contents of ''mixed dishes not measurable with a cup'' are lognormally distributed with means equal to the averages of the reported contents, and standard deviations equal to the natural logarithm of the standard deviations of the reported contents across the ''mixed dishes not measurable with a cup.'' The lognormal distribution is appropriate to use because it incorporates the idea that relatively few candidate consumption-substitute ''mixed dishes not measurable with a cup'' would have nutrient levels much different from the mean as would be implied by the use of a normal distribution. The parameters that describe the lognormal distribution are the natural logarithms of the mean and variance in the data. The 5 percent (low) and 95 percent (high) estimates are reported along with the average contents in table 1 of this document.

TABLE 1.—NUTRIENT CONTENTS OF SOME LIKELY SUBSTITUTES FOR ''LEAN'' ''MIXED DISHES NOT MEASURABLE WITH A CUP''

One Serving	Total Fat (g per 140 g RACC)	Saturated Fat (g per 140 g RACC)	Cholesterol (mg per 140 g RACC)
Hot Pockets, Beef and Cheddar Stuffed Sandwich, frozen	20	9	52
Libby's Spreadables Ready to Serve Sandwich Salads, shelf stable	13	3	36
Hot Pockets, Ham and Cheese Stuffed Sandwich, frozen	16	6	55
Sunny Fresh, Pre-Cooked Frozen Egg and Cheese Biscuit	13	3	157
Lean Pockets Glazed Chicken Supreme Stuffed Sandwiches, frozen	7	2	25
Weight Watchers On-The-Go Chicken, Broccoli, and Cheddar Pocket Sandwich, frozen	6	2	14
Average	12	4	56
5 percent (low)	10	3	50
95 percent (high)	15	5	63
Option 2: Industry proposed	7	3	75
Option 3: Extension of current criteria for ''meal products''	10	4.5	95
Option 4: FDA proposed	8	3.5	80
Low fat	3		

The maximum fat content that would be allowed under option 2 is between 47 and 70 percent of the average (i.e., (7 / 15) x 100 and 7 / 10 x 100) with a mean of 58 percent of the average fat content of the foods assumed to be likely substitute ''mixed dishes not measurable with a cup,'' and for option 3 the maximum fat content for ''lean'' is between 67 and 100 percent (i.e., (10 / 15) x 100 and (10 / 10) x 100) with a mean of 83 percent of the average fat content of the foods assumed to be likely consumption-substitute ''mixed dishes not measurable with a cup.'' FDA proposed maximum fat content for ''lean'' is between 53 and 80 percent (i.e., (8 / 15) x 100 and (8 / 10) x 100) with a mean of 67 percent of the average fat content of the foods assumed to be likely consumption-substitute ''mixed dishes not measurable with a cup.'' The maximum fat content for ''low fat'' is about 25 percent of the average content of the foods listed (i.e., 3 / 12 x 100). We note that these estimates of the difference in fat contents between ''lean'' ''mixed dishes not measurable with a cup'' and likely consumption-substitute ''mixed dishes not measurable with a cup'' may understate the true difference to the extent that some ''lean'' ''mixed dishes not measurable with a cup'' will have fat contents below the maximum allowed, which is the value used in the computation.

Based on an assumed continuum of fat contents ranging from 25 percent of

the average (low-fat) to the average fat content in likely consumption-substitute ''mixed dishes not measurable with a cup'' not eligible to make fat claims we estimate a market share for ''lean'' ''mixed dishes not measurable with a cup'' of 6 percent using the industry-petitioned criteria (i.e., (58 percent - 25 percent) x 17.2 percent of mixed dishes that have reduced fat claims, rounded to the nearest percent); 10 percent using the criteria in option 3 (i.e., (83 percent - 25 percent) x 17.2 percent of mixed dishes that have reduced fat claims, rounded to the nearest percent); and 7 percent using the proposed criteria (i.e., 67 percent - 25 percent) x 17.2 percent of mixed dishes that have reduced fat claims, rounded to the nearest percent). In order to incorporate uncertainty in our estimate of market share, we assume a uniform distribution with a range of 0 to 8 percent using FDA-proposed criteria, from 0 to 7 percent using the industry-proposed criteria, and from 0 to 10 percent by extending the current criteria for ''main dish products.'' The estimated ''lean'' market share and estimated fat contents relative to likely consumption-substitute ''mixed dishes not measurable with a cup'' are summarized in table 2 of this document.

TABLE 2.—FAT CONTENT RELATIVE TO LIKELY CONSUMPTION-SUBSTITUTES AND THE MARKET SHARE FOR ''LEAN'' ''MIXED DISHES NOT MEASURABLE WITH A CUP''

	Fat Content in ''Lean'' Relative to the Average Fat Content in Likely Consumption-Substitute ''Mixed Dishes Not Measurable With a Cup''	Market Share of ''Lean'' ''Mixed Dishes Not Measurable With a Cup''
Option 2: Industry-petitioned	Low: 47 percent High: 70 percent Average: 58 percent	0 to 7 percent
Option 3: Extending current criteria for ''main dish products''	Low: 67 percent High: 100 percent Average: 83 percent	0 to 10 percent
Option 4: FDA proposed	Low: 53 percent High: 80 percent Average: 67 percent	0 to 8 percent

7. Estimating the Reduction in Fat Consumption From Allowing the ''Lean'' Claim

The use of the estimated market share for ''lean'' ''mixed dishes not measurable with a cup'' may overstate the reduction in fat consumption if many consumers already consume FDA-regulated products that would be eligible for the ''lean'' claim (without the claim on the label). Moreover, it is possible that some consumers may switch to ''lean'' ''mixed dishes not measurable with a cup'' once they become available, from the ''low-fat'' alternatives they currently consume because of better taste. We estimate that one-half of all consumption of ''lean'' ''mixed dishes not measurable with a cup'' would be from consumers that would switch from other ''mixed dishes not measurable with a cup'' that contain the same amount or less fat.

Table 3 of this document shows the expected ''lean'' market share, percent reduction in fat consumption from the ''mixed dishes not measurable with a cup'' category, and the percent reduction in fat consumption relative to current total fat consumption for each option considered here. Based on the criteria for fat, saturated fat, and cholesterol contents stated in each policy option, we estimate that the total amount of fat consumed for 0 to 7 percent of ''mixed dishes not measurable with a cup'' will decline by between 10 and 24 percent (i.e., [(1 - 0.80) x 100] / 2, and [(1 - 0.53) x 100)] / 2) with a mean of 17 percent under the proposed option. For option 3, extending the current criteria for ''main dish products'' we expect the total amount of fat consumed for 0 to 12 percent of ''mixed dishes not measurable with a cup'' to decline by between 0 and 17 percent (i.e., [(1 - 1) x 100] / 2, and [(1 - 0.67) x 100)] / 2), with a mean of 9 percent. Under the industry petitioned option we expect the total amount of fat consumed for 0 to 6 percent of ''mixed dishes not measurable with a cup'' to decline by between 15 and 26 percent (i.e., [(1 - 0.70) x 100] / 2, and [(1 - 0.47) x 100)] / 2), with a mean of 21 percent.

Because ''mixed dishes not measurable with a cup'' that are subject to FDA labeling requirements make up approximately 0.67 percent of total consumption, we estimate that total fat consumption could decline by about 0.01 percent (i.e., 8 percent of ''mixed dishes not measurable with a cup'' x 17 percent fat reduction (using the mean) x 0.67 percent of total consumption rounded to the nearest hundredth) using the FDA proposed ''lean'' criteria, assuming that consumers do not increase their consumption of other foods including main dishes with weights over 6 oz and other foods with higher fat contents.

TABLE 3.—MARKET SHARE AND PERCENT REDUCTION IN FAT CONSUMPTION FROM NEWLY LABELED ''LEAN'' ''MIXED DISHES NOT MEASURABLE WITH A CUP''

	Expected Market Share of ''Lean'' ''Mixed Dishes Not Measurable With a Cup''	Mean Percent Reduction in Fat in ''Mixed Dishes Not Measurable With a Cup'' Subject to FDA Oversight	Mean Percent Reduction in Total Fat Consumption
Option 2: Industry-petitioned	6 percent	21 percent	0.0084 percent
Option 3: Extending current criteria for ''main dish products''	10 percent	9 percent	0.0141 percent

TABLE 3.—MARKET SHARE AND PERCENT REDUCTION IN FAT CONSUMPTION FROM NEWLY LABELED ''LEAN'' ''MIXED DISHES NOT MEASURABLE WITH A CUP''—Continued

	Expected Market Share of ''Lean'' ''Mixed Dishes Not Measurable With a Cup''	Mean Percent Reduction in Fat in ''Mixed Dishes Not Measurable With a Cup'' Subject to FDA Oversight	Mean Percent Reduction in Total Fat Consumption
Option 4: FDA proposed	8 percent	17 percent	0.0113 percent

As table 3 of this document shows, the reduction in fat consumption resulting from this proposed rule is likely to be quite small. Additional factors may mitigate further the reduction in fat intake resulting from the proposed rule. Because consumers may increase their consumption of other foods with higher fat and cholesterol contents to compensate for the lower fat and cholesterol contents of ''lean'' ''mixed dishes not measurable with a cup,'' the mean estimated reduction in total fat and cholesterol consumption may be less than 0.01 percent. Moreover, we may be overestimating the reduction in fat consumption by not accounting for the increase in fat intake for current consumers of lower fat substitutes who, given the opportunity, would choose ''lean'' ''mixed dishes not measurable with a cup'' because of their perceived better taste. To incorporate uncertainty in the estimate, we assume the reduction in fat consumption from this proposed rule to be uniformly distributed between 0 and 0.02 percent, with 0.01 percent as the mean.

8. The Distribution of Obese and Overweight Consumers Across Income Groups

The distribution of overweight and obese consumers across income groups may be important when valuing the benefits from the proposed rule. Drewnowski and Spector find evidence that the highest rates of obesity occur among population groups with the highest poverty rates and the least education (Ref. 6). If the obesity rates are negatively related to income and education, and if low income consumers respond more to the higher prices than the lower fat contents of ''lean'' products, then the overall benefits from this proposed rule may be lower than anticipated.

Prices for ''lean'' products will be higher than those for products with no nutrient content claim. For example, data collected by FDA on market shares for frozen dinners making nutrient content claims suggests an estimated average price of $2.92 per product, for a $0.32 price premium on frozen dinners making a ''healthy'' claim compared with frozen dinners of comparable size making a less stringent nutrient content claim (Ref. 9). We interpret this premium to imply that consumers of those frozen dinners place a $0.32 price premium (or 12.3 percent) per dinner on ''nutrition'' characteristics. Assuming that consumers hold the same preferences for taste and nutrition characteristics for ''mixed dishes not measurable with a cup'' as they do for frozen dinners, we estimate a price premium (all else the same) for ''mixed dishes not measurable with a cup'' that make a ''lean'' claim to be somewhere between 0 and 12.3 percent (note we estimate that the ''nutritious'' premium may be lower than 12.3 percent because the nutrition criteria required for a ''lean'' claim are less stringent than that required for the ''healthy'' claim).

Consuming foods with lower fat content helps consumers who are not overweight with few health risks to maintain recommended fat intakes, and helps overweight and obese consumers at higher risk to reduce their fat intakes to recommended levels. Because obese people have the highest health risks, the benefits from reducing their fat consumption are acute and immediate, while those for reducing the dietary fat intake for trim consumers with low health risks are latent and realized only after a long period of time. We assume that the benefits obtained from this proposed rule by low-risk consumers will be smaller than those obtained by overweight and other high-risk consumers. If the obese population is disproportionately represented by lower income consumers, then that income groups' relatively large response to the higher prices for ''lean'' ''mixed dishes not measurable with a cup'' will result in reduced benefits.

Consequently, the health benefits derived from the enhanced ability of consumers to make healthier dietary choices among foods in the category of ''mixed dishes not measurable with a cup'' subject of FDA regulatory oversight based on their fat contents, when such foods bear the ''lean'' nutrient content claim will be small. The category of ''mixed dishes not measurable with a cup'' comprises only 1.3 percent of total food consumption, and we estimated that between 0 and 7 percent of this category would actually bear a ''lean'' claim under the FDA proposed rule. Finally, we estimated that consumers would reduce their consumption of fat by between 0 and 0.02 percent of current fat consumption with passage of the proposed rule.

D. Costs

The costs incurred by manufacturers of ''mixed dishes not measurable with a cup'' who choose to label their products as ''lean'' would be voluntarily incurred because no manufacturer would incur them if it weren't profitable to do so. Nevertheless, we do anticipate an allocation of resources devoted to product reformulation, relabeling, new product development, and the discontinuation of product lines, as a result of this proposed rule, and that the magnitude of this resource allocation is important for characterizing the broader economic impact on society.

The voluntarily incurred costs of the proposed rule include costs of reformulating and relabeling ''mixed dishes not measurable with a cup'' that would be newly able to make the ''lean'' claim, as well as the costs from discontinued production and new product development. ''Mixed dishes not measurable with a cup'' that currently satisfy the proposed ''lean'' criteria, but as yet, are not permitted to make the claim, would only incur labeling costs from this proposed rule, while those that reformulate will incur both reformation and labeling costs. The reformulating process includes laboratory testing of recipes that meet the required ''lean'' criteria, researching market prices and availability of new ingredients and necessary equipment, production testing in increasingly large batch sizes, and finally, consumer testing and marketing evaluations. At any stage in the process a product may be dropped from reformulation consideration. Products that undergo a portion of the process, but that are eventually dropped from consideration also constitute a reformulation cost. Labeling costs for ''lean'' products include the costs of testing food products to verify that the levels of fat, saturated fat, and cholesterol in the

package are consistent with the ''lean'' claim, as well as the fixed and variable printing costs for the new label and the storage costs associated with disposing old labels.

We used the FDA Reformulation Cost Model (Ref. 10), the FDA Decision to Reformulate Model (Ref. 11), and the FDA Labeling Cost Model (Ref. 12) to estimate the reformulation and labeling costs from making ''lean'' claims on ''mixed dishes not measurable with a cup.'' Data from NAICS 311412, Frozen Specialties NEC, incorporated in the Reformulation Cost Model were used in simulations to estimate the reformulation costs of ''mixed dishes not measurable with a cup.'' The total costs computed for the broad NAICS code are adjusted to account for the fraction of products within that category that are subject to FDA regulatory oversight and estimated to make the ''lean'' claim for each option.

Based on the earlier framework used to estimate the size of the market for ''mixed dishes not measurable with a cup,'' we assume that 50 percent of the products in NAICS 311412 are ''mixed dishes not measurable with a cup,'' half are subject to FDA regulatory oversight, and 8 percent of those products will either reformulate in order to meet the ''lean'' criteria, or only relabel if they already meet the ''lean'' criteria. We assume a uniform distribution between 0 and 0.08 of the market share for ''lean'' ''mixed dishes not measurable with a cup'' (subject to FDA regulatory oversight) for the proposed option, and a uniform distribution between 0 and 0.07 for the industry-petitioned option. We justify the wide range because of the uncertainty surrounding our assumptions.

Using FDA's Decision to Reformulate Model, we estimate that between 80 and 100 percent of the affected products using the ''lean'' label for ''mixed dishes not measurable with a cup'' will be reformulated products. The estimates generated from that model are derived from interviews with experts on the probability of reformulation by NAICS code or product category. Estimates at the lower end of the range (i.e., closer to 80 percent) represent those products that would incur higher reformulation costs if major ingredient substitutions are necessary to meet the ''lean'' criteria. At this range of difficulty the Decision to Reformulate Model estimates that between 5 and 6 percent of ''mixed dishes not measurable with a cup'' would be discontinued because the net benefits to the company from their reformulation are lower than those for their discontinuation. Estimates at the higher end of the range (i.e., closer to 100 percent) represent those products that require only minor but critical ingredient substitutions. No product lines would be terminated at this end of the range.

We assume that the fraction of the ''lean'' market that would incur reformulation costs is uniformly distributed between 80 and 100 percent, with the fraction that only requires relabeling estimated as the remainder (i.e., between 0 and 20 percent). We used the average of the estimates generated from the Reformulation Cost Model for 80 and 100 percent reformulation rates. The estimates generated by the Reformulation Cost Model are derived from experts' information on detailed reformulation costs by NAICS code including market research, product testing, consumer testing, and marketing costs and are reported as low, middle, and high values. We characterize uncertainty in our simulation by assuming triangular distributions for the 80 and 100 percent reformulation rates generated from the Reformulation Cost Model, using the reported low, middle, and high values from that model as the low, medium, and high parameters in that distribution.

We assume that the costs of product lines that become discontinued are due to insufficient consumer demand, and those for new product development if this proposed rule were issued are equal to each other. This reflects the assumption that growth in the number of ''mixed dishes not measurable with a cup'' will not change as a result of this proposed rule. The Reformulation Cost Model estimates that for major ingredient substitution requirements between 5 and 6 percent of product lines will be discontinued. We assume the costs of products that are discontinued and those for new product development are both uniformly distributed between 0 and 6 percent of the costs of reformulation.

We ran the Reformulation Cost Model for the case when minor and noncritical ingredient substitutions are necessary (in which case, 100 percent of the market will be reformulated products) and also for the case when minor but critical ingredient substitutions are necessary (in which case, 80 percent of the market will be reformulated products). The relabeling costs are estimated from FDA's Labeling Cost Model, which also generates cost estimates by NAICS code. We further characterize uncertainty in our simulation by assuming a triangular distribution for labeling costs (for between 0 and 20 percent of the ''lean'' market) using the estimates of the low, medium, and high costs generated from the Labeling Cost Model as the low, medium, and high parameters in that distribution.

Table 4 of this document reports ranges for estimates of reformulation costs, labeling costs, discontinued product line costs, and total costs for the proposed and industry-petitioned options, and for time periods of 12 and 24 months for each option. The range reported for reformation costs from the proposed rule incorporates uncertainties in both the estimate of the ''lean'' market share, the probability for reformulation, and the reformulation costs generated by the Reformulation Cost Model. The range reported for the labeling costs from the proposed rule incorporates uncertainty in the estimates of the ''lean'' market share, reformulation costs, and the labeling costs generated by the Labeling Cost Model. The range of estimates reported for costs from discontinued product lines and new product development incorporate uncertainty in the estimates of the ''lean'' market share, reformulation costs, as well as the fraction of discontinued product lines generated from the Probability of Reformulation Model. The range of estimates of total costs reported in table 4 reflects uncertainties in the estimates of all of the individual costs components. The low and high estimates in the respective ranges are the 5- and 95-percent levels computed by the computer simulation software *@Risk*™, given the distributional assumptions made for each of the component costs.

TABLE 4.—VOLUNTARILY INCURRED CHANGE-OVER COSTS FOR MAKING A "LEAN" CLAIM

	Proposed Option (8% Market Share)		Option 2: Industry-Petition (6% Market Share)		Option 3: Extend Current Criteria to "Mixed Dishes Not Measurable With a Cup" (10% Market Share)	
	12-month compliance (dollars)	24-month compliance (dollars)	12-month compliance (dollars)	24-month compliance (dollars)	12-month compliance (dollars)	24-month compliance (dollars)
Reformulation costs						
low	657,000	423,000	365,000	267,000	821,000	529,000
mean	7,801,000	4,880,000	4,235,000	3,149,000	9,751,000	6,100,000
high	16,249,000	10,617,000	8,541,000	6,749,000	20,311,000	13,271,000
Labeling costs						
low	12,000	14,000	7,000	9,000	15,000	18,000
mean	306,000	158,000	197,000	102,000	382,000	198,000
high	885,000	914,000	549,000	680,000	1,106,000	1,143,000
Discontinued						
low	7,000	4,000	4,000	3,000	8,000	5,000
mean	234,000	146,000	127,000	94,000	293,000	183,000
high	665,000	400,000	355,000	276,000	832,000	500,000
New product development						
low	3,000	2,000	2,000	1,000	4,000	3,000
mean	117,000	73,000	54,000	40,000	146,000	92,000
high	333,000	200,000	152,000	118,000	416,000	250,000
Total costs						
low	1,095,000	749,000	583,000	441,000	1,369,000	936,000
mean	8,574,000	5,331,000	4,686,000	8,026,000	10,718,000	6,664,000
high	17,690,000	10,892,000	9,862,000	7,353,000	22,112,000	13,615,000

Table 5 of this document reports the annualized change-over costs for the proposed rule, which we computed assuming the discount rates of 3 and 7 percent over an infinite time horizon for assumed 12- and 24-month periods for relabeling and reformulation. For a 12-month period all costs are assumed to be incurred in the beginning of the second year. For a 24-month period all costs are assumed to be incurred in the beginning of the third year. Because producers choose the time period for the reformulation and relabeling of products, the actual time periods for the changes can be of any length, with the costs differing from those in table 5. From our labeling cost and reformulation models, however, we expect that costs would be substantially higher for time periods under 12 months, and substantially lower for time periods over 24 months. We also expect that the time periods chosen would be shorter and the costs higher, the greater the perceived consumer response to these product claims.

TABLE 5.—ANNUALIZED VOLUNTARILY INCURRED CHANGE-OVER COSTS FOR PROPOSED RULE

	12-Month Period	24-Month Period
3 percent discount rate		
5 percent (low)	$32,000	$21,000
mean	$250,000	$151,000
95 percent (high)	$515,000	$308,000
7 percent discount rate		
5 percent (low)	$72,000	$46,000
mean	$561,000	$326,000
95 percent (high)	$1,158,000	$666,000

V. Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act requires that agencies analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule, if finalized, would permit firms to add a "lean" claim to their labels if their products meet certain criteria. Small

firms may voluntary add this claim if they so choose. No small firm, however, will choose to bear the cost of adding the ''lean'' claim to its product labels unless the firm believes that it will lead to increased sales of its product sufficient to justify the costs. The rule would not mandate that firms make any labeling changes. This proposed rule, if finalized, would not impose compliance costs on any small business. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. Unfunded Mandates

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product (GDP) (i.e., $100 million x [2003 Implicit GDP deflator / 1995 GDP deflator]). FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount, and has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has tentatively concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Environmental Impact

FDA has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

FDA has tentatively concluded that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. If you base your comments on scientific evidence or data, please submit copies of the specific information along with your comments. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Petition to expand ''lean'' nutrient content claim, submitted by Nestlé Prepared Foods Corp., January 4, 2004.

2. U.S. Department of Health and Human Services and U.S. Department of Agriculture, Dietary Guidelines for Americans, 2005.

3. U.S. Census Bureau, *1997 Economic Census*, December 17, 2002.

4. Economic Research Service, *http://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/cpiforecasts.htm*, accessed November 8, 2004.

5. Teisl, M., and A. Levy, ''Does Nutrition Labeling Lead to Healthier Eating?'' *Journal of Food Distribution Research*, October 1997.

6. Drewnowski, A., and S. Specter, ''Poverty and Obesity: The Role of Energy Density and Energy Costs,'' *The American Journal of Clinical Nutrition*, vol. 79, 1:6–16, January 2004.

7. LeGault, L., M. Brandt, N. McCabe, C. Adler, A. Brown, and S. Brecher, ''2000–2001 Food Label and Package Survey: An Update on Prevalence of Nutrition Labeling and Claims on Processed, Packaged Foods,'' *Journal of the American Dietetic Association*, 104:952–958, 2004.

8. USDA, National Nutrient Database for Standard Reference, Release 18 (2005), *http://www.nal.usda.gov/fnic/foodcomp/search/*, accessed on September 15, 2005.

9. Mancini, D., FDA, Center for Food Safety and Applied Nutrition, memorandum to file, May 23, 2002.

10. RTI International, *Cost of Reformulating Foods and Cosmetics, Final Report*, prepared for Ed Puro, FDA, Center for Food Safety and Applied Nutrition, prepared by White, W.J., E. Gledhill, S. Karns, and M. Muth, RTI Project Number 08184.003, July 2002.

11. RTI International, *Modeling the Decision to Reformulate Foods and Cosmetics, Final Report*, prepared for David Zorn, FDA, Center for Food Safety and Applied Nutrition, prepared by Muth, M., S. Karns, D. Anderson, M. Coglaiti, and M. Fanjoy, RTI Project Number 08184.005, October 2003.

12. RTI International, *FDA Labeling Cost Model, Final Report*, prepared for Amber Jessup, FDA, Center for Food Safety and Applied Nutrition, prepared by Muth, M., E. Gledhill, and S. Karns, RTI Project Number 06673.010, January 2003.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.62 is amended by revising paragraph (e) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(e) *''Lean'' and ''extra lean'' claims.* (1) The term ''lean'' may be used on the label or in labeling of foods, except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m), provided that the food is a seafood or game meat product and, as packaged, contains less than 10 g total fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g;

(2) The term defined in paragraph (e)(1) of this section may be used on the label or in labeling of a mixed dish not measurable with a cup as defined in table 2 of § 101.12(b), provided that the food contains less than 8 g total fat, 3.5 g or less saturated fat, and less than 80 mg cholesterol per reference amount customarily consumed;

(3) The term defined in paragraph (e)(1) of this section may be used on the

label or in labeling of meal products as defined in § 101.13(l) or main dish products as defined in § 101.13(m), provided that the food contains less than 10 g total fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per 100 g and per labeled serving;

(4) The term ''extra lean'' may be used on the label or in labeling of foods, except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m), provided that the food is a discrete seafood or game meat product and as packaged contains less than 5 g total fat, less than 2 g saturated fat, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g; and

(5) The term defined in paragraph (e)(4) of this section may be used on the label or in labeling of meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m), provided that the food contains less than 5 g of fat, less than 2 g of saturated fat, and less than 95 mg of cholesterol per 100 g and per labeled serving.

* * * * *

Dated: November 18, 2005.

Michael M. Landa,

Deputy Director for Regulatory Affairs, Center for Food Safety and Applied Nutrition.

[FR Doc. 05–23293 Filed 11–23–05; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 125

[OW–2004–0002, FRL–8002–3]

RIN 2040–AD70

National Pollutant Discharge Elimination System Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Phase III Facilities; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On November 24, 2004, EPA published proposed regulations to establish requirements for cooling water intake structures at Phase III facilities under section 316(b) of the Clean Water Act (CWA). EPA proposed the following three options for defining which existing facilities would be subject to uniform national requirements, based on the facility's design intake flow threshold and source waterbody type: The facility has a total design intake flow of 50 million gallons per day (MGD) or more, and withdraws from any waterbody; the facility has a total design intake flow of 200 MGD or more, and withdraws from any waterbody; or the facility has a total design intake flow of 100 MGD or more and withdraws specifically from an ocean, estuary, tidal river, or one of the Great Lakes. The proposed rule would also establish national section 316(b) requirements for new offshore oil and gas extraction facilities. This notice of data availability (NODA) summarizes significant data EPA received or collected since publication of the proposed rule and discusses how EPA may use this data in revising its analyses. EPA solicits public comment on the information presented in this notice and the record supporting this notice.

DATES: Comments on this notice of data availability must be received or postmarked on or before midnight December 27, 2005.

ADDRESSES: Comments may be submitted by mail addressed to Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No OW–2004–0002. Comments may also be submitted electronically, or by hand delivery. Follow the detailed instructions as provided in Section B.1 of the **SUPPLEMENTARY INFORMATION** section to file comments electronically.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Paul Shriner at (202) 566–1076. For additional economic information contact Erik Helm at (202) 566–1066. For additional biological information contact Ashley Allen at (202) 566–1012. The e-mail address for the above contacts is *rule.316b@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2004–0002. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA

identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments, however, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2004–0002. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *OW–Docket@epa.gov*, Attention Docket ID No. OW–2004–0002. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send an original and three copies of your comments to the Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No OW–2004–0002.

3. By Hand Delivery or Courier. Deliver your comments to: Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OW–2004–0002. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0002. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

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I. Purpose of This Notice

This notice presents a summary of significant data EPA has received, collected, or developed since proposal and a discussion of how EPA is considering using these data in revised analyses supporting the final rule.

Section II of this notice discusses additional data about the environmental impacts associated with cooling water intake structures at facilities potentially subject to regulation under Phase III. This includes data obtained from the National Oceanic and Atmospheric Administration (NOAA), which characterize the nature and abundance of fish and shellfish in the vicinity of offshore oil and gas extraction facilities in the Gulf of Mexico potentially subject to regulation under Phase III. It also includes data extracted during EPA's review of additional cooling water intake structure impact studies relevant to Phase III.

This notice also discusses EPA's revision of certain elements of the proposed Phase III rule cost estimates and presents the revised costing information. This includes revisions to the Phase III cost development methodology (*i.e.*, cost-test tool) and the data inputs to this methodology, which are discussed in more detail in section III of today's notice.

For the proposed regulation, EPA conducted an economic analysis of four major categories of manufacturers potentially subject to regulation under Phase III: paper and allied products, chemical and allied products, petroleum and coal products, and primary metals. These manufacturing categories, combined with steam electric facilities, represent 99 percent of cooling water use by all existing facilities potentially subject to regulation under section 316(b). Therefore, all other existing manufacturing facilities were grouped together in ''other industries.'' EPA has now revised its economic impact analysis for these ''other industries,'' to better capture the food and kindred products sector, which represents the next largest user of cooling water among the ''other industries.'' The updated technology modules, costs, and economic analyses, including these additional industrial categories, are not anticipated to significantly affect the proposed benefits analyses. However, EPA has made minor adjustments to the benefits analysis through use of the population matrix fish model discussed at proposal (69 FR 68510), which has been peer reviewed subsequent to publication of the proposed rule. Data and adjustments to the economic impact and benefits analyses are discussed in sections IV and V of today's notice, respectively.

EPA solicits public comment on the information presented in this notice and the record supporting this notice.

II. Environmental Impacts

For today's NODA, EPA analyzed additional data on the regions in which offshore oil and gas extraction facilities operate in order to better characterize the potential for entrainment of ichthyoplankton (planktonic egg and larval life stages of fish) by these facilities. Offshore oil and gas extraction facilities operate off the coasts of California and Alaska and in the Gulf of Mexico. Most activity takes place in the Gulf of Mexico region (see Phase III proposed TDD; DCN 7–0004, document ID OW–2004–0002–0027, pp. 3–130 to 3–148).

Because planktonic organisms have limited swimming ability, those present in offshore regions where oil and gas activities take place are at risk of entrainment by cooling water intake structures at offshore oil and gas facilities. EPA obtained data on densities of ichthyoplankton in the Gulf of Mexico from the Southeast Area Monitoring and Assessment Program (SEAMAP).[1] This long-term sampling program collects information on the density of fish larvae and eggs throughout the Gulf of Mexico.

EPA analyzed the SEAMAP data to determine average ichthyoplankton densities in the Gulf of Mexico for the available sampling period (1982–2003). Actual conditions at any one location and at any one time vary from this average. EPA's analysis of the SEAMAP data indicates that ichthyoplankton occur throughout the Gulf of Mexico. On average, densities are highest at sampling stations in the shallower regions of the Gulf of Mexico and lowest at sampling stations in the deepest regions. Average densities are greater than 450 organisms/100 m^3 at sampling stations in waters less than 50 meters deep. Average densities gradually decrease to 100 organisms/100 m^3 as sampling station depth-at-location increases to 150 meters. At stations in waters greater than 150 meters deep, densities are relatively uniform and fall between 25 organisms/100 m^3 and 100 organisms/100 m^3.

The wide range of ichthyoplankton densities seen in the offshore Gulf of Mexico region falls within the range of ichthyoplankton densities seen in freshwater and coastal water bodies in coastal and inland regions of the United States.[2] Over 600 different fish taxa were identified in the SEAMAP samples, including species of commercial and recreational utility. Spawning events occur at all times of the year in the Gulf of Mexico, with different species typically spawning at a time of year particular to that species.[3]

In the area surrounding offshore oil and gas extraction facilities off the California coast, the California Cooperative Oceanic Fisheries Investigations (CalCOFI) program has gathered data on densities of ichthyoplankton and other organisms. According to the CalCOFI and other research programs, a number of fish and shellfish species, including species of commercial and recreational value, are known to live and spawn in this region.[4] EPA does not know of similarly extensive sampling programs for the Alaska offshore region. However, a number of fish and shellfish species, including species of commercial and recreational value, are known from various research programs to live and spawn in the offshore regions of Alaska where oil and gas activities currently take place or may take place in the future. The eggs and larvae of many species found in the offshore regions of California and Alaska are planktonic and could therefore also be vulnerable to entrainment by a facility's cooling water intake structure operating in these regions. Larger life stages (*e.g.* adults and juveniles) could be vulnerable to impingement. EPA believes these data indicate the potential for entrainment and impingement from cooling water intake structures at oil and gas facilities operating in offshore regions.

EPA also continued to collect impingement and entrainment studies from Phase II and Phase III facilities that indicated in their industry questionnaire that they had conducted such studies (see 69 FR 68458). Since

[1] Adam Rettig and Blaine Snyder, Tetra Tech, Inc. Memorandum to Ashley Allen, EPA. A summary of ichthyoplankton presence and abundance in the Gulf of Mexico, as part of an assessment of the potential for entrainment by offshore oil and gas facilities. DCN 8–5220. Document ID OW–2004–0002–951.

[2] A. L. Allen (EPA). Memorandum to EPA Docket OW–2004–0002. Information on Ichthyoplankton Densities in Various Aquatic Ecosystems in the United States. DCN 8–5240.

[3] Ditty, J.G. Seasonality and depth distribution of larval fishes in the northern Gulf of Mexico above latitude 26 (degrees) 00 (minutes) N. DCN 7–0013A03. Document ID OW–2004–0002–0174.

[4] A.L. Allen (EPA). Memorandum to EPA Docket OW–2004–0002. Information on Fish Species that Live and Spawn off the Coasts of Alaska and California in the Vicinity of Offshore Oil and Gas Production Areas. DCN 8–5260.

proposal, EPA has collected 12 additional studies containing data that can be used for the national environmental assessment.[5] (See the Regional Benefits Assessment for the Proposed Section 316(b) Rule for Phase III Facilities [EPA–821–R–04–017], p. A1–3 for a description of data needs and quality criteria for the environmental assessment.) Though EPA has not fully evaluated the data in these studies, the data from these studies appear to be consistent with data from previously collected studies.

III. Engineering Costing Revisions

As described in the preamble for the Phase III proposed rule (69 FR 68498), EPA used a spreadsheet program called the ''cost-test tool'' to estimate engineering costs for model facilities. In contrast to Phase II, EPA does not have facility-level data for all potentially regulated facilities, and is therefore conducting the analysis using a model facility approach. Based on a series of data inputs, such as cooling system type, waterbody type, intake location, design intake flow (DIF), technology in-place, and through-screen velocity, the cost-test tool determines one of two possible performance expectations: (1) Impingement requirements only, or (2) both impingement and entrainment requirements.[6] The cost-test tool then determines a compliance response for each intake at a model facility and assigns one of 12 technology modules as the best-performing technology for that model intake. Cost estimates are derived through a series of computations that apply facility-specific data to the selected technology module. Cost outputs include capital costs, incremental operation and maintenance (O&M) costs, and installation downtime (in weeks) where appropriate (69 FR 68498). These model facility costs are then weighted and summed to provide national technology cost estimates for the proposal.

For today's NODA, EPA's analyses reflect updated data inputs to the cost-test tool. In a few cases, EPA has provided technical corrections to certain data inputs. EPA has revised the capital costs, the annual O&M costs, and any monitoring and study costs correspondingly. Additionally, EPA conducted a sensitivity analysis using two different intake flow values to estimate engineering compliance costs.

Technical corrections to the cost-test tool and the results of the intake flow analyses are discussed below.[7] Costs were revised for 149 of the 155 facilities (weighted value) potentially subject to the Phase III regulations.[8] In aggregate, the national technology capital costs decreased by approximately 10% from the capital costs at proposal and O&M costs decreased by approximately 38%.

A. Corrections to Cost-Test Tool Data Inputs

Since the publication of the proposed rule, EPA reviewed elements of the survey database for Phase III facilities for technical accuracy. These data serve as model facility inputs to the cost-test tool. Today's NODA reports the outcome of this review. EPA found a few inconsistencies and checked them against the original data reported in a given facility's 316(b) survey. Most inconsistencies were identified in the following fields of the cost-test tool:

- Technology in-place (the current technology at the facility);
- Intake water depth and intake well depth;
- Through-screen velocity; and
- Design intake flow (DIF).

For technology in-place, intake water depth and intake well depth, and through-screen velocity, EPA corrected data inputs that were incorrectly interpreted for the cost-test tool in the proposed rule analysis. To do so, EPA reviewed 316(b) survey responses and written comments submitted with the survey to ensure that the correct parameters were identified and input into the cost-test tool. EPA also reviewed the facility-level data for DIF and found that some model facilities included emergency intake flows in their calculation of DIF. These facilities' costs were potentially overstated, and the costs were adjusted to remove emergency intakes and emergency intake flows. Some facilities also reported more than one technology in-place and also operate more than one intake, indicating that the facility has two distinct types of intake structure (e.g., a facility may have a shoreline intake and a submerged offshore intake). The costs for these ''split'' intakes are now generated separately for each intake. The corrected values for DIF (''corrected DIF'' or ''revised DIF'') were subsequently used in the cost tool to calculate facility costs.

Other corrections were made to the canal length for certain model facilities. Additionally, adjustments were made to model facilities to account for multiple intakes with unique characteristics, e.g., model facilities with intakes withdrawing from different waterbody types, model facilities with both shoreline and submerged intakes, and model facilities with intake velocities less than and greater than 0.5 foot per second (fps). These model facilities' costs were potentially overstated at proposal, as they included costs of technology modules for the model facilities' total flows rather than just those intakes needing technology modules.

EPA also reviewed the calculation of O&M costs for all scenarios and revised costs to ensure that all incremental variable O&M costs were based on the actual intake flow (AIF). For the proposal, EPA used AIF for some variable O&M costs and DIF for others. EPA previously noted that the AIF is, on average, less than half of the total DIF (69 FR 68460). EPA believes that using AIF for all cost modules is more appropriate for use in estimating technology O&M costs since the AIF will more accurately capture periods in which screens are not required to be operated as long or backwashed as frequently. Using the AIF more accurately reflects any incremental costs associated with reductions in power demand, wear on the system, and operator labor hours. Since AIF is on average less than half of the DIF, incremental O&M costs based on DIF tend to overstate costs.

EPA also revised the baseline O&M costs for existing technologies for all technology modules except modules 5 (fish barrier net) and 8 (add velocity cap). In doing so, EPA accounted for O&M costs currently borne by facilities to maintain any existing technologies, and only calculated the incremental baseline O&M costs for a new technology (as required by the rule). Modules 5 and 8 remain unchanged, as any existing technologies would likely remain in place after a new technology is installed as a result of the regulations. For all other modules, the existing technology would be removed and replaced by a new technology. In one additional case, EPA failed to account for a model facility's baseline O&M costs. In this case, EPA has now included the baseline O&M costs, and the model facility's costs were corrected

[5] ''Summary Descriptions of Facilities with Impingement and Entrainment Studies Collected Since Proposal of the Section 316(b) Phase III Rule'' provides a summary of these studies supplementing the Regional Benefits document DCN 8–5282. These 12 studies are also in the record for today's NODA.

[6] Input parameters for the cost-test tool are defined and discussed in the Proposed 316(b) Phase III Technical Development Document, Section 5 (DCN 7–0004). The decision tree used to apply technology cost modules is also detailed in the TDD.

[7] See Revisions for Phase III Compliance Cost Estimates (DCN 8–6600) for a detailed discussion.

[8] For the NODA, revisions were made to the capital costs, O&M costs, and downtime costs. Costs increased for some model facilities, and decreased for others. In some cases, only one of the three cost categories changed for a model facility, but in many cases, revisions were made in all three categories.

to reflect only the incremental O&M costs.

The corrections to the engineering costs also resulted in changes to some of the pilot study costs estimated for the Information Collection Request (ICR).

B. Installation Downtime

For the analysis supporting the proposal, installation downtime (the amount of time that a facility may need to shut down due to the installation of an impingement and/or entrainment technology) was estimated using EPA's Phase II modeling methodology (see Phase II Technical Development Document DCN 6–0004). This approach primarily presumes that the facility would need to shut down operations completely to retrofit an intake to either add a larger intake or relocate an intake to be submerged offshore. Although this is true for most electric generators, manufacturing facilities may have greater flexibility regarding operation of various production operations and cooling water requirements.[9] Alternate electricity sources may be available or other intakes with sufficient excess capacity may be available for use during construction of a new intake technology. Therefore, EPA believes that the assumptions used for Phase II facilities may be overly conservative for Phase III model facilities and may tend to overestimate downtime potentially incurred by Phase III model facilities and the associated lost revenue.

Since the proposal, EPA has contacted several manufacturing facilities to verify the technology in-place, and has collected additional vendor and consultant data to update the downtime estimates.[10] Based on this information, EPA corrected DIF values and revised cost module allocations for some model facilities, reduced downtime estimates by two weeks for technology modules 3, 4, 7, 12, and 14 (see exhibit 5–23 of the proposed Development Document DCN 6–0004), and considered each intake at those model facilities with multiple intakes separately. These activities resulted in significant reductions in the need for any downtime at some facilities, and reduced downtime estimates for others. The revised installation downtime estimates are presented below for the three regulatory options and compared with values presented at proposal.

EXHIBIT III–1.—REVISED INSTALLATION DOWNTIME ESTIMATES

National Net Downtime Estimates (Weeks)					
50 MGD all		100 MGD certain waterbodies		200 MGD all	
Proposal	NODA	Proposal	NODA	Proposal	NODA
104	55	16	2	28	17

For Phase III model facilities with multiple intakes, downtime estimates remain at zero for those facilities with shoreline intakes that are not dedicated intakes, as discussed in the proposal. Using the approach presented in today's NODA, and applying the model facilities' weights to achieve a national estimate, downtime estimates would be reduced by 49 weeks, 14 weeks, and 11 weeks, respectively, for the three regulatory options (50 MGD–All, 100 MGD Certain Waterbodies, and 200 MGD–All, weighted values).

EPA is soliciting comments on this approach to calculating installation downtime for Phase III facilities. EPA presents the revised estimates of downtime costs in Section IV.B. Exhibit IV–4 of this notice.

C. Use of Alternate Intake Flow Data to Estimate Costs

For the proposed rule, EPA used the DIF to estimate all engineering compliance costs. The DIF is typically established prior to the design phase of construction and is estimated based on the maximum potential flow volume requirement for that facility. As stated previously, facilities rarely operate at flows close to the maximum DIF, and several commenters on the Phase III proposal stated that this methodology may have overestimated costs for the Phase III rulemaking.

Several facilities commented that for older facilities, especially those that have implemented flow reduction measures, the plant's original DIF may be significantly higher than what is required under normal operations today. The costs developed for the proposed rule reflected the entire DIF as originally reported by the facility. EPA believes this may have resulted in overestimating flow for costing purposes. For example, EPA's costs should exclude technology retrofits to those structures where the intakes and/or pump houses have been permanently taken out of service. However, EPA is not able to identify all cases where a facility's reported DIF is significantly higher than the plant's current maximum intake flow or ''MRIF.'' To assess the impact of using DIF in the cost analysis, EPA conducted a sensitivity analysis using the three different intake flow values: The DIF with the corrections noted above in Section III.A. (''corrected DIF''); the AIF; and the MRIF.[11] The AIF is calculated as the three-year average (1996–1998) of intake flow volume reported on the 316(b) surveys. The MRIF is calculated as the three-year average (also 1996–1998) of the maximum reported daily intake flow reported on the 316(b) surveys.[12] Estimated engineering compliance costs for the three flow values are presented in Section IV.B, Exhibit IV–7 for each proposed option (50 MGD all, 200 MGD all, and 100 MGD certain waterbodies).[13]

As part of the sensitivity analysis, installation downtime estimates were also developed using the AIF and the MRIF values and are presented in Exhibit III–2.

EXHIBIT III–2.—ESTIMATED NATIONAL INSTALLATION DOWNTIME USING ALTERNATIVE INTAKE FLOWS

Intake flow alternative	Net downtime (weeks) for NODA (weighted)		
	50 MGD all	100 MGD certain waterbodies	200 MGD all
Corrected DIF	55	2	17
AIF	54	2	16
MRIF	54	2	16

[9] Id.

[10] See Downtime Duration Input and Analysis of Manufacturing Facilities (DCN 8–6601).

[11] See Revisions for Phase III Compliance Cost Estimates (DCN 8–6600) for a detailed discussion.

[12] Where MRIF values were not provided on the 316(b) survey, EPA imputed the values from the reported AIF.

[13] See DCNs 8–6608A, 8–6608B, and 8–6608C.

EPA acknowledges that using DIF to estimate engineering capital costs may overestimate costs for some facilities, but believes that DIF provides the best margin of safety for periods of peak flows and allows for growth of future operations. EPA also believes that using the AIF or MRIF flows as the design basis for capital costs is not appropriate since many manufacturing facilities have flow requirements that vary greatly over time. Using the AIF may result in technologies being substantially undersized during periods of peak flow requirements, thus limiting the proper function of the technology. For example, intake screens are sized based on an acceptable through-screen velocity; when the actual flow exceeds the AIF, the performance of the technology suffers and greater impingement and entrainment may result. EPA also reviewed survey data that showed the MRIF exceeding the DIF in some extreme cases; in these instances, a technology sized for the MRIF may not be adequately protective. For these reasons, EPA intends to use the corrected DIF values in developing engineering capital costs for the final rule. EPA solicits comments on this approach.

D. Consideration of Operating Time

Under the Phase II rule, facilities with a capacity utilization rate less than 15 percent are afforded reduced regulatory requirements, i.e., impingement mortality only regardless of waterbody type or DIF. Capacity utilization rate is defined as ''the ratio between the average annual net generation of power by the facility (in Megawatt hours (MWh)) and the total net capability of the facility to generate power (in MW) multiplied by the number of hours during a year'' (69 FR 41684). In the proposed rule for Phase III, EPA solicited comments on an analogous approach for manufacturing facilities (69 FR 68484). No comments were received that reflected a specific approach; however, several commenters noted that reductions in flow or sporadic intake use should be addressed in the final requirements. In today's NODA, EPA is considering using a threshold of fewer than 60 days of operation for manufacturing facilities for reduced regulatory requirements.[14] The 60 day value was approximated as 15 percent of 365 days. For facilities with intakes operating fewer than 60 days per year, the intake would only be subject to impingement mortality requirements similar to those requirements for a Phase II facility operating at less than 15 percent capacity utilization rate. EPA solicits comments on this approach.

IV. Economic Impact

In this section of today's NODA, EPA first describes additional analyses that were undertaken for the ''Other Industries,'' which, as described at proposal, are industries in addition to the electric power industry and the Primary Manufacturing Industries that are potentially within the scope of the section 316(b) regulation. Second, EPA reviews an alternative concept for valuing the social cost of installation downtime. Third, EPA presents revised estimates of the social cost of compliance based on the revisions to the engineering cost analysis for regulatory compliance, as discussed in Section III, above.

A. Additional Analyses for the Other Industries

As described in the proposal, EPA framed its initial analysis and data-gathering for the proposed Phase III rule on the electric power industry (facilities with design intake flow of less than 50 MGD) and four manufacturing industries: Paper, Chemicals, Petroleum, and Primary Metals, (the ''Primary Manufacturing Industries''). EPA focused on these industrial categories because they are cooling-water-intensive, and EPA therefore expected a substantial number of facilities in these categories would potentially be subject to the proposed regulation. Collectively, this target population was estimated to generate 99 percent of the cooling water in the nation (see 69 FR 68457). Because other industries contribute relatively little cooling water generation, EPA excluded them from the target population for purposes of data collection activities.

From a list of facilities in the target population, EPA selected a statistical sample to receive a questionnaire. Selecting facilities in this manner allows statistical inferences to be made about all eligible facilities in the target population, including those that did not respond or did not receive the questionnaire. When EPA received the responses, it found a few (22) questionnaires had been completed by facilities that were not part of the target population for the questionnaire. However, EPA determined that the 22 facilities may be subject to the rule because their operations include cooling water usage. For this reason, EPA retained the data and considered them on a facility-level basis in the impact analysis of the proposed rule. EPA performed a less detailed assessment of the economic circumstances in terms of the industries' ability to comply with the proposed Phase III regulation without material economic/financial impact. In its analysis at proposal, EPA found that none of the 22 facilities would be expected to incur an adverse economic impact from compliance with any of the proposed regulatory options. EPA proposed to extrapolate these findings to all ''other'' industries, because the associated (''other'') industries collectively contribute one percent or less of the cooling water usage, and therefore EPA believes there would be few, if any, additional potentially regulated facilities in the ''other'' industries. Comments on the proposal suggested that EPA should consider the impacts of the Other Industries, not just the facilities themselves.

Since the proposal, EPA has continued to investigate these facilities and the Other Industries more generally to increase its understanding of the potential impact of the 316(b) regulation on such industries. These efforts include:

1. A comparative analysis of cooling water use and compliance cost for the Other Industries and Primary Manufacturing Industries facilities. This analysis considered several normalized measures of cooling water use and compliance cost for facilities in the Other Industries and Primary Manufacturing Industries.[15]

2. Preparation of a detailed industry profile and assessment of business conditions and outlook for the Food and Kindred Products industry. EPA chose this industry for additional analysis because it submitted over half (12) of the 22 Other Industries questionnaires that EPA received and because it is the next largest user of cooling water, after the electric power industry and the Primary Manufacturing Industries, as reported in the Census of Manufacturers reports of cooling water usage.[16] None of the twelve facilities analyzed are expected to experience financial stress as a result of any of the proposed Phase III options.

3. Development of a basis for extrapolating results from the analysis of subset of the Food and Kindred Products industry facilities to the

[14] Meadows, K. Memo to P. Shriner, EPA RE: Estimates of Operating Days for Phase III Facilities. DCN 8–6604.

[15] See Statistical Analysis of Other Industries and Primary Manufacturing Industries Facility Data, DCN 8–2502 and Evaluation of Similarities Between Intakes at Phase III Food and Kindred Products Facilities and Other Phase III Manufacturers; DCN8–6607.

[16] See Profile of Food and Kindred Products Industry (SIC 20), DCN 8–2500.

broader population of facilities in the industry. In addition to preparing an economic profile for the Food and Kindred Products industry, EPA also sought to develop a method for extrapolating the findings from the analysis of the 12 individual Food and Kindred Products facilities to the broader population of facilities in the industry.[17] EPA considered an ex-post-stratification approach to develop sample weights for facilities in the industry, but EPA concluded that sufficient data were not available to develop reliable sample weights by this method. As an alternative, less rigorous approach, EPA also considered extrapolating facility results to the broader population based on the approximate fraction of total cooling water use in the Food and Kindred Products industry represented by the 12 facilities from which EPA received questionnaires. This analysis indicated that these facilities account for approximately 32 percent of estimated total cooling water usage in the Food and Kindred Products industry at the time of EPA's survey, which, in turn, would imply an extrapolation multiplier of 3.11. This concept of extrapolation assumes that compliance cost, facility counts, and other regulatory impact measures are directly proportional to cooling water usage, as represented by the 12 facilities, and thus can be scaled to the total Food and Kindred Products industry on this basis. Of these 12 Food and Kindred Products facilities, 3 reported design intake flow of at least 50 MGD, and thus could be subject to the Phase III regulation under the regulatory applicability thresholds as outlined at Proposal and carried forward to this NODA. The remaining 9 Food and Kindred Products facilities reported design intake flow of less than 50 MGD and thus would not be subject to the Phase III regulation, based on the regulatory applicability thresholds set forth in the proposed regulation. For the purposes of EPA's analyses for the Phase III regulation, the estimated extrapolation multiplier of 3.11 would thus apply only to those facilities with design intake flow of at least 50 MGD. Applying this extrapolation multiplier to the 3 Food and Kindred Products facilities with at least 50 MGD design intake flow, EPA estimates that approximately 9 to 10 facilities, total, in the Food and Kindred Products industry could potentially be within the scope of the Phase III regulation, based on the lowest of the three regulatory applicability thresholds as presented for the proposed regulation. EPA seeks comment on usage of this extrapolation concept for estimating the industry-level impact of Phase III regulatory compliance for the Food and Kindred Products industry.

4. Further review of Other Industries facilities outside of the Food and Kindred Products industry. As described above, 12 of the 22 Other Industries facilities are within the Food and Kindred Products. The remaining 10 facilities lie in a broad range of industries, with five being in manufacturing industries and five in resource and agricultural (non-manufacturing) industries. Four of these remaining facilities have a DIF greater than 50 MGD, and are in the Fabricated Metal Products, Transportation Equipment, and Metal Mining industries.[18]

In the same way as described above for the Food and Kindred Products industry facilities, EPA considered extrapolating regulatory analysis findings for the non Food and Kindred Products facilities based on the fraction of estimated total cooling water usage represented by these facilities in their respective industries, and in the aggregate of the remaining industries not accounted for by the five Primary Manufacturing Industries or the Food and Kindred Products industry. This potential basis for extrapolation is limited to only those Other Industries facilities that are in Manufacturing sectors, because cooling water usage data were collected in the Economic Census only for manufacturing industries. Using the same concepts as described in the preceding paragraph, EPA calculated that cooling water usage in the five manufacturing sector Other Industries facilities represented from 0.7 percent to 13.8 percent of the estimated cooling water usage in the respective industries of each of these facilities. When the calculation is performed on an aggregate basis for all of the industries not accounted for by the five Primary Manufacturing Industries or the Food and Kindred Products industry, the resulting fraction of total cooling water usage accounted for by the five manufacturing sector Other Industries facilities is 1.5 percent. These relatively low estimated percentage coverages would indicate relatively high extrapolation multipliers, ranging from 7.2 to 149.0, for the individual industries, and of 67.3 for the aggregate remaining industry comparison. Because the estimated fractions of cooling water usage covered by the five manufacturing sector Other Industries facilities, both by individual industry and in the aggregate, are low (0.7 to 13.8 percent), the implied statistical error in using this information as a basis for extrapolation to the remainder of the industries would be very high. Accordingly, EPA has considerably less confidence in using the information from the scant number of Other Industries facilities outside the Food and Kindred Products industry as a basis for extrapolating regulatory findings from the five manufacturing sector Other Industries to the industry level than is the case for the Food and Kindred Products industry, where the cooling water usage coverage is relatively high—32 percent. EPA seeks comment on the usage of this extrapolation concept for estimating the industry-level impact of Phase III regulatory compliance for Other Industries outside of the Food and Kindred Products industry.

EPA's analysis shows, with only one exception, that the values for Other Industries facilities fall within the distributions of values for the Primary Industries facilities. As a result, EPA continues to propose to include the Other Industries within the scope of the 316(b) Phase III regulation. EPA notes this general approach is appropriate for determining the national costs and economic impacts of the proposed regulations, and these results should not be used for facility-specific costing exercises.

B. Alternative Approach to Valuing the Social Cost of Installation Downtime

For the proposal (see Proposed Phase III Economic Analysis Appendix 2 to Chapter B3: Calculation of Installation Downtime Cost, DCN 7–0002), EPA calculated the cost of installation downtime for the manufacturers facility impact/private cost analysis, as the loss in pre-tax income, accounting for lost revenue, reduced variable production costs, and cost of replacement electricity, if any. However, as described in the proposal, the social cost of downtime is based on a different economic concept. Specifically, under the assumption that the total quantity of goods and services produced and sold by the affected industries would not change as a result of the regulation, the cost to society from installation downtime is the increase in cost for producing the goods and services that would otherwise have been produced by the affected facilities' except for the

[17] See Using Cooling Water Usage Data to Extrapolate Analysis Results for the 12 Food & Kindred Products Facilities to the Industry Level, DCN 8–2503.

[18] See Using Cooling Water Usage Data to Extrapolate Analysis Results for the 10 Other Industries' Facilities Not In Food & Kindred Products to the Industry Level, DCN 8–2558 for further information on these facilities.

occurrence of installation downtime. That is, other producers are assumed to replace the production of goods and services lost due to installation downtime, or even the affected facilities may produce these goods and services, but in a different time period. Either way, the cost to society is the amount, if any, by which the cost to produce these replacement goods and services exceeds the cost at which the affected facilities would have produced these goods and services if they were not to incur installation downtime due to the 316(b) regulation. Another possibility is that the quantity of goods and services produced would change, in which case social cost comparison must also account for lost consumer surplus. EPA believes it is reasonable to ignore this effect as long as the overall impacts (and any associated price changes) are small relative to the size of the affected sectors.

EPA is not able to estimate precisely what this additional cost is likely to be. Conceptually, the cost to society could vary over a broad range depending on the structure of, and character of competition in, the production of goods and services in the individual markets affected by the 316(b) Phase III regulation.

At the low end of this possible range, if the replacement goods and services can be provided by other producers (or by the affected facilities but at a different time) at the same variable production cost as otherwise would have been incurred by the affected 316(b) Phase III facilities, then the cost to society of installation downtime would be zero. Because the cost for alternative producers is the same as for the producers incurring downtime, society incurs no incremental resource cost when other producers provide the replacement goods and services. In this case, although the affected 316(b) Phase III facilities might incur a financial impact from installation downtime, this impact—the loss in pre-tax income described in the preceding section—becomes a transfer of income from the producers incurring installation downtime losses to the producers who make up the lost production.

At the high end of this possible range, the cost to society would be approximately equal to the pre-tax income loss incurred by facilities due to installation downtime. That is, the cost to society would again be the lost revenue from installation downtime less the variable cost of producing the goods and services not produced due to the installation downtime. In this case, the variable production cost for other producers to replace the lost goods and services is assumed to be essentially the same as the price received for the sale of the goods and services not produced by the facilities incurring the installation downtime. This assumption is consistent with a competitive market model of increasing marginal production cost, such that the variable production cost of the marginal supplier of goods and services produced and sold in any period is approximately equal to the price received for those goods and services in the market.

EPA believes that this latter high-social-cost-valuation approach is reasonable for the analysis of installation downtime in the electric power industry. For electricity, this assumption is consistent with the electricity market concept that the variable production cost of the last generating unit to be dispatched is approximately the same as the price received for the last unit of production. However, for manufacturers, EPA believes that this latter approach may overstate the cost to society of installation downtime. The goods and services produced by facilities in the manufacturers segment are not necessarily produced and sold in as orderly markets as the markets for electricity. In addition, unlike electricity, the goods and services produced by Phase III manufacturers may be able to be produced at a different time than the time at which the goods and services would otherwise have been produced by the affected facilities. As a result of these differences in market and production characteristics, the cost of producing the replacement goods and services may be lower than the price at which the goods and services are sold, and as a result, the cost to society of downtime would be correspondingly lower. In the lower bound case, as outlined above, the replacement goods and services might be produced at the same cost as they would otherwise have been produced by the affected 316(b) facilities and, in this case, society would incur no cost from downtime.

The likely reality is that the cost to society from installation downtime lies somewhere between these cases. At the time of the proposal, lacking specific knowledge of the overall production cost structure of the affected industries and for the numerous goods and services provided by the affected industries, to be conservative in its analysis, EPA adopted the higher end assumption for its analysis of the social cost of downtime for the manufacturers segment, but explained that the resulting value likely overstates social cost. For example, 12 percent of Phase III facilities (manufacturers with a loss of goods produced) incurred average downtime costs of $10,650 per MGD of design intake flow (see Technical Development Document for the Proposed 316(b) Phase III Rule, page 5–41; DCN 7–0004). In comparison, 18 percent of Phase II facilities (i.e. electric generators) incurred average downtime costs of $882 per MGD of design intake flow. Actual downtime costs (in dollars) vary for each individual facility; see the proposed Economic Analysis for more information.

For this NODA, EPA has calculated the social cost of installation downtime both according to the conservative, higher end assumption (as presented in the proposal) and according to the lower bound case, in which the social cost of downtime is zero. As stated above, EPA is not able to know with certainty where the social cost of downtime will actually fall along this scale but believes these two cases provide a reasonable upper and lower bound of the social cost of downtime. EPA seeks comment on which of these approaches to valuing the social cost of installation downtime best reflects the national social cost of installation downtime for the proposed rule.

C. Estimated Social Cost of Compliance Based on Revised Engineering Cost Analysis

EPA calculated new social cost estimates for the direct cost of compliance using costs based on the three different intake flow values—the corrected DIF, the AIF, and the MRIF—and reflecting the other revisions to the engineering cost analysis as described in Section III, above. For this analysis, EPA used the same methodology as described in the proposal, but brought all costs forward to mid-2004$ using the Implicit Price Deflator for Gross Domestic Product or another appropriate index to adjust costs to the year of interest. For the analysis of social costs, EPA used two discount rates, 3% and 7%, to discount all costs to the beginning of 2007, the date at which the rule is assumed to become effective. EPA assumed that all regulated facilities would achieve compliance between 2010 and 2014, and estimated the time profile of compliance and related costs over 30 years from the year of compliance for each complying facility. The last year for which costs were tallied is 2043. The basis for these projections can be found in Chapter B1 of the Economic Analysis for the Proposed Section 316(b) Rule for Phase III Facilities (DCN 7–0002). For this NODA, EPA did not estimate costs incurred by governments for

administering the regulation as these costs are not expected to differ materially from those presented at proposal.

Below, EPA presents these revised social cost estimates of the direct cost of compliance to facilities, based on the three threshold options in the proposed Phase III rule: (1) Design intake flow of at least 50 MGD, any source waterbody type (''50 MGD ALL''), (2) design intake flow of at least 200 MGD any source waterbody type (''200 MGD ALL''), and (3) design intake flow of at least 100 MGD, from an ocean, estuary, tidal river, or Great Lake (''100 MGD Certain Waterbodies''). The first set of exhibits and discussion bring forward to mid-year 2004$ the costs based on DIF as known at proposal and compare these values to the cost estimates based on the corrected DIF, which reflect the corrections and adjustment made to the DIF since proposal, as described in Section III. C, above. These cost estimates reflect the upper bound valuation of downtime, as presented at proposal. In the second section, EPA presents the alternative cost estimates for the corrected DIF values using the lower bound valuation of downtime, as described in Section IV.B, above. The third section presents costs using the alternative intake flow concepts as the basis for determining regulatory applicability—Maximum Reported Intake Flow (MRIF) and Average Intake Flow (AIF). Finally, EPA presents a summary comparison of the cost estimates under the original and corrected DIF and alternative intake flow concepts, and for the upper and alternative, lower bound estimate of the social cost of downtime.

Adjusting Proposal Cost Estimates to 2004 Dollars and Applying DIF Corrections

Exhibits IV–3 and IV–4 summarize the changes in the cost estimates from proposal, based first, on bringing the cost values forward from mid-year 2003 to mid-year 2004, and second, on the corrections to DIF, as described at Section III. C, above. As shown in Exhibit IV–3, the proposal cost estimates were brought forward to mid-year 2004 using the Implicit Price Deflator for Gross Domestic Product. This adjustment resulted in a uniform increase of 2.6% (rounded) to each component of social cost and to total social cost.

EXHIBIT IV–3.—ANNUALIZED TOTAL SOCIAL COSTS OF COMPLIANCE FOR ALL OPTIONS AS PRESENTED AT PROPOSAL BROUGHT FORWARD TO 2004$

[In millions]

Cost component	In 2003$		In 2004$	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
50 MGD All Option				
Pilot Study	$0.3	$0.4	$0.3	$0.4
Initial Permitting	2.7	3.7	2.7	3.8
Downtime	14.3	18.6	14.6	19.1
Capital Cost	14.1	13.9	14.5	14.2
O&M	8.0	6.7	8.2	6.9
Repermitting	3.1	2.5	3.2	2.6
Monitoring	4.4	3.7	4.5	3.8
Total Social Cost	46.8	49.5	48.0	50.8
200 MGD All Option				
Pilot Study	0.1	0.2	0.1	0.2
Initial Permitting	0.5	0.7	0.6	0.8
Downtime	7.4	9.9	7.6	10.1
Capital Cost	7.9	7.7	8.1	7.9
O&M	4.9	4.1	5.1	4.2
Repermitting	0.6	0.5	0.6	0.5
Monitoring	1.1	0.9	1.1	0.9
Total Social Cost	22.6	24.0	23.2	24.6
100 MGD Certain Waterbodies Option				
Pilot Study	0.2	0.3	0.2	0.3
Initial Permitting	0.8	1.1	0.9	1.2
Downtime	4.3	5.6	4.4	5.8
Capital Cost	7.1	6.9	7.3	7.0
O&M	2.9	2.4	3.0	2.5
Repermitting	0.9	0.8	0.9	0.8
Monitoring	1.3	1.1	1.3	1.1
Total Social Cost	17.5	18.1	17.9	18.6

Note: Prices adjusted to 2004$ using the Implicit Price Deflator for Gross Domestic Product. See DCN 8–2521.

As described above, EPA corrected the DIF for certain facilities and revised the estimates of compliance costs based on these corrected DIF values. Exhibit IV–4, below, compares the total annualized social costs of the three proposed options under the DIF as known at proposal to the new costs based on the corrected DIF. For the 50

MGD All Option, total social costs decline from $48.0 million to $36.7 million under the 3% rate, and from $50.8 to $37.5 million at the 7% rate. The 200 MGD All Option's total social costs decrease from $23.2 million to $18.1 million at the 3% rate, and from $24.6 million to $18.8 million at the 7% rate. Total social costs under the 100 MGD Certain Waterbodies Option fall from $17.9 million to $13.7 million at the 3% rate, and from $18.6 to $13.3 million at the 7% rate. EPA notes that due to the smaller number of facilities potentially regulated under the 200 MGD All and the 100 MGD Certain Waterbodies options, changes in costs for any one model facility are more likely to result in large changes in the total national costs.

EXHIBIT IV–4.—COMPARISON OF ANNUALIZED SOCIAL COSTS OF COMPLIANCE USING DIF AS KNOWN AT PROPOSAL AND USING CORRECTED DIF

[In millions, mid-2004$]

Cost component	In 2003$		In 2004$	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
50 MGD All Option				
Pilot Study	$0.3	$0.4	$0.3	$0.4
Initial Permitting	2.7	3.8	3.2	4.5
Downtime	14.6	19.1	5.9	7.9
Capital Cost	14.5	14.2	13.1	12.9
O&M	8.2	6.9	5.1	4.3
Repermitting	3.2	2.6	3.8	3.1
Monitoring	4.5	3.8	5.3	4.5
Total Social Cost	48.0	50.8	36.7	37.5
200 MGD All Option				
Pilot Study	0.1	0.2	0.1	0.2
Initial Permitting	0.6	0.8	0.7	0.9
Downtime	7.6	10.1	4.3	5.9
Capital Cost	8.1	7.9	8.1	7.9
O&M	5.1	4.2	2.8	2.3
Repermitting	0.6	0.5	0.8	0.6
Monitoring	1.1	0.9	1.4	1.1
Total Social Cost	23.2	24.6	18.1	18.8
100 MGD Certain Waterbodies Option				
Pilot Study	0.2	0.3	0.2	0.2
Initial Permitting	0.9	1.2	1.0	1.3
Downtime	4.4	5.8	0.0	0.0
Capital Cost	7.3	7.0	8.3	8.1
O&M	3.0	2.5	1.7	1.4
Repermitting	0.9	0.8	1.1	0.9
Monitoring	1.3	1.1	1.5	1.3
Total Social Cost	17.9	18.6	13.7	13.3

Compliance Costs Based on Upper and Lower Bound Valuation of Installation Downtime and Using Corrected DIF Values

As described at Section IV.B, EPA also developed social cost estimates based on an alternative concept of downtime valuation. Exhibit IV–5 compares the estimates of social cost using the corrected DIF values under the original, upper bound downtime valuation concept and the alternative, lower bound valuation concept. For this comparison, all components of cost except downtime cost are unchanged between the two cases, and, as described, for the alternative, lower bound valuation concept, the estimated downtime cost is simply set to zero. As shown in Exhibit IV–5, the total social cost values decline by 16 percent (3% discount rate) and 21 percent (7% discount rate) under the 50 MGD All Option and by 24 percent (3% discount rate) and 31 percent (7% discount rate) under the 200 MGD All Option. Because no facilities are expected to incur downtime costs under the 100 MGD Certain Waterbodies Option, the estimated social costs are the same under both the upper and lower bound downtime valuation cases.

EXHIBIT IV–5.—ANNUALIZED SOCIAL COST OF COMPLIANCE USING CORRECTED DIF AT UPPER AND LOWER BOUND ESTIMATES OF DOWNTIME

[In millions, mid-2004$]

Regulatory Option	Upper valuation of downtime		Lower valuation of downtime	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
50 MGD All	$36.7	$37.5	$30.7	$29.6
200 MGD All	18.1	18.8	13.7	13.0
100 MGD Certain Waterbodies	13.7	13.3	13.7	13.3

Comparison of Alternative Intake Flow Concepts as Basis for Determining Regulatory Applicability

EPA also estimated social costs using the two alternative intake flow concepts for determining regulatory applicability—Maximum Reported Intake Flow (MRIF) and Average Intake Flow (AIF). Exhibit IV–6 presents the social costs under these alternative flow concepts for each option, using the upper bound downtime valuation concept, as described at proposal. Costs are lower under both of the alternative intake flow approaches than under the DIF approach. Costs decrease by a greater amount (relative to the corrected DIF values) under the AIF approach than under the MRIF approach. As discussed at proposal, these costs assume all facilities would comply with the regulations by installing the single best-performing technology module, which does not necessarily reflect the most cost-effective compliance alternative (69 FR 68499).

Overall, the costs for the 50 MGD All Option decrease, at the 3 percent rate, from $36.7 million under the corrected DIF, to $33.5 million (MRIF basis) and to $32.0 million (AIF basis). At the 7 percent rate, total costs decline from $37.5 million under the corrected DIF to $34.2 million (MRIF), and to $32.7 million (AIF). Under the 200 MGD All Option, costs decline, at the 3 percent rate, from $18.1 million under the corrected DIF to $16.5 million (MRIF), and to $15.4 million (AIF). At the 7 percent rate, costs decline from $18.8 million under the corrected DIF to $17.1 million (MRIF) and to $16.1 million (AIF). Under the 100 MGD Certain Waterbodies Option, at the 3 percent discount rate, total social costs decline from $13.7 million under the corrected DIF to $11.7 million (MRIF) and to $10.6 million (AIF). At the 7 percent discount rate, costs decline from $13.3 million under the corrected DIF to $11.3 million (MRIF), and to $10.2 million (AIF).

EXHIBIT IV–6.—ANNUALIZED SOCIAL COST OF COMPLIANCE UNDER MRIF AND AIF BASES FOR DETERMINING REGULATORY APPLICABILITY, UPPER BOUND DOWNTIME VALUATION

[In millions, mid-2004$]

Cost Component	MRIF		AIF	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
50 MGD All Option				
Pilot Study	$0.2	$0.2	$0.2	$0.2
Initial Permitting	3.2	4.5	3.2	4.5
Downtime	5.4	7.2	5.4	7.2
Capital Cost	11.0	10.8	9.6	9.4
O&M	4.7	3.9	4.5	3.8
Repermitting	3.8	3.1	3.8	3.1
Monitoring	5.3	4.5	5.3	4.5
Total Social Cost	33.5	34.2	32.0	32.7
200 MGD All Option				
Pilot Study	0.1	0.1	0.1	0.1
Initial Permitting	0.7	0.9	0.7	0.9
Downtime	3.8	5.1	3.8	5.1
Capital Cost	7.3	7.1	6.4	6.2
O&M	2.5	2.1	2.3	2.0
Repermitting	0.8	0.6	0.8	0.6
Monitoring	1.4	1.1	1.4	1.1
Total Social Cost	16.5	17.1	15.4	6.1
100 Certain MGD Waterbodies Option				
Pilot Study	0.1	0.1	0.1	0.1
Initial Permitting	1.0	1.3	1.0	1.3
Downtime	0.0	0.0	0.0	0.0
Capital Cost	6.8	6.6	5.7	5.5
O&M	1.4	1.2	1.3	1.1

EXHIBIT IV–6.—ANNUALIZED SOCIAL COST OF COMPLIANCE UNDER MRIF AND AIF BASES FOR DETERMINING REGULATORY APPLICABILITY, UPPER BOUND DOWNTIME VALUATION—Continued

[In millions, mid-2004$]

Cost Component	MRIF		AIF	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
Repermitting	1.1	0.9	1.1	0.9
Monitoring	1.5	1.3	1.5	1.3
Total Social Cost	11.7	11.3	10.6	10.2

Summary of Social Costs Over Regulatory Options, Alternative Intake Flow Concepts, and Alternative Installation Downtime Valuations

Exhibit IV–7, below, summarizes social costs according to the various regulatory and analytic configurations as outlined in the preceding discussion.

EXHIBIT IV–7.—ANNUALIZED SOCIAL COSTS OVER REGULATORY OPTIONS, ALTERNATIVE INTAKE FLOW CONCEPTS, AND ALTERNATIVE INSTALLATION DOWNTIME VALUATIONS

[In millions, mid-2004$]

Regulatory option	Discount rate (percent)	Proposed rule	Corrected DIF	MRIF	AIF
Upper Bound Downtime Valuation Concept, as Presented at Proposal:					
50 MGD All Option	3	48.0	36.7	33.5	32.0
	7	50.8	37.5	34.2	32.0
200 MGD All Option	3	23.2	18.1	16.5	15.4
	7	24.6	18.8	17.1	16.1
100 MGD Certain Waterbodies Option	3	17.9	13.7	11.7	10.6
	7	18.6	13.3	11.3	10.2
Alternative, Lower Bound Downtime Valuation Concept:					
50 MGD All Option	3	33.4	30.7	28.1	26.6
	7	31.7	29.6	28.1	25.5
200 MGD All Option	3	15.7	13.7	12.7	11.6
	7	14.5	13.0	11.9	10.9
100 MGD Certain Waterbodies Option	3	13.5	13.7	11.7	10.6
	7	12.8	13.3	11.3	10.2

D. Additional Regulatory Costs to 316(b) Facilities

EPA's after-tax cash flow (ATCF) adjustment analysis brings the estimates of cash flow forward from the time of the 316(b) facility survey (years 1996–1998) to the time of the regulatory analysis (2003). The ATCF analysis does account implicitly for additional regulatory costs incurred through 2003. However, the ATCF adjustment analysis does not capture the impact of new regulations that came into effect during this period and for which costs had not yet been incurred, or fully incurred, by 2003. The EPA is aware of other environmental regulations that were recently or soon to be promulgated, potentially imposing additional costs beyond those reflected in the survey financial statements. Prior to determining the final compliance costs for the 316(b) Phase III regulations, EPA will review EPA's Unified Agenda for EPA regulatory actions that may affect Phase III regulated facilities during the time horizon of the analysis. EPA does not have cost information to provide at this time; however, EPA intends to review regulatory actions not captured in the proposed rule ATCF adjustment analysis, and then consider whether estimation of model facility costs for these regulations might be warranted for the Phase III final regulation analysis. EPA intends to include these evaluations as supplemental economic analyses in the final record.

V. Benefits

In today's NODA, EPA is making several minor corrections to its analysis of national benefits. The meta-analysis used for the proposal to estimate recreational fishing benefits was revised in response to peer review comments.[19] These corrections help to better characterize the summary level data generated by the analysis and are discussed below. In addition, a revised commercial fishing benefits approach that uses both revenue and cost data that are region and species specific, and also accounts for the effect of region and species specific fishery management regimes on the potential benefits is discussed. EPA also examined a modeling approach that considers the effects of population-level dynamics in estimating the impact of impingement mortality and entrainment.

A. Recreational Benefits

In this NODA, EPA is documenting a few minor changes to the meta-analysis

[19] A.L. Allen (EPA). Memorandum to EPA Docket OW–2004–0002. Materials for Peer Review of the Population Projection Matrix Model. DCN 8–5200.

methodology used to estimate recreational fishing benefits.[20] Meta regressions are designed to statistically summarize the relationship between benefit measures and a set of characteristics compiled from multiple primary study sources. The changes, which were made in response to peer reviewers' comments, all relate to the way the explanatory variables are defined in the meta-analysis equation that allows EPA to estimate the recreational benefits.

The first change made to the specification of the meta-model was to combine the trout_west, trout_east, and trout_other variables into a new variable, trout_nonGL. This variable represents all species of trout caught outside of the Great Lakes region. This change was made to address concerns about the limited number of observations within each of the three initial variables, particularly trout_other. The estimated coefficients on these fish type variables may reflect more than influences of trout_other on the calculation of willingness-to-pay dollar values, and may inadvertently capture other study-specific influences not fully modeled, such as study geography. The new variable, trout_nonGL, now includes 49 observations. This increased number of observations is expected to decrease overall sensitivity of the model to any single data point.

EPA also changed the meta-model by revising the specification of the trips and age variables using categorical (dummy) variables. Age and trips are now represented by two dummy variables each: age42_down, age43_up, trips19_down, and trips20_up. For example, age42_down is a binary variable indicating that the mean age of sample respondents in a particular study was less than 43 years. This means that the variable is one if the mean age of the sample respondents is less then 43 and zero if the mean sample age was greater than or equal to 43, or was not reported. The variable p age43_up is a binary variable indicating that the mean age of sample respondents was 43 or greater. This means that the variable is one if the mean age of the sample respondents is 43 or greater and zero if the mean sample age was less than 43, or was not reported. The default case captures studies in which mean age was not reported. Similar logic applies to the trips variables. Because age and trips were not reported by all studies, EPA believes that this is a more appropriate and transparent means of representing these variables. These new dummy variables are interpreted as the additional impact on willingness-to-pay values associated with studies that reported age (or trips) that fall in the four defined categories, compared to the default of when age (or trips) data are not reported. The values at which the two sets of dummy variables were divided (43 and 20, for age and trips, respectively) were chosen because they occur approximately halfway through the range of age and trips values observed in the meta-data.

The final change that EPA made to the meta-model was to drop the gender variable. EPA chose to eliminate this variable because, after the model modifications discussed above, all categorical (dummy) variable specifications of the gender variable were not statistically significantly different. Other model results were not affected by this omission.

The following Exhibit IV–8 presents the marginal recreational values per fish used in the proposed rule analysis and the values calculated based on the revised meta-model. Most of the revised marginal per fish values are 10% to 50% lower than the values used in the proposed rule analysis. The greatest decrease in per fish values occurred in the California region. The revised values for the California region are, however, more consistent with the values estimated for other regions. The revised marginal values for freshwater bass and panfish in the Great Lakes region are 3% (panfish) to 19% (bass) higher.

EXHIBIT IV–8.—MARGINAL RECREATIONAL VALUE PER FISH, BY REGION AND SPECIES

[Mid-2004$]

Marginal Recreational Value per Fish, by Region and Species (June 2004$) [a]							
Species	California	North Atlantic	Mid-Atlantic	South Atlantic	Gulf of Mexico	Great Lakes	Inland
Marginal Recreational Value per Fish Used in the Proposed Rule Analysis:							
Small game [b]	$12.98	$7.89	$7.09	$5.83	$5.49	.....	$7.62
Flatfish	16.12	8.32	7.14	6.03	.....	.....	.....
Other saltwater [c]	4.67	4.34	3.85	3.19	2.97	.....	.....
Salmon	.....	.....	.....	.....	.....	$11.56	.....
Trout	.....	.....	.....	.....	.....	8.25	2.88
Walleye/pike	.....	.....	.....	.....	.....	4.73	5.32
Bass	.....	.....	.....	.....	.....	6.09	7.19
Panfish	.....	.....	.....	.....	.....	1.09	1.00
Revised Marginal Recreational Value per Fish:							
Small game [b]	6.14	5.03	4.99	4.84	4.76	.....	4.53
Flatfish	8.25	5.04	4.75	4.75	.....	.....	.....
Other saltwater [c]	2.50	2.52	2.47	2.41	2.34	.....	.....
Salmon	.....	.....	.....	.....	.....	$11.23	.....
Trout	.....	.....	.....	.....	.....	7.98	2.40
Walleye/pike	.....	.....	.....	.....	.....	3.48	3.47
Bass	.....	.....	.....	.....	.....	7.24	7.62

[20] See Recreational Fishing Analysis for the 316(b) Regulation for Phase III Facilities (DCN 8–4601).

EXHIBIT IV–8.—MARGINAL RECREATIONAL VALUE PER FISH, BY REGION AND SPECIES—Continued

[Mid-2004$]

Marginal Recreational Value per Fish, by Region and Species (June 2004$) [a]							
Species	California	North Atlantic	Mid-Atlantic	South Atlantic	Gulf of Mexico	Great Lakes	Inland
Panfish	.....	.....	.....	.....	.....	1.13	0.90

[a] Marginal values per fish are presented only for species in regions in which they are affected by one of the regulatory options evaluated for the proposed rule.
[b] Other saltwater species include bottom fish and other miscellaneous species
[c] Anadromous species such as striped bass and American shad can be found in freshwater coastal rivers as well as in saltwater.

EPA estimates the recreational welfare gain from the proposed regulation by multiplying the marginal value per fish by the additional number of fish caught by recreational anglers that would have been impinged or entrained in the absence of the regulation. Whether the total value of recreational fishing benefits of the final 316b rule will be revised downward or upward will depend on the estimated reduction in impingement and entrainment attributed to the 316(b) regulation for Phase III facilities and species affected by impingement and entrainment.

B. Commercial Fishing Benefits

EPA is considering a revision to its methodology for estimating the commercial fishing-related benefits to society from the 316(b) Phase III regulation. Whereas the previous analysis for the Phase II regulation and the Phase III proposed regulation relied on region- and species-specific revenue data, those analyses did not use region-specific harvesting cost data and also did not account for the effect of region- and species-specific fishery management regimes on expected societal benefits. The revised approach uses both revenue and cost data that are region- and species-specific, and also accounts for the effect of region- and species-specific fishery management regimes on the potential benefits. In addition, the data underlying the revised analysis are also considerably more recent than the data used in the previous analyses.

The analysis develops estimates of societal net benefits derived from increased commercial fishing harvest resulting from reduced impingement and entrainment of marine aquatic species. For this analysis, the Agency retained the proposed assumption that the 316(b) regulations will not affect the commercial catch landing price, but will affect the quantity of fish harvested at that price. As a result, the analysis continues to focus on the increase in producer surplus as the measure of societal benefit in the commercial fishing sector. Net benefits are assessed as the product of an estimated net benefits ratio for each species and region-specific fishery, multiplied by the gross revenue from increased commercial fishing harvest. The analysis utilizes the most recent available variable cost, landings and ex-vessel price data collected by the regional offices of NOAA's National Marine Fisheries Service (NOAA Fisheries).[21] The data and the methodology used in this analysis are the same as those used by NOAA Fisheries to assess the effect of new or amended fishery regulations on the U.S. commercial fishing industry and the U.S. economy. EPA solicits comment on the use of these data in the revised commercial fishing benefits analysis.

Today's NODA provides results of this revised approach for the North and Mid Atlantic regions. The decrease in fishermen's costs produces an increase in social welfare with monetized regional values that range from zero to $9,418 ($2002, undiscounted) depending on the species of interest. The complete analysis is described in more detail in the memo, ''Revised Assessment of Commercial Fishery Benefits for 316(b) Regulations; The North and Mid Atlantic Regions'' (DCN 8–4918). EPA solicits comment on the use of this revised approach for all regions for which NOAA Fisheries data are available.

C. Impingement and Entrainment

EPA is using an age-structured matrix population model to examine the potential population-level consequences of impingement mortality and entrainment of individual organisms. EPA refers to the model as the Population Projection Matrix (PPM) model. A matrix population model uses stage-specific rates of survival and reproduction, combined with the number of individuals in each stage, to estimate changes in population size over time.[22] The model considers the effects of certain population-level dynamics (i.e., density-dependent survival and reproduction) that are not directly considered in EPA's other modeling efforts.

For those species and populations for which sufficient data are available, EPA is first using the PPM model to represent a species' population under current conditions (i.e., without implementation of the regulatory options proposed in this rulemaking effort). The model uses the same species and stage-specific rates of survival used for EPA's modeling efforts presented as part of the proposed rule (see DCNs 2–0016 to 2–0024), as well as reproductive rates estimated by a calibration procedure based on the intrinsic growth rate of the population size.[23] By reference to historical harvest rates for the population and facility-provided impingement and entrainment loss records, the model partitions total mortality for the population into three sources of mortality: Natural mortality, fishing mortality, and mortality due to impingement and entrainment. Density-dependent survival in a single life stage is modeled as a linear function of population abundance, with the carrying capacity of the population set so that the equilibrium harvest level predicted by the model under baseline conditions matches the average historic harvest level for the population. The model does not strictly specify the life stage in which density dependent survival occurs, but instead allows users to designate one life stage as being subject to density dependent survival. EPA will consider available information on density dependent survival dynamics when making this designation so as to identify biologically realistic model scenarios.[24]

[21] See DCNs 8–4800 to 8–4906.

[22] See Caswell, H. 1989. Matrix Population Models: Construction, Analysis, and Interpretation. Sinauer Associates, Inc., Sunderland, MA.

[23] Myers, R.A., K.G. Bowen, and N.J. Barrowman. 1999. Maximum reproduction rate of fish at low population sizes. Canadian Journal of Fisheries and Aquatic Sciences 56:2004–2419 (DCN OW–2002–0004–1793).

[24] See Section 4 in Newbold, S. and R. Iovanna. 2005. Population-level Impacts on Fish of Cooling Water Intake Withdrawals. Report prepared for the 316(b) Scientific and Economic Review panel.

EPA is then using the PPM model to evaluate the potential impacts of regulatory options described in the proposed rule. To do this, EPA adjusts the life stage-specific rates of impingement and entrainment mortality to reflect the estimated effectiveness of a given regulatory option. EPA then compares the model's estimates with and without implementation of a given regulatory option to estimate the option's impact on population abundance.

Given the limited number of species populations for which sufficient data is available to implement the PPM model, EPA foresees using the model as a supplement to, rather than as a replacement for, the modeling efforts described in the proposal. Some preliminary results from use of the PPM model are described in Section 4 of DCN 8–5201. EPA has also conducted a peer review of the model.[25] EPA solicits comment on the use of the PPM model for the final rule. EPA also solicits submission of data that may be used to implement the model.

Dated: November 18, 2005.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. 05–23276 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–IN–0007; FRL–7999–4]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's April 8, 2005, submittal which revises existing sulfur dioxide (SO_2) emission limits for sources in Dearborn County. On April 8, 2005, Indiana submitted its final rule as published in the Indiana Register. Indiana held public hearings on the submittal on May 5, 2004 and October 6, 2004. Indiana is requesting that EPA approve the revisions to Indiana's SO_2 rule for Dearborn County, which removes obsolete rule language and updates information for sources listed in the rule. These revisions will not result in an increase in SO_2 emissions in Dearborn County because no emission limits were increased.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 27, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0007 by one of the following methods:

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

Agency Web site: http://docket.epa.gov/rmepub/.

RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

E-mail: mooney.john@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IN–0007. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I(B) of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Charles Hatten at (312) 886–6031 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031. *Hatten.Charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information.
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today?

National Center for Environmental Economics, U.S. EPA, Washington, DC. DCN 8–5201.

[25] A.L. Allen (EPA). Memorandum to EPA Docket OW–2004–0002. Materials for Peer Review of the Population Projection Matrix Model. DCN 8–5200.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

I. General Information

A. Does This Action Apply to Me?

This action only applies to specific SO_2 sources located in Dearborn County, Indiana.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

EPA is proposing to approve revisions to Indiana's SO_2 SIP for specified existing stationary sources located in Dearborn County, Indiana. The SIP revisions amend 326 IAC 7–4–13, by removing obsolete rule language for the Indiana Michigan Power Tanners Creek Station. The SIP revision also updates information for other companies listed in 326 IAC 7–4–13, including adding source identification numbers. The amendments to this rule are minor, and will not result in an increase in SO_2 emissions in Dearborn County because no emission limits were increased.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone Charles Hatten at (312) 886–6031 before visiting the Region 5 Office.)

Dated: November 10, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–23278 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 05–191]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) examines the reach of Emergency Alert System (EAS), as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio. The Further Notice of Proposed Rulemaking is the most recent in a series of proceedings in which the Commission has sought to contribute to an efficient and technologically current public alert and warning system.

DATES: Comments are due on or before January 24, 2006, and reply comments are due on or before February 23, 2006. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted to the public, Office of Management and Budget (OMB), and other interested parties on or before January 24, 2006.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit comments, identified by EB Docket No. 04–296, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. You may submit your Paperwork Reduction Act (PRA) comments by electronic mail or U.S. mail. To submit your PRA comments by electronic mail, send comments to: *PRA@fcc.gov*. To submit your PRA comments by U.S. mail, mark them to the attention of Judith B. Herman and address them to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Senior Counsel, Office of Homeland Security, Enforcement Bureau, at (202) 418–1199. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in EB Docket No. 04–296, FCC 05–191, adopted November 3, 2005, and released November 10, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile

(202) 863–2898, or via e-mail at *www.bcpiweb.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 24, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), The Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS).

Form No.: Not applicable.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

Estimated Number of Respondents: 22,008.

Estimated Time Per Response: Range from 0.017–40 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Estimated Total Annual Burden: 22,100 hours.

Estimated Total Annual Costs: None.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: As currently approved by OMB and reflected in the information above, Part 11 contains rules and regulations providing for an emergency alert system. The EAS provides the President with the capability to provide immediate communications and information to the general public during periods of national emergency. The EAS also provides state and local governments, as well as the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posing a threat to life and property. With the adoption of the FNPRM, the Commission seeks comment on what actions the Commission, along with its Federal, State and industry partners, should take to help expedite the development of a robust, state-of-the-art, digitally based public alert and warning system. The Commission also seeks comment on how to amend the EAS rules to ensure that EAS messages more effectively reach individuals with hearing and vision disabilities, as well as speakers of languages other than English.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*.

Synopsis of the Further Notice of Proposed Rulemaking

1. *Background.* In the Notice of Proposed Rulemaking (NPRM) (69 FR 52843, August 30, 2004), the Commission sought comment on whether the EAS in its present form is the most efficient mechanism for warning the American public of an emergency and, if not, on how the Emergency Alert System (EAS) can be improved. The main objective of the NPRM was to seek comment on whether the EAS as currently constituted is the most effective and efficient public warning system that best takes advantage of appropriate technological advances and best responds to the public's need to obtain timely emergency information. The NPRM sought comment on the current efficacy of EAS in an age when the communications landscape has evolved from what it was when EAS predecessors, and EAS itself, were originally conceived.

2. *Introduction.* The Commission realizes the immediate objective of ensuring that the large and growing segments of the population who rely on digital radio and television technologies are not left without access to alerts in the event of an emergency. While the current EAS performs a critical function, the Commission believes it could be improved. In this Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks specific comments on what actions the Commission should take to help expedite the development of a more comprehensive system.

3. An accurate, wide-reaching public alert and warning system is critical to the public's safety and a vital part of the Commission's core mission to promote the safety of life and property through a robust communications system. Such a system should enable officials at the national, state and local levels to reach affected citizens in the most effective and efficient manner possible. It should have built-in redundancy features and use a variety of communications media so that officials can reach large numbers of people simultaneously. In response to the NPRM, commenters identified a number of approaches to digital alert and warning. The Commission seeks further comment on these approaches and asks what the Commission can do to facilitate the development of a more effective, comprehensive digital public alert and warning system. Specifically, comment is sought on the appropriate role for the Commission among the various government and industry entities that are involved in the creation of this system. In addition, the Commission seeks further comment on how to amend the EAS rules to ensure that EAS messages more effectively reach individuals with hearing and vision disabilities, and speakers of languages other than English.

4. The comments filed in response to the NPRM reveal a multitude of technical approaches to a digital alert and warning system, from specific approaches to individual technologies to broad approaches to architecture and protocol design. The FNPRM includes a representative sample of issues for parties to address. The issues we include are representative, and do not constitute an exclusive list. Parties can—and should—comment on any next generation issues, and should consider what role the Commission should play in facilitating choice among these options.

5. It is the Commission's intention in this proceeding to seek comment on these and an array of other questions and potential rule changes. The Commission has already begun—and will continue throughout this proceeding—to coordinate carefully with the Department of Homeland Security (DHS), its component, FEMA, and the Department of Commerce and its component, the National Oceanic and Atmospheric Administration's (NOAA's) National Weather Service (NWS). The Commission anticipates

these federal partners will be active participants in the proceeding. In addition to seeking comments from all interested individuals and federal entities on the issues raised in this FNPRM, the Commission also specifically seeks the participation of state and local emergency planning organizations and solicit their views. Finally, the Commission seeks input from all telecommunications industries concerned about developing a more effective EAS.

Initial Regulatory Flexibility Analysis

6. With respect to this FNPRM, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix A. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as described above. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

7. The EAS First Report and Order, which accompanies the FNPRM, is the Commission's first step to ensure that digital media is capable of receiving and disseminating EAS messages. In the Order, the Commission realized the immediate objective of ensuring that the large and growing segments of the population who rely on digital radio and television technologies are not left without access to alerts in the event of an emergency. Although the current EAS performs a critical function, the Commission believes it could be improved. An accurate, wide-reaching public alert and warning system is critical to the public safety and a vital part of the Commission's core mission to promote the safety of life and property through a robust communications system. The Commission believes that such a system should be technologically up-to-date, should have built-in redundancy features, and should use a variety of communications media to allow officials at the national, state and local levels to send messages to reach the greatest number of citizens in the affected areas in the most effective and efficient manner possible.

8. Accordingly, the Commission is initiating this FNPRM to seek additional comment on what actions the Commission, along with its Federal, State and industry partners, should take to help expedite the development of a robust, state-of-the-art, digitally based public alert and warning system. The Commission also seeks comment on the appropriate role for the Commission among the various government and industry entities that are involved in the creation of this system. In their comments, parties should also comment on the Commission's statutory authority to regulate such a system.

9. The comments filed in response to the NPRM reveal a multitude of technical approaches to a digital alert and warning system, from specific approaches to individual technologies to broad approaches to architecture and protocol design. The Commission does not seek to duplicate that significant effort, but rather seeks comment on a representative group of issues. The issues on which comment is sought do not constitute an exclusive list. Parties can—and should—comment on any issues relevant to specific technologies that can aid the development of a next-generation alert and warning system.

10. Specifically, the Commission seeks comment on the appropriate role for the Commission in developing system architecture and common protocols that could be used for message distribution across different platforms. The Commission also asks questions specific to particular technologies, such as how DTH and SDARS could deliver local alerts; how best to involve wireless providers; and whether traditional wireline telephone companies that become content providers should have an obligation to provide alerts. To ensure that the American public receives public alert and warning in an accurate and timely fashion from this next-generation system, the Commission seeks comment whether it will need to adopt performance standards and reporting requirements.

11. The Commission also seeks comment regarding how it may, consistent with the EAS First Report and Order, make EAS alerts more accessible to people with disabilities. The Commission is committed to ensuring that persons with disabilities have equal access to public warnings and are considered in emergency preparedness planning. Thus, it seeks comment on how any next-generation, digitally based alert and warning system can be developed in a manner that assures that persons with disabilities will be given equal access to alert and warning as other Americans. The Commission also seeks comment on whether there are disparities in or conflicts between the EAS rules and the Commission's other disability access rules contained in section 79.2, and if so, the manner in which such disparities or conflicts could be resolved in subsequent rules.

12. The Commission recognizes the historic and important role of states and localities in public safety matters, and the essential role of states and localities in public safety matters, and the essential role that state and local governments play in delivering alert and warning. Accordingly, the Commission seeks comment on how it can best work with the states to help implement the EAS rules adopted in the Order as well as to develop the next generation of alert and warning systems. In particular, the Commission notes that there is a vital connection between state and local alert and warning and Federal efforts to mitigate disasters. The Commission seeks comment on whether its rules should be revised to require that states notify the Commission of any changes in EAS participants' state EAS Local Area and/or EAS designation (PEP, LP1, LP2, SR, LR, etc.) within thirty days of such change, and in the absence of a change, a yearly confirmation that all state EAS Local Area and EAS designations remain the same.

13. On September 22, 2005, the Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council filed a Petition for Immediate Relief with the Commission proposing changes to the Commission's EAS rules to require stations to air EAS messages in other languages in addition to English. The Commission seeks comment on the issues raised in the petition and, for that purpose, incorporates the petition as well as the other pleadings filed in response to the petition into the record of this proceeding. The Commission seeks comment on how this proposal would be implemented, and seeks comment on any other proposals regarding how to best alert non-English speakers.

Legal Basis

14. Authority for the actions proposed in this FNPRM may be found in sections 1, 4(i), 4(o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 303(r), 544(g) and 606.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

15. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

17. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $12 million or less in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

18. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6 million or less. The Commission notes, however, that many radio stations are affiliated with much larger corporations having much higher revenue. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by itsr action.

19. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having $12.5 million or less in annual receipts. According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999. Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

20. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The Commission estimates that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

21. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

22. *Multipoint Distribution Systems.* The established rules apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined ''small entity'' for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading

areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

23. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, the Commission estimates that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

24. *Instructional Television Fixed Service*. The established rules would also apply to Instructional Television Fixed Service facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, the Commission tentatively concludes that at least 1,932 are small businesses and may be affected by the established rules.

25. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees. This SBA size standard also applies to wireless telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. According to the data, 437 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 260 of these are small businesses under the SBA small business size standard.

26. *Broadband Personal Communications Service*. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

27. *Incumbent Local Exchange Carriers (Incumbent LECs)*. The Commission has included small incumbent local exchange carriers in this present IRFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its proposed rules.

28. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by its proposed rules.

29. *Satellite Telecommunications and Other Telecommunications.* The

Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

30. The second category—*Other Telecommunications*—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

31. There are potential reporting or recordkeeping requirements proposed in this FNPRM, particularly with regard to state and local EAS participation and participation by digital broadcasters. For example, the Commission is considering whether to adopt performance standards and reporting obligations for EAS participants. The proposals set forth in this FNPRM are intended to advance the Commission's public safety mission and enhance the performance of the EAS while reducing regulatory burdens wherever possible.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

33. The NPRM invited comments on a number of alternatives to the imposition of EAS obligations on the digital communications technologies. The Commission has considered each of those comments and in its Order imposes minimal regulation on small entities to the extent consistent with its goal of advancing the Commission's public safety mission by adopting rules that expand the reach of EAS. The Commission believes that requiring DTV, DAB, digital cable, satellite DTH and SDARS providers to install and use EAS equipment will not impose undue regulatory or financial burdens.

34. This FNPRM seeks additional comment to help expedite the development of a robust, state-of-the-art, digitally based public alert and warning system, and to further minimize the impact on small entities. In particular, the Commission seeks comment on how DTH and SDARS could deliver local alerts; how best to involve wireless providers; and how the Commission can best work with the states to help implement the EAS rules adopted in the EAS First Report and Order as well as to develop the next generation of alert and warning systems. The Commission notes that it sought specific comment concerning possible alternatives in its approach toward small entities in the context of making EAS accessible to persons with disabilities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

35. None.

Ex Parte Rules

36. These matters shall be treated 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 requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Ordering Clauses

37. Accordingly, pursuant to the authority contained in sections 1, 4(i) and (o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 303(r), 403, 544(g), and 606, Notice is Hereby Given of the proposals described in the Further Notice of Proposed Rulemaking.

38. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–23270 Filed 11–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; DA 05–2974]

Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc.; Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau grants a request for an extension of time to file reply comments in response to the Notice of Proposed Rulemaking (*NPRM*) adopted by the Commission in the ''Closed Captioning of Video Programming'' proceeding. The extension is granted to provide parties the necessary time to coordinate and file reply comments that will result in a more complete record.

DATES: Reply comments are due on or before December 16, 2005.

ADDRESSES: Interested parties may submit reply comments, identified by CG Docket No. 05–231, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Amelia Brown, Consumer & Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2799 (voice), (202) 418–7804 (TTY), or e-mail at *Amelia.Brown@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Order, DA 05–2974, in CG Docket No. 05–231, adopted November 16, 2005, released November 17, 2005, which extends the reply comment filing deadline in the ''Closed Captioning of Video Programming'' proceeding. Pursuant to §§ 1.415 and 1.419 of the Commission rules, 47 CFR 1.415 and 1.419, interested parties may file reply comments on or before the dates indicated on the first page of this document. Reply comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Reply comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal Rulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. All comments received are viewable by the general public at any time through the Web site.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- 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. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are subject to disclosure.

The full text of document DA 05–2974 and copies of any subsequently filed documents relating to this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *www.bcpiweb.com* or by calling 1–800–378–3160. A copy of the National Association of Broadcasters (NAB) Request for Extension of Time may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 05–231 into the proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 05–2974 can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro*.

Synopsis

On July 21, 2005, the Commission released an *NPRM* in CG Docket No. 05–231; FCC 05–142, which was published in the **Federal Register** on September 26, 2005 (70 FR 56150) which set the deadline for filing reply comments as November 25, 2005. On November 15, 2005, the Commission received a Request for Extension of Time for this proceeding from the National Association of Broadcasters (NAB). NAB requests that the Commission extend the reply comments deadline until December 16, 2005 because of the significant amount of time required to review, analyze and respond to the hundreds of comments filed in this proceeding. NAB notes that the current reply comment deadline is the day after the Thanksgiving holiday. Additionally, NAB asserts that the proposed extension will enable the Commission to gather and consider a more complete factual record of the relevant legal issues, which is in the public interest.

Though the Commission does not routinely grant extensions of time, an extension in this proceeding will afford parties the necessary time to file reply comments that will result in a more complete record in this proceeding. The extension will not cause undue delay to the Commission's consideration of the issues.

Ordering Clauses

The Request for Extension of Time filed by the National Association of Broadcasters on November 15, 2005, is granted. Interested parties may file reply comments on or before December 16, 2005.

This action is taken pursuant to the authority provided in § 1.46 of the Commission's rules, 47 CFR 1.46, and under delegated authority pursuant to §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141 and 0.361.

Federal Communications Commission.

Monica Desai,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E5–6585 Filed 11–23–05; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 70, No. 226
Friday, November 25, 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

November 18, 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), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Cooperative State Research, Education, and Extension Service

Title: CSREES Proposal Review Process.

OMB Control Number: 0524–0041.

Summary of Collection: The Cooperative State Research, Education, and Extension Service (CSREES) is responsible for performing a review of proposals submitted to CSREES competitive awards programs in accordance with section 103(a) of the Agricultural Research, Extension, and Education Reform Act, of 1998, 7 U.S.C. 7613(a). Reviews are undertaken to ensure that projects supported by CSREES are of high quality and are consistent with the goals and requirements of the funding program. Proposals submitted to CSREES undergo a programmatic evaluation to determine worthiness of Federal support. The evaluations consist of a peer panel review and may also entail an assessment by Federal employees and mail-in (ad-hoc) reviews. CSREES will collect information using the ''Proposal Review Sheet'' or the ''Reviewer Worksheet'', Questionnaire, and a Conflict of Interest and Confidentiality Certification Form.

Need and Use of the Information: The collected information from the evaluations is used to support CSREES grant programs. CSREES uses the results of each proposal to determine whether a proposal should be declined or recommended for award. If this information was not collected and documented, the decision to fund a particular application could be questioned.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government; Farms.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 100,497.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–23251 Filed 11–23–05; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–084–1]

Black-Tailed Prairie Dog Conservation and Management on the Nebraska National Forest and Associated Units; Record of Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Animal and Plant Health Inspection Service's Wildlife Services program (APHIS–WS) has prepared a record of decision based on the Black-Tailed Prairie Dog Conservation and Management on the Nebraska National Forest and Associated Units final environmental impact statement.

ADDRESSES: Copies of the APHIS-WS record of decision may be viewed on the Wildlife Services Web site at *http://www.aphis.usda.gov/ws/pubs.html* or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The final environmental impact statement on which this APHIS–WS record of decision is based and the U.S. Department of Agriculture, Forest Service (USDA–FS) record of decision may be found on the Nebraska National Forest Web site at *http://www.fs.fed.us/r2/nebraska/* and are also available for public inspection at the USDA-FS offices and public libraries listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Littauer, Environmental Manager, Operational Support Staff, WS, APHIS, 8441 Washington NE., Albuquerque, NM 87113; (505) 346–2632.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Animal and Plant Health Inspection Service's Wildlife Services program (APHIS–WS) has prepared a record of decision based on the Black-Tailed Prairie Dog Conservation and Management on the Nebraska National Forest and Associated Units final environmental impact statement (EIS) prepared by the Forest Service, U.S. Department of Agriculture. APHIS–WS was a cooperating agency in the preparation of the EIS.

A notice announcing the availability of the Forest Service's final EIS was published in the **Federal Register** on August 12, 2005 (70 FR 47199), and a notice announcing that the Forest Service's record of decision had been signed on August 3, 2005, was published in the **Federal Register** on August 26, 2005 (70 FR 50297). APHIS has independently reviewed the EIS and has concluded its comments and suggestions have been satisfied. APHIS has adopted the final EIS and has prepared a record of decision that is now available to the public. In addition to the Web site location provided in **ADDRESSES** above, the final EIS and Forest Service's record of decision are available for viewing at the following locations between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays:

- Nebraska National Forest Supervisor's Office, 125 North Main St., Chadron, NE;
- Pine Ridge Ranger District, 1240 W. 16th St., Chadron, NE;
- Bessey Ranger District, State Spur 86B off Hwy 2, Halsey, NE;
- Buffalo Gap National Grassland, Fall River Ranger District, 1801 Highway 18 Truck Bypass, Hot Springs, SD;
- Buffalo Gap National Grassland, Wall Ranger District, 708 Main Street, Wall, SD; and
- Fort Pierre National Grassland, 1020 N. Deadwood St., Ft. Pierre, SD.

CDs of the final EIS are available for viewing at the following area public libraries:

- Rawlins Municipal Library, 1000 East Church St., Pierre SD;
- Wall City Community Library, 407 Main St., Wall, SD;
- Oglala Lakota College Library, Piya Wiconi Center, Kyle, SD;
- Pine Ridge College Center Library, Pine Ridge, SD;
- Lower Brule Tribal Office, 187 Oyate Circle, Lower Brule, SD;
- Rapid City Public Library, 610 Quincy St., Rapid City, SD;
- Rapid City Public Library, 300 6th St., Rapid City, SD;
- Hot Springs Public Library, 1543 Baltimore St., Hot Springs, SD; and
- Chadron Public Library, 507 Bordeaux St., Chadron, NE.

The APHIS–WS record of decision has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 21st day of November, 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23302 Filed 11–23–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) has scheduled its next two regular meetings. The first meeting will take place Friday, December 9, 2005 from 1 p.m. until 5:15 p.m. (or until the conclusion of public testimony), and Saturday, December 10, 2005 from 8 a.m. until 12 p.m. This meeting will be held in Petersburg, Alaska. The second meeting will take place on Friday, January 13, 2006 from 8 a.m. until 5:15 p.m. (or until the conclusion of public testimony), and on Saturday, January 14, 2006 from 8 a.m. until 9 a.m. This meeting will take place in Wrangell, Alaska. The purpose of both of these meetings is in review submitted projects and potentially make funding recommendations pursuant to title II, Public Law 106–363, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. Public testimony regarding the proposals will also be taken at each meeting.

DATES: The first meeting will take place in Petersburg, Alaska, on Friday, December 9, 2005 from 1 p.m. until 5:15 p.m. and Saturday, December 10, 2005 from 8 a.m. until 12 p.m. The second meeting will take place in Wrangell, Alaska on Friday, January 13, 2006 from 8 a.m. until 5:15 p.m., and on Saturday, January 14, 2006 from 8 a.m. until 9 a.m.

ADDRESSES: The December meeting will take place at the Scandia House Hotel Conference Room, 110 N. Nordic Drive, Petersburg, Alaska. The January meeting will take place at the James and Elsie Nolan Center, 1096 Outer Drive, Wrangell, Alaska.

FOR FURTHER INFORMATION CONTACT: Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, Phone (907) 772–3871, e-mail *pagrantham@fs.fed.us*, or Mark Hummel, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99833, e-mail *mhummel@fs.fed.us.* Toll-free conference calling is available for each of these meetings; please call or e-mail for specific information. For further information on RAC history, operations, and the application process, a Web site is available at *http://www.fs.fed.us/payments.* Once in the Web site, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

SUPPLEMENTARY INFORMATION: This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106–393). New proposals (initial reading) may be discussed at the meetings. The committee may make recommendations for project funding during the meetings. A field trip to review proposals proximate to both the Wrangell and Petersburg, Alaska areas may take place in conjunction with the meetings. Both meetings are open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee during that time.

Dated: November 10, 2005.

Forrest Cole,

Forest Supervisor.

[FR Doc. 05–23244 Filed 11–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fremont and Winema Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fremont and Winema Resource Advisory Committee will meet in Klamath Falls, Oregon, for the purpose of conducting business as it relates to the planning of RAC Project Proposal workshops in the winter of 2006. The RAC will also discuss budget and other outstanding business. The RAC is authorized under the provisions of Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held on December 14, 2005.

ADDRESSES: The meeting will be held at the Klamath Ranger District Office located at 1936 California Avenue, Klamath Falls, Oregon 97603. Send written comments to Fremont and

Winema Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 67, Paisley, OR 97636, or electronically to *agowan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Amy Gowan, Designated Federal Official, c/o Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097, telephone (530) 841–4421.

SUPPLEMENTARY INFORMATION: The agenda will include time for RAC proposal workshop planning, funding review and 2002 to 2005 project status report. 1 All Fremont and Winema Resource Advisory Committee Meetings are open to the public. There will be a time for public input and comment. Interested citizens are encouraged to attend.

Dated: November 16, 2005.

Amy A. Gowan,

Designated Federal Official.

[FR Doc. 05–23261 Filed 11–23–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC41

Advertising and Sponsorship in Connection With Concessions Involving Privately Owned Improvements on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of interim directive; request for public comment.

SUMMARY: The Forest Service is issuing an interim directive (ID) revising direction in Forest Service Manual (FSM) 2340.03 governing advertising and sponsorship in connection with concessions involving privately owned improvements operated under special use permits on National Forest System (NFS) lands. The ID allows holders of concession permits to advertise inside buildings and other interior spaces that they own, subject to certain conditions, and encourages cooperative relationships and sponsorships that promote public participation in the management of NFS lands. The Forest Service is requesting comment from the public on the provisions contained in this ID in order to develop a final policy. The ID will be in effect until removed or adoption of a final policy through an amendment to FSM 2340.03.

DATES: Comments must be received in writing by March 27, 2006.

ADDRESSES: Send comments by mail to USDA, Forest Service, Attention: Carolyn Holbrook, Recreation and Heritage Resources Staff (2340), 1400 Independence Avenue, SW., Stop 1125, Washington, DC 20250–1125 or by facsimile to Carolyn Holbrook, 202–205–1145, or by e-mail to *rhr2300@fs.fed.us.* Comments also may be submitted by following the instructions at the federal eRulemaking portal at *http://www.regulation.gov*. If comments are sent by e-mail or facsimile, the public is requested not to send duplicate comments via mail. Please confine comments to issues pertinent to the ID, explain the reasons for any recommended changes, and where possible reference the specific wording being addressed.

All comments on the ID, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this ID in the Office of the Director, Recreation and Heritage Resources Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC, on business days between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1399 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, Recreation and Heritage Resources Staff, (202) 205–1399.

SUPPLEMENTARY INFORMATION:

1. Background and Need

Encouraging Investment Through Limited Advertising and Recognition of Cooperators and Sponsors

The Forest Service regulates the provision of concession services to the public by private individuals and entities that own and operate recreational facilities and services on NFS lands (concessionaires). These facilities and services, which are authorized by special use permits, enhance opportunities for the public to recreate on NFS lands. Concessionaires are the primary contact for many people visiting National Forests, and they often provide information and education to the public about the National Forests. Thus, concessionaires, such as resort, marina, and ski area operators, greatly assist the Forest Service in providing information and services to the public.

The Forest Service wants to encourage concessionaires to promote public participation in the management of NFS lands by proposing public services, evaluating solutions to specific natural resource management problems, and promoting conservation awareness and public health and safety. These endeavors may cost money without generating a return on investment by the concessionaires. Concessionaires have encouraged the agency to consider sponsorship and advertisement as ways to generate funding for these types of activities.

Proposed Changes to FSM 2343.03

Paragraph 11. Paragraph 11 has been revised to allow concessionaires to advertise products and services inside buildings and other interior spaces they own, including chairlift restraining bars facing the rider. However, paragraph 11 does not allow display of the Forest Service shield or other agency symbols in conjunction with product or service names or advertisements to avoid any other appearance of agency endorsement of products or services. Paragraph 11 allows exterior signage that merely identifies the types of goods or services provided within the permitted facilities with prior written approval from the authorized officer. Except for short-term special events provided for in paragraph 12(c), advertising outside of buildings or interior spaces owned by the concessionaire or along roads on NFS lands is prohibited.

Current paragraph 12. Current paragraph 12 has been renumbered as paragraph 13 in the ID. No other changes were made to this paragraph.

New Paragraph 12. New Paragraph 12 encourages cooperative relationships and sponsorships that promote public participation in the management of NFS lands, including programs or projects that involve public services, evaluate solutions to specific natural resource management problems, or promote conservation awareness or public health and safety. Paragraph 12 requires that these programs or projects have prior written approval from the authorized officer and that they include a plan that describes the program or project; its duration, objective, outcome, and target audience; and communication or marketing strategies for the program or project.

Paragraph 12(a) allows cooperator or sponsor recognition only during and within the proximity of the program or project and, to the extent practical, requires that the recognition be integrated into the program or project so that participants and spectators can make a clear connection between the cooperator or sponsor and the public service being provided. In addition, paragraph 12(a) prohibits recognition of cooperators or sponsors on government vehicles.

Paragraph 12(b) limits recognition of cooperators or sponsors in signs, printed and electronic media, wayside and kiosk exhibits, and temporary facilities to acknowledgment of the cooperator's or sponsor's public service initiative, which can include the cooperator's or sponsor's name and trademark.

Paragraph 12(c) allows recognition of cooperative support for or sponsorship of short-term special events, such as races, competitions, festivals, clean-up days, and volunteer events. Paragraph 12(c) allows temporary waiver of the prohibition against exterior advertising during short-term special events sponsored by the holder (rather than by the Forest Service, with support from a cooperator). Recognition of sponsors during these events may appear on banners, posters, flyers, and temporary facilities and could include sponsor names, sponsor trademarks, sponsor product names and services, and sponsor advertisements. Paragraph 12(c) also prohibits use of the Forest Service shield or other agency symbol in conjunction with sponsor product names, services, and advertisements on banners, posters, flyers, and temporary facilities, and care has to be taken to avoid any other appearance of agency endorsement of sponsor products and services in connection with the events. In addition, paragraph 12(c) also prohibits recognition of cooperators or sponsors on government vehicles.

Current Paragraph 13. Current paragraph 13 is renumbered as paragraph 14 in the ID.

Paragraph 14. Paragraph 14 has been revised for clarity. In contrast to advertising of commercial products and services at concession sites as provided under paragraphs 11 and 12, it is appropriate in advertising about Forest Service concessions to identify authorized facilities and services with the Forest Service.

2. Regulatory Requirements

Environmental Impact

This ID revises national policy governing administration of special use permits for concession uses involving privately owned facilities. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's conclusion is that this ID falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This ID has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant directive. This ID will not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This ID will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this ID will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this ID is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this ID has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this ID will not have a significant economic impact on a substantial number of small entities as defined by the act because the ID will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not significantly affect their cash flow, liquidity, or ability to remain in the market. The benefits cannot be quantified and are not likely substantially to alter costs to small businesses.

No Takings Implications

This ID has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the ID will not pose the risk of a taking of private property.

Civil Justice Reform

This ID has been reviewed under Executive Order 12988 on civil justice reform. If this ID were adopted, (1) all State and local laws and regulations that are in conflict with this proposed directive or that would impede its full implementation will be preempted; (2) no retroactive effect will be given to this proposed directive; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed directive under the requirements of Executive Order 13132 on federalism, and has made an assessment that the ID conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this ID does not have tribal implications as defined by Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments,'' and therefore advance consultation with Tribes is not required.

Energy Effects

This ID has been reviewed under Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this ID does not constitute a significant energy action as defined in the executive order.

Unfunded Mandates

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

Controlling Paperwork Burdens on the Public

This ID does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Any information collected from the public as a result of implementing this ID has been approved by the Office of Management and Budget under control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: October 24, 2005.

Dale N. Bosworth,

Chief.

3. Proposed Directive Changes for Advertising and Sponsorship at Certain Concessions

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administrating concession special use permits involving privately owned improvements.

Forest Service Manual

2300—Recreation, Wilderness, and Related Resource Management

Chapter 2340 Privately Provided Recreation Opportunities

* * * * *

2343.03—Policy

* * * * *

11. The holder of a term permit may advertise products and services inside buildings or other interior spaces owned by the holder, including chair lift restraining bars facing the rider. The Forest Service shield and any other symbol identified with the agency shall not appear in conjunction with product or service names and advertisements and care shall be taken to avoid any other appearance of agency endorsement of products or services. The holder may also post exterior signage that merely identifies the types of products and services provided within those buildings. Except as provided in paragraph 12(c) for short-term special events, advertising outside those buildings or interior spaces, or along roads on National Forest System (NFS) lands, is prohibited. Any exterior signage must have prior written approval from the authorized officer.

12. Encourage cooperative relationships and sponsorships that promote public participation in the management of NFS lands, including programs or projects that propose public services, evaluate solutions to specific natural resource management problems, or promote conservation awareness or public health and safety. These programs or projects must have prior written approval from the authorized officer and must include a plan that describes the program or project; its duration, objective, outcome, and target audience; and communication or marketing strategies for the program or project. Cooperators and sponsors of these programs or projects may be recognized in accordance with the following:

a. *Duration and Location of Recognition.* Cooperator or sponsor recognition shall be allowed only during and within the proximity of the program or project and, to the extent practical, shall be integrated into the program or project so that participants and spectators can make a clear connection between the cooperator and sponsor and the public service being performed. Recognition of cooperators or sponsors on government vehicles is prohibited.

b. *Content of the Recognition.* Cooperator or sponsor recognition in signs, printed and electronic media, wayside and kiosk exhibits, and temporary facilities shall be limited to acknowledgement of the cooperator's or sponsor's public service initiative and may include the cooperator's or sponsor's name and trademark. The purpose of the recognition is to identify the sponsor, not to promote the sponsor's products or services.

c. *Special Events.* Recognize cooperative support for or sponsorship of short-term special events, such as races, competitions, festivals, clean-up days, and volunteer events. During short-term special events sponsored by the holder (rather than by the Forest Service, with support from a cooperator), the authorized officer may temporarily waive the prohibition on exterior advertisement. Recognition of sponsors during the events may appear on banners, posters, flyers, and temporary facilities and may include sponsor names, sponsor trademarks, sponsor product names and services, and sponsor advertisements. The Forest Service shield and any other agency symbol shall not appear in conjunction with sponsor product names, services, and advertisements on banners, posters, flyers, and temporary facilities. In addition, care shall be taken to avoid any other appearance of agency endorsement of sponsor product names and services in connection with the events. Recognition of cooperators or sponsors on government vehicles is prohibited.

13. Clearly define the holders' responsibilities for the safety of their employees and the public within the boundaries of the authorization and while participating in activities covered by the authorization. Require that safety be addressed in applications responding to prospectus offerings, special use authorizations, and operating plans.

14. Ensure that literature, brochures, and other advertising of facilities and services under special use permit that holders display or distribute do not contain misleading statements or statements that discriminate on the basis of race, color, sex (in educational and training programs), national origin, age, or disability. Also ensure that these materials state that the permitted facilities and services are located on NFS lands.

* * * * *

[FR Doc. 05–23256 Filed 11–23–05; 8:45 am]

BILLING CODE 3410–11–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to 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.

DATES: Comments Must be Received on or Before: December 25, 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.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service 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

Battery, Nonrechargeable (Silver Oxide),
NSN: 6135–01–106–7740—Battery, Button, Silver Oxide, Miniature.
NSN: 6135–01–110–9470—Battery, Button, Silver Oxide.

Battery, Nonrechargeable (Size N),
NSN: 6135–01–031–0862—Battery, Size N, Alkaline-Manganese Dioxide.

NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contracting Activity: Defense Supply Center Richmond, Richmond, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–6517 Filed 11–23–05; 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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

DATES: *Effective Date:* December 25, 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 September 23 and September 30, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 55816, and 57254) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services 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 services to the Government.

2. The action will result in authorizing small entities to furnish the 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 services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, Child Development Centers, Buildings 44401, 45400, and 45410, Fort Gordon, Georgia.
NPA: Good Vocations, Inc., Macon, Georgia.
Contracting Activity: U.S. Army Contracting Agency, Fort McPherson, Georgia.

Service Type/Location: Janitorial/Custodial, USDA, Animal and Plant Health Inspection Service/PPQ, Asian Longhorn Beetle Project, 3920 N. Rockwell, Chicago, Illinois.
NPA: Habilitative Systems, Inc., Chicago, Illinois.
Contracting Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, MN.

Deletions:

On September 30, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 57254) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the 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 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 services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Base Supply Center, Bangor Naval Submarine Base, Bangor, Washington.
NPA: Peninsula Services, Bremerton, Washington.
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington.

Service Type/Location: Base Supply Center, Everett Naval Station, Everett Home Port, Everett, Washington.
NPA: Peninsula Services, Bremerton, Washington.
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington.

Service Type/Location: Base Supply Center, Whidbey Island Naval Air Station, Oak Harbor, Washington.
NPA: Peninsula Services, Bremerton, Washington.
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–6518 Filed 11–23–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 57–2005)

Foreign–Trade Zone 181 - Akron/ Canton, Ohio

Application for Expansion

SUPPLEMENTARY INFORMATION: An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Northeast Ohio Trade & Economic Consortium (NEOTEC), grantee of FTZ 181, requesting authority to expand and reorganize its zone in the seven–county northeast Ohio area, and to add two new sites in and adjacent to the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 14, 2005.

FTZ 181 was approved by the Board on December 23, 1991 (Board Order 546, 57 FR 41; 1/2/92). On March 13, 1998, the grant of authority was reissued to NEOTEC (Board Order 965, 63 FR 13837; 3/23/98). The zone was expanded in 1997 (Board Order 902, 62 FR 36044; 7/3/97), in 1998 (Board Order 968, 63 FR 16962; 4/7/98), in 1999 (Board Order 1053, 64 FR 51291; 9/22/99), in 2002 (Board Order 1260, 67 FR 71933; 12/3/02), and in 2004 (Board Order 1334, 69 FR 30281; 5/27/04). FTZ 181 currently consists of seven sites in the northeast, Ohio area covering the Counties of Summit, Trumbull, Mahoning, Columbiana, Stark, Ashtabula, and Portage.

The applicant is now requesting authority to update, expand and reorganize the zone as described below. The proposal also requests authority to reduce certain existing sites, and to add several new industrial park sites. Overall, the zone would be increased by 647 acres.

Site 1 (Summit County) will be reorganized and expanded by transferring 12 acres from the northwestern and central portions of the Cuyahoga Falls Industrial Park to the southern portion of the Park; by deleting the 20–acre Terex Road parcel; and, adding 88 acres to the southwestern portion of the Hudson Drive/Prosper Industrial Park. Site 1 would cover 736 acres.

Site 4 (Stark County) will be reorganized by deleting 9 acres from the southwestern portion of the 819–acre Intermodal Facility, located at 5000 Maryland Avenue, SW, Navarre; and adding three new parcels (150 acres total) as follows: (5 acres) I–77 - SR 30 Center, located at 1411 Navarre Road, SW; (142 acres) Canton Commerce Development LLC, I–77 & Faircrest Road; and, (3 acres) Dillard Property/RRR Development, located at 8817 Pleasantwood Avenue, NW, Lake Township. Site 4 would cover 1,338 acres.

Site 5 (City of Mansfield) will be expanded by adding 29 acres at 20–40 South Airport and 21 acres at 41 Cairns Road, Mansfield.

Proposed Site 8 (Medina County, 4 Parcels, 247 acres total) would involve the Beacon Transportation Park (111 acres) between Interstate Routes 71 & 76, Seville; the Brunswick Commerce Center (38 acres) on Interstate Parkway, Brunswick; the Portside Corporate Park (51 acres) 2200 Akron–Medina Road, Sharon Township; and, the Wadsworth Corporate Park (47 acres), Wadsworth, Medina County, Ohio.

Proposed Site 9 (Wayne County, 141 acres) would involve the Route 30 Industrial Park, State Route 30, Wooster, Wayne County, Ohio.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 600 Superior Avenue, East Suite 700,Cleveland, Ohio, 44114.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005.

Dated: November 16, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–23282 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–812)

Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand

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

SUMMARY: On July 21, 2005, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on furfuryl alcohol from Thailand. The period of review is July 1, 2003, through June 30, 2004. The final results do not differ from the preliminary results of this review, in which we found that sales of the subject merchandise have not been made below normal value. We will instruct the U.S. Bureau of Customs and Border Protection not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smith or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1276 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the July 21, 2005, publication of the preliminary results in this review (*see Notice of Preliminary Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand*, 70 FR 42029 (July 21, 2005) (''*Preliminary Results*'')), the following events have occurred:

We invited parties to comment on the *Preliminary Results* of the review. On August 22, 2005, the respondent, Indorama Chemicals (Thailand) Ltd. (''IRCT''), and the petitioner, Penn Specialty Chemicals, Inc. (''petitioner''), each filed case briefs. On August, 29, 2005, the respondent and petitioner each filed rebuttal briefs. On October 27, 2005, the Department rejected the petitioner's case brief and IRCT's rebuttal brief on the basis that these briefs contained new factual

information. The deadline for submission of new factual information was October 20, 2004. On November 2, 2005, the petitioner and IRCT each filed a new case brief and rebuttal brief, respectively, absent the information the Department deemed to be new information.

Scope of the Order

The merchandise covered by this order is furfuryl alcohol (C4H3OCH2OH). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The period of review is July 1, 2003, through June 30, 2004.

Analysis of Comments Received

All issues raised in the case brief filed by parties to this review are addressed in the ''Issues and Decision Memorandum for 2003–2004 Administrative Review of Furfuryl Alcohol from Thailand'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated November 18, 2005 (''*Decision Memo*''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memo*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department of Commerce's (''the Department'') Central Records Unit, located in Room B–099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the *Decision Memo* are identical in content.

Fair Value Comparisons

To determine whether sales of furfuryl alcohol by IRCT to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV. Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in the final results calculation memorandum cited below, which is on file in the CRU.

Export Price

We calculated EP in accordance with section 772(a) of the Tariff Act of 1930, as amended (''the Act''), because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter/producer outside the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the same general methodology described in the *Preliminary Results*.

Normal Value

Except as noted below, we used the same methodology as that described in the *Preliminary Results* to determine the cost of production and the NV. As discussed in the *Decision Memo*, we used IRCT's reported interest expense ratio in these final calculations.

Changes from the Preliminary Results

Based on our review of the comments received, we have made certain changes to the calculations for the final results. Specifically, we re–calculated the cost of manufacture, general and administrative expenses, duty drawback adjustment, and U.S. packing expense for the final results. These changes are discussed in the *Decision Memo* and in the final results calculation memorandum. *See* ''Final Results Calculation Memorandum for Indorama Chemicals (Thailand) Ltd.,'' dated November 18, 2005, which is on file in the CRU.

Final Results of the Review

We determine that the following margin percentage exists for the period July 1, 2003, through June 30, 2004:

Exporter/manufacturer	Weighted–average margin percentage
Indorama Chemicals (Thailand) Ltd.	0.00

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rate is *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific (or customer–specific) *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer–specific (or customer–specific) *ad valorem* rate is greater than *de minimis*, we calculated a per–unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of furfuryl alcohol from Thailand entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted–average margin is *de minimis*, *i.e.*, less than 0.5 percent); (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, the previous review, or the original 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 reviews, the cash deposit rate will be 7.82 percent, the ''all others'' rate established in *Furfuryl Alcohol from Thailand: Notice of Amended Final Antidumping Duty Determination and Order*, 60 FR 38035 (July 25, 1995). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review. *See* section 751(a)(2)(C) of the Act.

Notification to Importers

This notice serves as a final 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 doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a 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 terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 18, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Issues and Decision Memorandum

Comment 1: Certain Loss Related to General and Administrative Expenses (Cost Adjustment #1)
Comment 2: Changes in Inventory (Cost Adjustment #2)
Comment 3: Cost Adjustment #3
Comment 4: Financial Expenses
Comment 5: Technical Services Adjustment

Comment 6: Duty Drawback
Comment 7: Packing Costs

[FR Doc. 05–23281 Filed 11–23–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111605E]

Receipt of an Application for Incidental Take Permit 1554

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

ACTION: Notice; application for permit.

SUMMARY: NMFS has received an application from the Washington Department of Fish and Wildlife (WDFW) for an incidental take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The duration of the proposed Permit is 10 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the document. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit application must be received at the appropriate address or fax number no later than 5 p.m. Pacific standard time on December 27, 2005.

ADDRESSES: Written comments on the application should be sent to Kristine Petersen, Salmon Recovery Division, NWR1, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Comments may also be sent via fax to (503) 872–2737. The mailbox address for providing e-mail comments is *UCRFisheries.nwr@noaa.gov*. Include in the subject line the following document identifier: ''Upper Columbia fisheries''. Requests for copies of the permit application should be directed to the Salmon Recovery Division, 1201 N.E. Lloyd Blvd., Suite 1100, Portland, OR 97232. The documents are also available on the Internet at *www.nwr.noaa.gov/1srd*. Comments received will be available for public inspection, by appointment, during normal business hours by calling (503) 230–5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR (ph: (503) 230–5409, fax: (503) 872–2737, e-mail: *kristine.petersen@noaa.gov*.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in this Notice

The following evolutionarily significant units (ESUs) are included in the Permit application:

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River (UCR).

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring-run and threatened Snake River spring/summer-run.

Application received:

On September 21, 2005, the WDFW submitted an application to NMFS for an ESA section 10(a)(1)(B) permit for the incidental take of ESA-listed anadromous fish species associated with recreational fisheries on non-ESA-listed fish species in the middle and upper Columbia River Basin in Washington State.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(B) of the ESA. If it is determined that the requirements are met, a permit will be issued to the WDFW for the purpose of carrying out the proposed fisheries. NMFS will publish a record of its final action in the **Federal Register**.

Dated: November 21, 2005.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–23285 Filed 11–23–05; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102705A]

Marine Mammals; File No. 774–1649–03

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 774-1649-02 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038 (Principle Investigator: Rennie Holt, Ph.D.) has been amended.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980–4001; fax (562)980–4018;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Tammy Adams (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 3, 2005, notice was published in the **Federal Register** (70 FR 57566) that an amendment of Permit No. 774–1649–02 had been requested by the above-named organization. The requested amendment has been granted under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amended permit authorizes the Holder to administer isotopes (doubly-labeled water (DLW)) to and collect serial blood samples from up to 15 Antarctic fur seal (*Arctocephalus gazelle*) females and 30 pups to study female/pup energetics and maternal investment.

Dated: November 21, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–23288 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111605G]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Council task force to convene via Conference Call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a task force comprised of Council members, Council staff, and Scientific and Statistical Committee (SSC) members via conference call to address the operations of the SSC governing their activities.

DATES: The Conference Call will be held on Monday, December 12, 2005.

ADDRESSES: The meeting will be held via conference call and a listening station will be available. For specific locations see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene a task force comprised of Council members, Council staff and Scientific and Statistical Committee (SSC) members by conference call on December 12, 2005 at 10 a.m. EST.

The purpose of the meeting is to discuss the operations governing activities of the SSC and to make recommendations to the Council. The Council will hear these recommendations at the meeting in Corpus Christi, TX, scheduled for January 9 - 12, 2006.

A listening station for members of the public to hear the discussion will be set up at the National Marine Fisheries Service Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701; contact: Virginia Fay; telephone: (727) 551–5785.

A copy of related materials can be obtained by calling the Council office at (813) 348–1630.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is 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: November 18, 2005.

Emily Menashes,

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

[FR Doc. E5–6511 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to a Determination Under the African Growth and Opportunity Act (AGOA)

November 18, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Directive to the Commissioner of Customs and Border Protection.

SUMMARY: Amendments to CITA's directive that determined certain textile and apparel goods from Nigeria be treated as ''handloomed, handmade, folklore articles, or ethnic printed fabrics'' and qualify for preferential treatment under the AGOA.

EFFECTIVE DATE: August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (''AGOA''), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (''AGOA Acceleration Act'') (19 U.S.C. §§ 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including hand-loomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA. CITA approved Nigeria for Category 9 effective August 1, 2005. (70 FR 43397).

The United States and Nigeria have agreed to add Atlantic Textiles Manufacturing Co. Ltd. to the list of companies in Annex B who are producers of ethnic printed fabrics in Nigeria.

CITA notes a technical correction to this same notice. The Harmonized Tariff Schedule of the United States (HTSUS) number referenced in Annex B

applicable to ethnic printed fabrics is 5208.52.40, not 5208.32.40.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 2005.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The directive issued to you on July 21, 2005 regarding articles made in Nigeria to be treated as ''handloomed, handmade, folklore articles, or ethnic printed fabrics'' under the AGOA is amended as follows:

1. Add Atlantic Textiles Manufacturing Co. Ltd. to the list of producers of ethnic printed fabrics in Nigeria in Annex B.
2. Strike 5208.32.40 and replace with 5208.52.40 in Annex B.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–23280 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Andean Trade Promotion and Drug Eradication Act (ATPDEA)

November 21, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a determination that certain 100 percent cotton, 2 x 2 twill weave, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA.

SUMMARY: On November 18, 2005, the Chairman of CITA received a petition from Oxford Industries alleging that 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns, of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, classified under subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that such fabrics, for use in the manufacture of shirts, trousers, nightwear, robes and dressing gowns and woven underwear in an ATPDEA beneficiary country for export to the United States, be eligible for preferential treatment under the ATPDEA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by December 12, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Maria K. Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The ATPDEA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The ATPDEA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. Pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President's authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA has been delegated to CITA.

On November 18, 2005, the Chairman of CITA received a petition from Oxford Industries alleging that certain 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns, of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, classified under HTSUS subheading 5208.43.00, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the ATPDEA for such fabrics, for use in the manufacture of shirts, trousers, nightwear, robes and dressing gowns and woven underwear in an ATPDEA beneficiary country for export to the United States.

Specifications:

Fiber Content:	100% Cotton
Weight:	not more than 200 grams/ square meter
Yarn Number:	ring spun 21-36 NM
Weave:	2 x 2 twill woven flannel
Finish:	Yarn dyed, napped on both sides

The petitioner emphasizes that the construction of the fabrics must be exactly or nearly exactly as specified or the fabrics will not be suitable for their intended uses.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics in question for purposes of the intended use. Comments must be received no later than December 12, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in

the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–23362 Filed 11–22–05; 2:22 pm]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Self-Regulation and Self-Regulatory Organizationsin the Futures Industry

AGENCY: Commodity Futures Trading Commission (''Commission'').

ACTION: Request for additional comments on self-regulation and self-regulatory organizations (''SROs'').[1]

SUMMARY: This Request for Comments (''Request'') continues the Commission's ongoing review of self-regulation and self-regulatory organizations in the U.S. futures industry (''SRO Study''). The Request seeks public comment on a range of SRO issues, including governance, minimizing conflicts of interest within self-regulation, the composition of SROs' boards of directors and disciplinary committees, and the impact of increasing competition, changing business models and new ownership structures on SROs' self-regulatory responsibilities.[2] Commenters are also asked to consider the impact of securities exchanges' listing standards and the unique role of registered futures associations (''RFAs'') and other third-party regulatory service providers. The questions presented update the Commission's prior fact-finding on self-regulation, build on industry developments since that time, and offer interested parties an additional opportunity to comment as the SRO Study nears conclusion. The questions raised in this Request will also form the basis of an upcoming Commission roundtable on self-regulation. The roundtable will provide a forum for industry participants to present their views on both the challenges and opportunities of self-regulation in a rapidly evolving futures industry.

DATES: Responses must be received January 9, 2006.

ADDRESSES: Written responses should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Responses may also be submitted via e-mail at *secretary@cftc.gov.* ''Self-Regulation and Self-Regulatory Organizations'' must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. This document is also available for comment at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Braverman, Deputy Director, (202) 418–5487; Rachel Berdansky, Special Counsel, (202) 418–5429; or Sebastian Pujol Schott, Attorney-Advisor, (202) 418–5641. Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

Since its initiation in May of 2003, the SRO Study has proceeded through two phases.[3] Phase I included staff interviews with over 100 individuals representing every segment of the futures industry, including futures commission merchants (''FCMs''), DCMs, DCOs, and industry associations. Staff also interviewed industry executives, academics, consultants, and individuals associated with securities-side entities. Based on these interviews, the Commission identified several issues for further attention and launched Phase II of the SRO Study in February of 2004.[4]

Phase II of the SRO Study has pursued two lines of inquiry. The first addresses issues relating to the cooperative regulatory agreement by which DCMs and the National Futures Association (''NFA'') coordinate compliance examinations of FCMs (''DSRO System''). In April of 2004, Commission staff sought public comment on the governance and operation of the Joint Audit Committee (''JAC'') and on the effectiveness of JAC and NFA examination programs.[5] Commission staff also sought comment on certain proposed amendments to the Joint Audit Agreement. The proposed amendments, among other things, add additional parties to the JAC, add certain voting eligibility provisions, and memorialize certain DSRO assignment procedures. The comments received and the proposed amendments to the JAC remain under consideration by Commission staff.

The second line of inquiry in Phase II of the SRO Study focuses primarily on conflicts of interest in self-regulation, and those factors that may tend to increase or ameliorate such conflicts. In June of 2004, the Commission sought public comment on SRO board composition, changing ownership structures and business models among SROs, and the organization and oversight of SROs' regulatory departments and personnel, among other things.[6] Simultaneously, the Commission distributed to each SRO a questionnaire to help evaluate the governance structures, policies, and procedures of the self-regulators under the Commission's authority. The comments solicited in 2004 and in the earlier interviews generated an array of responses and approaches to self-regulation that the Commission is now re-examining in light of industry developments and findings since that time.

One significant development in self-regulation since the beginning of the SRO Study is the creation of exchange ''regulatory oversight committees'' (''ROCs''). In each case, the ROCs are board-level committees, composed only

[1] For purposes of this Request, SROs include designated contract markets (''DCMs''), derivatives clearing organizations (''DCOs''), and registered futures associations.

[2] SROs' self-regulatory responsibilities include, among other things, market surveillance, trade practice surveillance, and audits and examinations of member firms (*e.g.,* ensuring compliance with financial integrity, financial reporting, sales practice, and recordkeeping requirements). An SRO's specific responsibilities will depend upon whether it is a DCM, DCO, or RFA.

[3] The SRO Study was initiated in an address by former Commission Chairman James E. Newsome at the Futures Industry Association Law and Compliance Luncheon (May 28, 2003), available at: *http://www.cftc.gov/opa/speeches03/opanewsm-40.htm.*

[4] As a prelude to Phase II, the Commission encouraged every SRO to reexamine its policies, employee training efforts, and day-to-day practices to confirm that there are safeguards in place to prevent the misuse use of confidential information obtained by SROs during audits, investigations, or other self-regulatory activities. The Commission continues to examine confidentiality of information as it moves forward with the SRO Study. *See* CFTC Progresses with Study of Self-Regulation, CFTC Press Release No. 4890-04 (Feb. 6, 2004), available at: *http://www.cftc.gov/opa/press04/opa4890-04.htm.*

[5] CFTC Seeks Comment on How Self-Regulatory Exams of Futures Firms Are Coordinated, CFTC Press Release No. 4910–04 (Apr. 7, 2004), available at: *http://www.cftc.gov/opa/press04/opa4910–04.htm.*

[6] SRO Governance, 69 FR 32,326 (June 9, 2004) and 69 FR 42,971 (July 19, 2004) (extending comment period to Sept. 30, 2004).

of independent non-member directors, with varying degrees of responsibility and authority. Among futures exchanges, both the New York Board of Trade (''NYBOT'') and the parent company of the Chicago Mercantile Exchange (''CME'') have created advisory ROCs with oversight of the exchanges' self-regulatory activities.[7] Both ROCs remain subject to their respective boards of directors. In contrast, the Futures Industry Association (''FIA'') has recommended exchange ROCs that create a ''functional separation of compliance and business staffs,'' including the hiring, firing, and compensation of such staff.[8] The Securities and Exchange Commission (''SEC'') has proposed its own version of the ROC for U.S. securities exchanges.[9] Its proposal places ROCs within majority independent non-member boards of directors.

As the questions below indicate, the Commission is interested in commenters' evaluation of the existing and proposed ROCs. Responses should address whether ROCs are necessary, how effective they are likely to be, and any potential drawbacks. Responses should also address what responsibilities and authority should be vested in ROCs, how their members should be nominated and elected, and the appropriate relationship between boards, ROCs, and SROs' senior regulatory officers. Finally, as the Commission considers a range of options to help insulate self-regulation from improper influence and commercial interests, commenters should address whether such insulation is best accomplished through new board composition standards, ROCs, or a combination of both.

Of the issues raised in the SRO Study, exchange disciplinary committees and the impact of changing ownership structures and business models have generated the most divergent opinions and approaches. Thus, although the Commission has previously solicited public comments on these matters, they require further exploration in an effort to reconcile the divergent views expressed by industry participants, outside experts, and others. Through this Request for Comments and the upcoming roundtable, the Commission will complete its research and prepare to conclude the SRO Study.

With respect to disciplinary committees, the central question is one of composition. The Chicago Board of Trade (''CBOT'') and Kansas City Board of Trade (''KCBT''), for example, typically use member-only disciplinary committees.[10] In contrast, other futures exchanges include independent persons on their committees, although only as a minority of the committee. The FIA recommends a fundamentally different approach: Majority-independent disciplinary committees.[11] The NFA is bound by Commission Regulation 1.64(c) which requires, among other things, that SRO disciplinary committees include at least one non-member of the SRO whenever the respondent is a member of the board or of a major disciplinary committee, or whenever the conduct alleged includes manipulation or attempted manipulation or results in direct harm to a non-member.[12] In the case of DCMs, Regulation 1.64(c) also required that a majority of disciplinary committee members represent an exchange membership category other than that of the respondent.[13] However, DCMs are now exempt from Regulation 1.64.[14]

In issuing this Request for Comments, the Commission is particularly interested in specific examples of instances where a disciplinary committee's composition may have influenced the outcome of a disciplinary matter. Interested parties should also comment on the appropriate composition of disciplinary committees and the optimal number and role of independent committee members.

The impact on self-regulation of changing ownership structures and business models has generated an equally broad array of opinions in the SRO Study. Starting with the CME in 2003, exchanges' continuing transformation from member-owned, not-for-profit entities to publicly-traded, for-profit businesses requires careful attention from the Commission. With the CBOT's initial public offering (''IPO'') and listing completed in October 2005, the two largest U.S. futures exchanges, accounting for almost 87% of all futures volume in the U.S., are now public, for-profit companies. In addition, the New York Mercantile Exchange is preparing to sell a 10% stake in the exchange to a private equity group in anticipation of a 2006 IPO. At that time, over 97% of U.S. futures trades will be transacted on exchanges whose incentives, owners, and demands are different from the not-for-profit, member-owned model that has prevailed for over 100 years, and upon which member self-regulation is based.

The Commission is particularly interested in specific examples of instances where an SRO's new commercial motives and incentives may have altered its self-regulatory behavior. More generally, commenters should address whether and how demutualized, for-profit, publicly-traded entities might alter their regulatory behavior in an effort to gain competitive advantage, reduce costs, satisfy shareholder and earnings expectations, or meet other non-regulatory objectives. Such regulatory behavior could include over-regulation, under-regulation, or selective or discriminatory regulation. Specific examples, either in the SRO or DSRO context, are welcome.

Finally, the Commission wishes to draw interested parties' attention to the listing standards of the New York Stock Exchange (''NYSE''), which impact both the CME and the CBOT as their parent companies are listed on that exchange. Certain governance provisions in the listing standards are another new development since the beginning of the SRO Study.[15] In particular, the NYSE now requires that the boards of directors of listed companies be majority independent, and provides detailed guidelines for determining a director's independence. The Commission notes, however, that both the governance and independence provisions in the listing standards are directed at shareholder protection and broad corporate governance. Although listed futures exchanges and their shareholders may benefit from these provisions, they may not be relevant to fair, effective, and vigorous self-regulation.

The Commission is interested in receiving comments on the relationship between SROs' Commission-mandated self-regulatory responsibilities and the

[7] NYBOT Rule 3.40, available at: *http://www.nybot.com/aboutNYBOT/rulebooks/nybot/download/Ch%203%20Committees.pdf* and Chicago Mercantile Exchange Holdings, Inc., Charter of the Market Regulatory Oversight Committee, available at: *http://investor.cme.com/downloads/regulation.pdf*.

[8] The Governance of Self Regulatory Organizations, FIA Comment Letter at 4 and 5 (Sept. 30, 2004), available at: *http://www.cftc.gov/files/foia/comment04/foicf0405c009.pdf*.

[9] Fair Administration and Governance of Self-Regulatory Organizations, 69 FR 71126 (Dec. 8, 2004).

[10] *See e.g.,* KCBT Rules 244.00 and 247.00 and CBOT Rules 540.12, 542.00, and 543.00.

[11] *See* The Governance of Self Regulatory Organizations, FIA Comment Letter at 8.

[12] 17 CFR 1.64(c).

[13] *See* § 1.64(a)(1) (excluding clearing organizations from the requirements of § 1.64).

[14] *See* 17 CFR 38.2.

[15] Section 303A of the NYSE's Listed Company Manual, which includes both the requirement that a majority of listed companies' directors be independent and bright-line tests for independence, received final approval from the SEC on November 4, 2003, with further amendments as late as November 3, 2004. The Listed Company Manual is available at: *http://www.nyse.com/Frameset.html?displayPage=/lcm/lcm_section.html*.

NYSE listing standards applicable to their parent companies, if any such relationship exists. Both the CME and the CBOT have determined that their member-directors are ''independent'' for purposes of the listing standards. Interested parties should comment on whether that determination is relevant to futures self-regulation.

II. Questions

The Commission has formulated the following questions based on its research, responses to previous **Federal Register** requests for comments, the views expressed by interview participants, and industry developments. Responses from interested parties will advance the Commission's understanding of issues relevant to conflicts of interest in self-regulation, SRO governance, and other relevant matters. Interested parties should also raise any additional issues that they believe will help the Commission's understanding of the issues presented. If interested parties believe that they have previously addressed any questions or issues related to this Request, and have no new information to add, they should feel free to refer the Commission to those responses.

Possible conflicts of interest, such as those that may exist between an SRO's regulatory responsibilities, its commercial interests, its members, and other constituents, are central to many of the questions articulated below. Where appropriate, parties should identify the specific conflict addressed in their response, and how their proposal resolves that conflict. With the SRO Study drawing to a conclusion, the Commission will carefully consider the need for additional guidance to insulate self-regulation from conflicts of interest and improper influence. Any such guidance will reflect the Commission's continuing commitment to industry self-regulation, flexible core principles, and responsible Commission oversight.

1. Is the present system of self-regulation an effective regulatory model for the futures industry?

2. As the futures industry adapts to increased competition, new ownership structures, and for-profit business models, what conflicts of interest could arise between:

(i) An SRO's self-regulatory responsibilities and the interests of its members, shareholders, and other stakeholders; and

(ii) An SRO's self-regulatory responsibilities and its commercial interests?

3. Given the ongoing industry changes cited above, please describe how self-regulation can continue to operate effectively. What measures have SROs taken thus far, and what additional measures are needed, to ensure fair, vigorous, and effective self-regulation by competitive, publicly-traded, for-profit SROs?

4. What is the appropriate composition of SROs' boards of directors to ensure the fairness and effectiveness of their self-regulatory programs?

5. Should SROs' boards include independent directors, and, if so, what level of representation should they have? What factors are relevant to determining a director's independence?

6. Should self-regulation be overseen by an independent entity within an SRO?

(i) If so, what functions and authority should be vested in such an entity?

(ii) At least two futures exchanges have implemented board-level regulatory oversight committees (''ROCs'') to oversee their regulatory functions in an advisory capacity. Commenters are invited to address any strengths or weaknesses in this approach.

7. The parent companies of some SROs are subject to the listing standards of the securities exchanges on which they are traded. Are such listing standards relevant to self-regulation and to conflicts of interest within DCMs?

8. What is the appropriate composition of SROs' disciplinary committees to ensure both expertise and impartiality in decision-making?

(i) Should a majority of committee members be independent? Should the composition of SROs' disciplinary committees reflect the diversity of the constituency? Should similar safeguards apply to other key committees and if so, which committees?

(ii) Should SRO disciplinary committees report to the board of directors, an independent internal body, or an outside body?

9. What information should SROs make available to the public to increase transparency (*e.g.,* governance, compensation structure, regulatory programs and other related matters)? Are the disclosure requirements applicable to publicly traded companies adequate for SROs?

10. What conflicts of interest standards, if any, should apply specifically to DCOs, both stand-alone DCOs and those integrated within DCMs?

11. What conflict of interest standards, if any, should be applicable to third-party regulatory service providers, including registered futures associations, to ensure fair, vigorous, and effective self-regulation on their part?

Issued in Washington, DC, on November 18, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. E5–6510 Filed 11–23–05; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed data collection instrument entitled: Field Network Pilot Study VISTA Cost Sharing Report Form and Survey. The information will be used by the Corporation's VISTA program to improve its understanding of the factors that determine cost sharing among VISTA sponsor organizations. The goal is to develop more effective strategies for encouraging cost sharing arrangements among VISTA sponsor organizations.

Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by January 24, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn: John Foster-Bey, Department of Research and Policy Development, Rm 10911, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom, Room 8100, at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(3) By fax to: 202–606–3464, Attn: John Foster-Bey, Senior Advisor to Director for Research and Policy Development.

(4) Electronically through the Corporation's e-mail address system: *jfosterbey@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Background

The Corporation has contracted with the Nelson A. Rockefeller Institute of Government to carry out a Field Network Pilot Study to analyze the potential for increasing the number of VISTA cost-share members. The Pilot Study will consider the implications of such expansion for the organizations where VISTA members serve (hereinafter ''sponsors''), given the Corporation's commitment to serve communities in need.

The Field Network Pilot Study VISTA Cost-Sharing Report Form and Survey will be used to assess the reasons why some sponsors cost-share and others do not; the effects of cost-sharing on sponsors; the potential for sponsors who are not currently cost-sharing to do so successfully in the future; current and potential sources of cost-share funds; and what actions the Corporation should take to help sponsors cost-share. Independent, local field researchers will be employed in collecting the information. During the data-gathering phase the researchers will refer to background information about the Corporation, the VISTA program, and the Field Network method.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Field Network Pilot Study VISTA Cost Sharing Report Form and Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Not-for-profit institutions; State, local, or tribal governments.

Total Respondents: 1450.

Frequency: Annually.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 1450 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Robert Grimm,

Director, Department of Research and Policy Development.

[FR Doc. 05–23245 Filed 11–23–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Current Information Collection with Revisions; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning changes to an existing information collection activity, the RSVP Volunteer Survey (OMB Number: 3045–0098), which is a component of the Performance Surveys for its three Senior Corps programs: the Foster Grandparent Program, the Senior Companion Program, and RSVP (Retired and Senior Volunteer Program).

Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by January 24, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn. Nathan Dietz, Department of Research and Policy Development, Rm. 10907, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom, Room 8100, at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(3) By fax to: 202–606–3464, Attn: Nathan Dietz, Attn. Nathan Dietz, Department of Research and Policy Development.

(4) Electronically through the Corporation's e-mail address system: *ndietz@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Nathan Dietz, (202) 606–6633, or by e-mail at *ndietz@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and,

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.*, permitting electronic submissions of responses).

Background: The Volunteer Surveys were conducted in 2004 for all three Senior Corps programs (RSVP, Foster Grandparents, and Senior Companions) to measure outcomes related to the benefits of service for senior volunteers. Using administrative data on the age distribution of volunteers for Senior Corps volunteers, the 2006 surveys will be sent to a targeted sample of RSVP volunteers who are Baby Boomers, and the survey will be revised so that the results will inform the management of a program that is heavily involved in recruiting Baby Boomers to national and community service.

Current Action: The Corporation is requesting comments on plans to revise the survey of Volunteers in RSVP (Retired and Senior Volunteer Program), one of the three main Senior Corps programs. This study is being conducted under contract with Westat, Inc. to collect information about local project volunteer outputs and outcomes. This information is to be used by the Corporation in preparing its Annual Performance Reports and to help program managers to improve the quality of services provided and will aid the Corporation in making grant decisions as well as for responding to ad hoc requests from Congress and other interested parties.

Type of Review: Current Information Collection with Revisions.

Agency: Corporation for National and Community Service.

Title: RSVP Volunteer Survey Component of the Annual Performance Surveys of Senior Corps Programs.

OMB Number: 3045–0098.

Agency Number: None.

Affected Public: RSVP volunteers (program participants).

Type of Respondents: RSVP volunteers (program participants).

Total Respondents: 600.

Frequency: Annually.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 150 hours total for all respondents.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 15, 2005.

Robert Grimm,

Director, Department of Research and Policy Development.

[FR Doc. 05–23246 Filed 11–23–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Current Information Collection With Revisions; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning changes to an existing information collection activity, the RSVP Station Supervisor Survey (OMB Number 3045–0097), which is a component of the Performance Surveys for its three Senior Corps programs: the Foster Grandparent Program, the Senior Companion Program, and RSVP (Retired and Senior Volunteer Program).

Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by January 24, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn. Nathan Dietz, Department of Research and Policy Development, Rm. 10907, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom, Room 8100, at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(3) By fax to: 202–606–3464, Attn: Nathan Dietz, Department of Research and Policy Development.

(4) Electronically through the Corporation's e-mail address system: *ndietz@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Nathan Dietz, (202) 606–6633, or by e-mail at *ndietz@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and,

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses).

Background

The Station Supervisor Surveys were conducted in 2004 for all three Senior Corps programs (RSVP, Foster Grandparents, and Senior Companions) to measure outcomes related to the benefits of service for senior volunteers. The 2006 surveys will focus on volunteer management, organizational best practices, and the benefits to the organization of senior volunteers. The revised version of the Surveys will combine selected questions from the 2004 version of the Station Supervisor Surveys and the 2004 version of the Accomplishment Surveys (OMB control

number 3045–0049), to eliminate the need to conduct the latter.

Current Action

The Corporation for National and Community Service (CNCS) is requesting comments on plans to revise the survey of Station Supervisors in RSVP (Retired and Senior Volunteer Program), one of the three main Senior Corps programs. This study is being conducted under contract with Westat, Inc. to collect information about local project volunteer outputs and outcomes. This information is to be used by CNCS in preparing its Annual Performance Reports and to help program managers to improve the quality of services provided and will aid CNCS in making grant decisions as well as for responding to ad hoc requests from Congress and other interested parties.

Type of Review: Current Information Collection with Revisions.

Agency: Corporation for National and Community Service.

Title: RSVP Station Supervisors Component of the Annual Performance Surveys of Senior Corps Programs.

OMB Number: 3045–0097.

Agency Number: None.

Affected Public: RSVP grantees and volunteer stations.

Type of Respondents: Supervisors of RSVP volunteer stations.

Total Respondents: 600.

Frequency: Annually.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 150 hours total for all respondents.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 15, 2005.

Robert Grimm,

Director, Department of Research and Policy Development.

[FR Doc. 05–23247 Filed 11–23–05; 8:45 am]

BILLING CODE 6050–$$–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning its proposed collection of State Service Plans from State Commissions. These plans are submitted by State Commissions as required by statute. The plans are elicited in order to assure that national service and volunteer service entities within a state are aware of each other and are coordinating activities to maximize their ability to leverage both human and financial resources in order to address significant unmet community needs.

Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 24, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, Amy Borgstrom, Associate Director for Policy, 1201 New York Ave., NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Under the National and Community Service Act of 1990, each State commission must submit a State Service Plan every three years. Each State Commission, after consulting with other service providers in the State, is responsible for submitting a plan to assure that national service and volunteer service entities within the State are aware of each other and, to the extent possible, coordinate activities and use service to address state priorities. In 2006, States will submit their plans via letter or e-mail.

Current Action

The Corporation seeks OMB clearance for a new information collection. It consists of the following instruction:

In 2006, the Corporation requests that you address the following questions in order to comply with the statutory requirement to provide a State Service Plan:

1. What are the specific programmatic areas your state is focusing upon?

2. Please describe ongoing efforts or special initiatives that involve collaborating with the Corporation State Office, State Education Agencies, state networks of volunteer centers, Campus Compacts, National Direct grantees and/or other service organizations within the state.

3. What support do you believe you need from the Corporation (Headquarter

Offices and/or your State Office) in order for your State Plan to be successful?

Your State Service Plan may also include other elements that you and your service partners find useful.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: State Service Plans.

OMB Number: None.

Agency Number: None.

Affected Public: State Service Commissions.

Total Respondents: 54.

Frequency: Every three years.

Average Time per Response: Averages 24 hours.

Estimated Total Burden Hours: 1296 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 18, 2005.

Rosie K. Mauk,

Director, AmeriCorps.

[FR Doc. E5–6523 Filed 11–23–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Department of the air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on December 27, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Ms. Novella Hill at (703) 588–7855.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 18, 2050 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

F051 SAFGC A

SYSTEM NAME:

Air Force Mediator Utilization Management Records.

SYSTEM LOCATION:

Primary Location: Office of the General Counsel, Dispute Resolution Division; SAF/GCD, 1740 Air Force Pentagon, Washington, DC 20330–1740.

Secondary Location: Information copies are maintained at Air Force installations or units that implement the Air Force Mediator Certification Program. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty and Civilian Air Force employees who are appointed to serve as collateral duty mediators in the Air Force workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the mediator's name, duty location, mediation experience, mediation or other relevant training, special skills, evaluations by co-mediators or mediation mentors, recommendations for certification, proof of training (e.g., training certificates, transcripts, diplomas), and documents created as a result of assistance provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Administrative Dispute Resolution Act, 5 U.S.C. 573, Neutrals; and 10 U.S.C. 8019, General Counsel of the Air Force.

PURPOSE(S):

To maintain rosters of Air Force collateral duty mediators at Air Force installations and facilities; and, to evaluate Air Force applications for certification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by mediator's last name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in locked cabinets and rooms. Records in computer devices are password protected by computer system software.

RETENTION AND DISPOSAL:

Files of Certified Mediators are retained so long as certification remains active and destroyed one (1) year after certification lapses; rejected Mediator Certification applications are retained one (1) year after application and then destroyed; and mediator rosters are retained for a period of three (3) years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Workplace ADR Programs, Office of the General Counsel, Dispute Resolution Division; SAF/GCD, 1740 Air Force Pentagon, Washington, DC 20330–1740.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Air Force installations or units that implement the Air Force Mediator Program.

Written requests must contain name, address, or any reasonable identifying

particulars about the subject in question.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to Air Force installations or units that implement the AIr Force Mediator Certification Program.

Written requests must contain name, address, or any reasonable identifying particulars about the subject in question.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals; Air Force records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23263 Filed 11–23–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974, System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records notice in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 27, 2005, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 18, 2005 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2005.

L.M. Bynum,

Federal Register Liaison Officer, Department of Defense.

A040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File (March 27, 2003 68 FR 14954).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add the following address: ''U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Individuals performing clinical practice, occupational health, industrial hygiene, and emergency medical activities in support of medical treatment facilities.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add the following: ''education, training, and occupational experience and competencies.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; Army Regulation 40–68, Clinical Quality Management; Army Regulation 40–5, Preventive Medicine, and E.O. 9397 (SSN).''

PURPOSE(S):

Add the following: ''and identify service-wide occupational health program strengths and weaknesses.''

* * * * *

STORAGE:

Add the following: ''and electronic storage media.''

RETRIEVABILITY:

Add the following: ''and/or Social Security Number.''

SAFEGUARDS:

Delete entry and replace with: ''Records are maintained in monitored or controlled access rooms or areas; public access to the records is not permitted; computer hardware is located in supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in the performance of their duties. Buildings/rooms are locked outside regular working hours.''

RETENTION AND DISPOSAL:

Delete first sentence and replace with: ''Records are retained in medical treatment facility of individual's last assignment and in the U.S. Army Center for Health Promotion and Preventive Medicine database.''

SYSTEM MANAGER(S) AND ADDRESS:

Add the following address: ''Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen, MD 21010–5403.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Interviewer, individual's application, medical audit results, voluntary self-reporting, and other administrative or investigative records obtained from civilian or military sources.''

* * * * *

A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File.

SYSTEM LOCATION:

U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

Medical treatment facilities at Army commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals performing clinical practice, occupational health, industrial hygiene, and emergency medical activities in support of medical treatment facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting delineation of clinical privileges and clinical

performance and medical malpractice case files, education, training, and occupational experience and competencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; Army Regulation 40–68, Clinical Quality Management, Army Regulation 40–5, Preventive Medicine, and E.O. 9397 (SSN).

PURPOSE(S):

To determine and assess capability of practitioner's clinical practice and identify service-wide occupational health program strengths and weaknesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In specific instances, clinical privileged information from this system of records may be provided to civilian and military medical facilities, Federal of State medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies for use in assuring high quality health care.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are maintained in monitored or controlled access rooms or areas; public access to the records is not permitted; computer hardware is located ins supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in the performance of their duties. Buildings/rooms are locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are retained in medical treatment facility of individual's last assignment and in the U.S. Army Center for Health Promotion and Preventive Medicine database. Records of military members are transferred to individual's Military Personnel Records Jacket upon separation or retirement. Records on civilian personnel are destroyed 5 years after employment terminates.

Medical malpractice case files are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen, MD 21010–5403.

NOTIFICATION PROCEDURE:

Individual's seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interviewer, individual's application, medical audit results, voluntary self-reporting, and other administrative or investigative records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23264 Filed 11–23–05; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 27, 2005 unless comments aqre received that would result in a contrary determination.

ADDRESSES: Send comments to Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 2030–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Folz at (202) 231–4291.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 18, 2005 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining

Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 05–0003

SYSTEM NAME:

Joint Intelligence Virtual University (JIVU II).

SYSTEM LOCATIONS:

Regional Support Command (RSC) Northeast Continental United States (CONUS): Defense Intelligence Agency, Washington, DC 20340.

Regional Support Command (RSC) West Continental United States (CONUS): Colorado Springs, CO.

Regional Support Command (RSC) Pacific Command (PACOM): Honolulu, HI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals with access to the Joint Worldwide Intelligence Communications System (JWICS) and the Secret Internet Protocol Router Network (SIPRNET) networks.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of education, training, and Career Development material and employee information such as name, email address, organization, Social Security Number, position number, position job code and other optional data to include title, address, city, state, zip code, country, phone number, and brief biography.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, (50 U.S.C. 401 et seq.); 10 U.S.C. 113; 10 U.S.C. 125; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to establish a system of records for the JIVU, an Intelligence Community training system which permits users of the Joint Worldwide Intelligence Communication System (JWICS) and the Secret Internet Protocol Router Network (SIPRNET) system, to take training courses for career advancement and job performance and to link such training to the user's personal Human Resource records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' set forth at the beginning of the Defense Intelligence Agency's compilation of systems records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated within an Oracle database, maintained on magnetic tape for backup and recovery.

RETRIEVABILITY:

Data will be retrievable by name or user login identifier.

SAFEGUARDS:

The servers hosting the JIVU application and the servers hosting the Oracle database are located in a secure area under employee supervision 24/7. Records are maintained and accessed by authorized personnel via the JWICS and SIPRNET internal, classified networks.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Directorate of Personnel (DP).

Defense Intelligence Agency, Washington, DC 20340–3191.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 2030–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial Agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency officials, employees, educational institutions, parent Services of individuals and immediate supervisor on station, and other Government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23265 Filed 11–23–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on December 27, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Folz at (202) 231–4291.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 18, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB

Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 05–0001

SYSTEM NAME:

Human Resources Management System (HRMS).

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former military and civilian personnel employed by or temporarily assigned to the DIA; current and former contract personnel; current and former civilian dependents, current and former military dependents assigned to the Defense Attache System; and individuals applying for possible employment.

DoD military, civilian, or contractor personnel nominated for security clearance/SCI access by DIA, and other DoD agencies and offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include, but are not limited to employment, security, education, training & career development, organizational and administrative information such as employee addresses, phone numbers, emergency contacts, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, (50 U.S.C. 401 *et seq.*) 10 U.S.C. 113, 5 U.S.C. 301, 44 U.S.C. 3102, and E.O. 9397 (SSN).

PURPOSE(S):

To collect employment and related information to perform numerous administrative tasks, to include preparing, submitting, and approving official personnel actions; personnel appraisals; and making decisions on benefits & entitlements. HRMS provides a central, official data source for the production of work force demographics, reports, rosters, statistical analysis, and documentation/studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Defense Intelligence Agency's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, and address.

SAFEGUARDS:

The server hosting HRMS is located in a secure area under employee supervision 24/7. Records are maintained and accessed by authorized personnel via Defense Intelligence Agency's internal, classified network. These personnel are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANGER(S) AND ADDRESS:

Defense Intelligence Agency, Directorate of Personnel (DP), 200 MacDill Blvd., Washington, DC 20340–3191.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

Defense Intelligence Agency's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency officials, employees, educational institutions, parent Service of individual and immediate supervisor on station, and other Government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23266 Filed 11–23–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Re-use of Naval Station Treasure Island, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy (DON) pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 United States Code (U.S.C.) 4332(2)(c), and the Council on Environmental Quality regulations (40 CFR parts 1500–1508), announces its decision to dispose of Naval Station Treasure Island (NSTI), which includes both Treasure Island and Yerba Buena Island. NSTI is located midway between the shores of the cities of San Francisco and Oakland. The disposal of NSTI will be accomplished in a manner that will allow the Treasure Island Development Authority (TIDA), the redevelopment authority established by the State of California and recognized by DoD, to reuse the property as set out in Alternative 1, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative. The decision by DON to dispose of the property in a manner that allows TIDA to reuse the property as described in the preferred alternative does not make the DON responsible for any obligation or commitment, fiscal or other, made by TIDA to the State of California or to third parties. Obligations or commitments made by TIDA in the course of developing its redevelopment plan, or in obtaining approval of the redevelopment plan from the United States Department of Housing and

Urban Development (HUD), remain the responsibility of TIDA.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McCay, telephone 619–532–0906; E-Mail: *patrick.mccay@navy.mil* or write to: Director, BRAC PMO West, ATTN: Mr. Patrick McCay, 1455 Frazee Road, Suite 900, San Diego, CA 92108.

SUPPLEMENTARY INFORMATION: The 1993 Defense Base Realignment and Closure Commission (BRAC 93 Commission) recommended the closure of NSTI. President Clinton approved this recommendation and the 103rd Congress accepted it on September 27, 1993. NSTI closed on September 30, 1997, and DON is in the process of disposing of the property to meet the requirements of the Defense Base Closure Realignment Act (DBCRA) of 1990 to reduce and realign United States military operations and enable productive reuse of this surplus Federal property.

On July 11, 1994, the majority of land and facilities at this installation were declared surplus to the needs of the Federal Government. State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of the installation were eligible for use of the property. The Base Closure Community Redevelopment and Homeless Assistance (BCCRAHA) Act of 1994 (Pub. L. 103–421) amends DBCRA of 1990, exempting base closure property from the McKinney Act and establishing a process that requires a balancing of homeless assistance needs with the need of the communities in the vicinity of the installation for economic redevelopment and other development.

Representatives of the homeless submit notices of interest for the installations to the redevelopment authority. The definition of redevelopment authority (generally referred to as a local redevelopment authority or LRA) is found in section 2910 of the amended DBCRA of 1990 (Pub. L. 101–510).

In 1997, California State Legislation created a special LRA for NSTI, transferring the LRA status from San Francisco, to TIDA. In March of 1998, DOD's Office of Economic Adjustment recognized TIDA as the implementing LRA for NSTI. For the purposes of this Record of Decision, DON will refer to TIDA as the LRA for NSTI.

Notices submitted to the LRA contain detailed information regarding the assistance program that the representative of the homeless proposes to carry out at the installation. The LRA, not the Federal Government, may address those notices of interest regarding needs either on or off base, and is responsible for screening to meet the needs of the homeless. Additionally, the BCCRAHA Act of 1994 requires that an LRA prepare a redevelopment plan for a closing installation that considers the expressed needs of the homeless, and that this plan be approved by HUD. Obligations or commitments made by TIDA in the course of developing its redevelopment plan, or in obtaining approval of the redevelopment plan from HUD, remain the responsibility of TIDA.

Before disposal of any real property, DON must analyze the environmental effects of the disposal action. As required by DBCRA, DON has treated the 1996 Draft Reuse Plan as part of the proposed Federal action for the installation.

The city and county of San Francisco prepared an Environmental Impact Report (EIR) for the transfer and reuse of NSTI. The proposed action and alternatives were essentially identical to that of DON's EIS. The EIR was recently certified in May 2005.

Master development plans for TIDA have continued to evolve since July 2002, as reflected in the preparation of initial studies, master development submittals and public workshops. The development plans do not show substantial changes to the overall proposed land use assumptions. The city and county of San Francisco will prepare a second EIR; specific to the proposed development, once the development plans have become sufficiently detailed.

Alternatives Considered: A screening process, based upon criteria set out in the Draft EIS, was conducted to identify a reasonable range of alternatives that would satisfy DON's purpose and need regarding property disposal.

Alternative 1, the Preferred Alternative, reflects disposal of the property in the context of the redevelopment scenario described in the 1996 Draft Reuse Plan developed by the LRA. Alternative 1 features a post-disposal reuse of publicly oriented development (155 acres), open space and recreation (118 acres), institutional and community uses (40 acres), and residential development (137 acres) at full build out. This scenario represents the most intensive redevelopment scenario proposed in the FEIS. Actual redevelopment by an entity would likely reflect this intensity, but may not reflect the specific conceptual construction types provided in the 1996 Draft Reuse Plan.

Alternative 2 presents less intensive post-disposal reuse than Alternative 1, but has similar land uses and development concepts. Alternative 2 was developed during the scoping process, including the recommendations of an advisory panel convened by the Urban Land Institute. Under this scenario, no new housing would be built at NSTI, and the existing housing would be reused initially (21 acres).

Alternative 3 represents a scenario where little new post-disposal development would occur and existing facilities would be used. No new housing units would be constructed.

The No Action alternative represents a scenario that maintains the status quo with DON retaining ownership of NSTI. Those structures subject to an existing lease would continue to be leased until such lease expires or is terminated. Those structures not subject to an existing lease would be maintained in a caretaker status. No demolition or construction would occur, except as allowed by existing lease authorization. Approximately 50 persons would be assigned to perform caretaker activities. The No Action Alternative would have no significant impacts; therefore, it is the environmentally preferred alternative.

Environmental Impacts: DON analyzed the direct, indirect, and cumulative impacts of the disposal action on the environment. Potentially significant impacts associated with Alternative 1, the alternative selected in this Record of Decision, are summarized below.

Land Use/Zoning: The anticipated land use zone classifications required for redevelopment as illustrated in Alternative 1 (*i.e.*, public, residential, mixed use) would be inconsistent with the existing city and county of San Francisco General Plan designation and zoning classification. The General Plan land use designation for NSTI is military. Amendments to the General Plan, using the public process established by the State of California for such amendments, would be required before redevelopment could occur.

Subsequent to the Naval Appropriations Act of 1942 (Pub. L. 441) in which Congress appropriated funds for the acquisition of Treasure Island, the Government pursued the condemnation process for the property now known as NSTI in the United States District Court of San Francisco. The declaration of taking was filed on April 17, 1942. The parties reached a joint settlement of the condemnation case on April 3, 1944. As compensation for the taking, the Government completed construction of 10 million dollars of permanent improvements at San Francisco Airport. Chapter 3 of the California Statutes of 1942 authorized

the transfer of Treasure Island to the government including all tide and submerged lands and further stated that the transfer: Shall be free and clear of all conditions and reservations respecting the title to or use of said lands.

The State made no provisions for the reservation of a tideland trust or public trust easement over tidelands or submerged land nor was there any reversion rights contained in the statute. Therefore, the DON's position is that the United States acquired full fee simple absolute title to all the property, including the tidelands and submerged lands, and that the property would not be subject to the public trust upon disposal by DON. The State of California, however, considers all former and existing tide and submerged lands on Treasure Island to be subject to the public trust in the event of a transfer of the property from DON.

The Treasure Island Conversion Act of 1997 (1997 Cal. Stat. 898, AB 699), granted TIDA the power to administer and control property at NSTI, identified by the State of California as land that will be subject to the public trust upon its release from Federal ownership. Under the 1997 Act, existing buildings and structures located on public trust lands which are incapable of being devoted to trust purposes may be used for other purposes, consistent with the reuse plan, for their remaining useful life. If the trust were deemed to apply, this would not be expected to have a substantial effect on future land use patterns on NSTI.

Similarly, the Treasure Island Public Trust Exchange Act (2004 Cal. Stat. 543, SB 1873), authorized an exchange of public trust lands whereby certain trust lands on NSTI would be freed from the public trust in exchange for encumbering other lands on Yerba Buena Island that are not now public trust lands. The Act specifically approved an exchange resulting in the configuration of trust lands substantially similar to that depicted on the diagram in section 12 of the Act. If the trust were deemed to apply, such an exchange would not be expected to have a substantial effect on future NSTI land use patterns.

Traffic: The proposed action would result in peak hour traffic volumes on the San Francisco-Oakland Bay Bridge (SFOBB)/Interstate-80 Yerba Buena Island westbound on-ramp, on the west side of Yerba Buena Island, that would exceed the current ramp capacity of 330 vehicles per hour (vph). The projected demand would result in a queue ranging from 7 vehicles (during the AM peak hour) to 239 vehicles (during the weekend midday peak hour). This queue would constrain vehicular circulation on the island.

Alternative 1 would result in a substantial increase in traffic volumes on the eastbound off-ramp on the west side of Yerba Buena Island that would exceed the practical capacity of the off-ramp (500 vph), resulting in a maximum queue of 36 vehicles, or about 700 feet (219 meters) of the SFOBB.

Alternative 1 would result in substantial increases in traffic volumes during the weekend, midday, peak hour on the eastbound on-ramp on the east side of Yerba Buena Island. While the increased volumes would be accommodated by the upgrade of this ramp as part of the California Department of Transportation's (Caltrans) SFOBB East Span project, it may create a secondary impact of potential traffic delays on the SFOBB.

Under Alternative 1, increased traffic on and off the SFOBB during the A.M. peak period (6:30 to 9:30) and P.M. peak period (3:30 to 6:30) would cause westbound traffic on segments of the SFOBB to deteriorate from Level of Service (LOS) D to LOS F during the last hour of the A.M. peak period (8:30 to 9:30) and to deteriorate from LOS B to LOS E or LOS F during the first hour of the P.M. peak period (3:30 to 4:30). LOS designations are a qualitative description of a facility's performance, based on travel speeds, delays, and density (number of cars per unit of lane). The designation for a facility ranges from LOS A, representing free-flow conditions, to LOS F, representing severe traffic congestion.

Due to a lack of direct bus service between NSTI and the East Bay, bus patrons would have to travel to San Francisco using existing routes, transferring at the Transbay Terminal to another transit service to the East Bay, or to drive, which would add to the vehicular demand and congestion at the Yerba Buena Island ramps. Approximately 4,290 weekday daily and 4,000 weekend daily bus transit patrons are estimated between NSTI and the East Bay.

Natural Resources: Significant impacts to mudflat habitat, including eelgrass beds, may occur as a result of increased pedestrian and boating activity around Clipper Cove. The enlarged marina would add approximately 200 new boat slips and 100 new tie-up buoys to the existing 100 slips and would quadruple boat traffic in Clipper Cove. This would increase the potential for mudflat habitat disturbance, especially during low tides when recreational boating traffic could erode nearshore sediments, which could directly affect invertebrate prey species in shallow water.

Increased pedestrian and boating activity around Clipper Cove could have a significant impact on shore and water birds by affecting mudflats and eelgrass beds where shorebirds forage. An increase in pedestrian activities from new residents or visitors could result in more people exploring the mudflats during low tide, disturbing avian species and sensitive habitat zones. In addition, the quadrupled boat traffic could erode nearshore sediment during low tide, affecting invertebrate and fish populations, resulting in a decrease of food sources for migratory birds, and decrease in foraging success.

Increased boat and pedestrian activity around Clipper Cove could have a significant impact on essential fish habitat by degrading eelgrass vegetated areas and shallow water in the same manner that mudflat habitat could be impacted. These areas provide important fish spawning, rearing, and foraging habitat.

Public Safety: Significant impacts could occur in the form of damage to structures and infrastructure on Treasure Island due to liquefaction induced ground failure in the event of a major earthquake. Low-lying areas of Yerba Buena underlain by heterogeneous artificial fill are also potentially subject to liquefaction, lateral spreading, and differential settlement hazards.

The installation of residential development in low lying areas would result in net increased exposure of approximately 3,000 residents, 13,799 daily visitors, and property to both ponding and flooding hazards due to seepage or overtopping of the dike. While nearby bodies of surface water will probably not be significantly impacted, the exposure to these types of hazards is potentially significant.

Hazardous Waste: Construction activities at NSTI associated with future development of the housing unit area, including demolition of existing structures, may interfere with remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

CERCLA Remediation Actions: The following measures have been developed to mitigate potentially significant impacts to remedial actions under the CERCLA program. DON is in the process of implementing various remedial actions at NSTI pursuant to and in accordance with the requirements of CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan that will

remove, manage, or isolate any potentially hazardous substances present on the property prior to conveyance. These remedial actions will ensure that human health and the environment will be protected based on the land use redevelopment scenario illustrated in the 1996 Draft Reuse Plan. If the CERCLA remedy for a particular site includes land use controls, the acquiring entity or entities will be required to comply with the land use controls during construction and/or operations to ensure continued protection of human health and the environment. Subsequent redevelopment of the existing housing area that would involve demolition of existing structures and the grading and reconfiguring of the soil would likely be subject to land use controls on the property. These may include compliance with a city administered soil management plan that would require permits for soil and groundwater disturbance, subject to proper characterization and management. In addition, deeds conveying the affected property will contain a notice that areas of the property not subject to remediation efforts, such as areas beneath existing foundations, may require additional characterization and possible response actions, subject to appropriate regulatory oversight. Adherence to land use controls and regulatory requirements would mitigate potentially significant impacts to an acceptable level.

Mitigation: As a result of the identification of a number of potentially significant impacts associated with Alternative 1, DON has identified measures that can assist the new property owner(s) in mitigating reuse impacts. As DON cannot exercise control over the property once title has been transferred, DON cannot be responsible for implementation of mitigation identified in the FEIS. The following mitigation measures have been identified for possible implementation by the entity (or entities) acquiring the property:

To achieve consistency between the selected reuse Alternative 1 and city policies, it will be necessary to amend the San Francisco General Plan to include land use designations consistent with the 1996 Draft Reuse Plan for Treasure Island and Yerba Buena Island, prior to approving land use actions.

SFOBB/Interstate-80 Yerba Buena Island on-ramps are substandard by current Caltrans standards; primarily in acceleration/deceleration lengths, ramp radii, and sight distances. Upgrading the on-ramps would increase ramp capacity and level of operation and decrease queuing impacts. However, upgrades to the on-ramps may be constrained by the geology of the site (elevation change and bedrock), and structural limitations due to the viaduct. Additional measures would include signage and notices to residents to encourage residents and visitors to use the second westbound on-ramp east of the Yerba Buena Island tunnel. Similarly, redirecting traffic during the weekend, midday, peak hour to the second on-ramp east of the Yerba Buena Island tunnel would reduce the queue at the first westbound on-ramp. Further measures include implementation of a Transportation Demand Management (TDM) program to further reduce traffic generation during peak hours, especially during the weekend. Implementation of additional or enhanced TDM measures include discounted ferry passes, flex-time, public relations campaigns, and giving employees working on Treasure Island or Yerba Buena Island preferential access to housing on NSTI. Such measures would encourage ferry use and encourage vehicle trips during the non-peak period, to reduce queues on both westbound on-ramps to tolerable levels. Additional measures include monitoring NSTI ramp traffic volumes to ensure that the transportation goals and objectives established by the 1996 Draft Reuse Plan are successfully implemented; monitoring NSTI bus transit demand on an annual basis (or at each phase of development) and ensuring that planned bus services are implemented to meet or exceed demand; implementing a similar monitoring program for ferry demand; restriping the portion of Treasure Island Road between the Main Gate and the westbound on-ramp on the west side of the Yerba Buena Island tunnel from two lanes to accommodate three traffic lanes; and, using traffic control measures, such as signage, to encourage eastbound motorists to use the second Yerba Buena Island off-ramp (the off-ramp on the east side of Yerba Buena Island). Implementation of TDM and monitoring measures discussed above would help reduce traffic volumes on this off-ramp.

In order to improve traffic volumes during the weekend, midday, peak hour on the eastbound on-ramp on the east side of Yerba Buena Island, Caltrans should consider the installation of a ramp metering device if the added traffic onto this on-ramp would cause significant traffic delay on the SFOBB mainline. The mainline includes the main lanes of a freeway as opposed to an off ramp or exit lane. A ramp metering device would restrict/govern the number of vehicles accessing the SFOBB for the benefit of maintaining free flow conditions on the SFOBB.

To alleviate increased traffic on and off the SFOBB during peak A.M. conditions, causing westbound traffic segments to deteriorate, traffic volumes should be monitored at each phase of development. If it is determined that traffic from NSTI is constraining the capacity of the SFOBB, either more aggressive TDM and transit improvements must be implemented or additional development should be delayed until such improvements are implemented.

Establishing direct transit service between NSTI and the East Bay would mitigate the lack of current direct service to a not significant level. Bus service would need to be at 10-minute headways (the interval between the trips of 2 successive vehicles) throughout the day during the weekday and at 15-minute headways throughout the day during the weekend. Additional measures include monitoring NSTI bus transit demand on an annual basis (or at each phase of development), ensuring planned services are implemented to meet or exceed demand, and implementing TDM measures to encourage bus transit. If monitoring indicates an imbalance between transit service and demand, the city and county of San Francisco could limit planned land use development on NSTI until required services are funded.

In response to comments from Bay Area Air Quality Management District (BAAQMD), DON has identified additional potential mitigation measures not discussed in the FEIS. DON recommends that future redevelopment projects implement the measures set out in sections 4.3 and 4.4 of the BAAQMD California Environmental Quality Act (CEQA) Guidelines: Assessing the Air Quality Impacts of Projects and Plans (BAAQMD 1999). First, as indicated in section 4.3 of the CEQA Guidelines, incorporate transit-oriented development in project design. This strategy is intended to reduce automobile usage associated with suburban land uses by integrating residential and commercial land uses with transportation routes and making communities more amenable to transit, bicycle, and pedestrian activities. Second, as indicated in section 4.4 of the BAAQMD CEQA Guidelines, measures identified in Tables 15, 16, and 17 to reduce vehicular emissions from commercial, institutional, industrial, and residential uses should be implemented in project-specific phases.

Implementation of these transportation measures would ensure that the proposed actions would not contribute to significant cumulative air quality impacts within the region.

To minimize significant impacts to mudflat habitat and eelgrass beds, several measures are recommended for the entity acquiring the land and applying for regulatory permits that will be required to allow development in sensitive areas. Measures include minimizing disturbance to sensitive habitats during construction and preparing and implementing a plan to minimize disturbance of sensitive habitats due to recreational activity. The permittee for the development projects for Clipper Cove could be required to post signs along the shore adjacent to the mudflats and at the marina to inform pedestrians and recreational boaters that the mudflats are a protected sensitive area and trespassing is not permitted. Buoys could be placed in the bay to identify the restricted mudflat area. A ''No Wake'' zone could be established in Clipper Cove to minimize shoreline and mudflat erosion. A ''No Wake'' speed (not exceeding 5 miles per hour) is the speed at which a vessel does not produce a wake. Any impacts related to construction or fill would be addressed during the Army Corps of Engineers section 404 permitting process.

Impacts on migratory birds from pedestrian and boating activities are closely associated with impacts on mudflat habitat and eelgrass beds. Impacts on migratory birds will be mitigated through compliance with all applicable laws, regulations, and regulatory permits. Additional mitigation may include posting signs along the shore adjacent to the mudflats and at the marina, informing pedestrians and boaters that the mudflats are a protected and sensitive area. Placing buoys in the bay, identifying the mudflat area as restricted and establishing a ''No Wake'' zone in Clipper Cove could also reduce impacts.

Mitigation measures for increased boat and pedestrian activity on eelgrass areas, mudflats, and shallow water areas are the same as those proposed to mitigate impacts to mudflat areas.

A zone of ''improved ground'' would be created around the perimeter of the island to reduce lateral spreading. Interior island areas shall be similarly improved to reduce large differential settlement. All sensitive structures, such as buildings greater than three stories, buildings intended for public occupancy, structures supporting essential services, and buildings housing schools, medical, police, and fire facilities, shall be supported on pile systems or other specially designed foundations. Detailed geotechnical studies shall be completed in accordance with the city and county of San Francisco requirements for individual development sites.

Filling low-lying portions of the residential area to at least 9 feet (3 meters) National Geodetic Vertical Datum (NGVD) prior to development would mitigate the increased exposure of occupants, visitors, and property to ponding hazards due to seepage through the dike during some high tide events. In addition, other low-lying areas within 500 feet (152 meters) of the Treasure Island perimeter should be similarly filled before development is allowed.

A setback for development inboard of the perimeter dike, to allow room for periodic dike raising without substantially increasing bay fill, would reduce impacts caused by exposure of people and property to flooding hazards due to dike overtopping during storms. Other measures include raising the dike as necessary to account for site settlement or for changes in maximum tidal heights and rises in sea levels; inspecting the dike after each major storm to identify repair needs; and repairing the dike promptly as required.

Response to comments received regarding the Final Environmental Impact Statement: Below is a summary of substantive public comments received in response to the release of the FEIS, as well as DON responses to comments.

The Department of Toxic Substances Control (DTSC) commented that Installation Restoration (IR) Site 30 should be represented as an active site until the CERCLA process is complete. DON agrees with this comment and will ensure that IR Site 30 is fully addressed under CERCLA, including the preparation of a Remedial Investigation and Feasibility Study to determine what, if any, action is necessary.

DTSC requested additional information regarding polychlorinated biphenyls (PCBs) and asked DON to demonstrate that PCBs are not an issue. DON addressed PCBs in section 4.13 of the FEIS. All PCB release sites have been identified at NSTI, and surveys are being completed. All PCB sites requiring a response will be remediated under CERCLA prior to property conveyance. Additionally, DON will comply with all applicable provisions of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605) and other applicable laws and regulations designed to minimize the risks posed by PCBs.

DTSC commented that it intends to hold any future owners of the property liable for lead in soil around residential and non-residential property and asked that the FEIS be modified to reflect that intent. HUD regulations (Title X, 42 U.S.C. 4851) and the DOD/United States Environmental Protection Agency (USEPA) ''LBP'' Joint Interim Final Field Guide (1999) set out the standards and responsibilities regarding lead based paint. Inasmuch as those standards and responsibilities are fully discussed in the FEIS, modification of the FEIS is not necessary.

The BAAQMD commented that without mitigation, emissions from any of the three project alternatives would contribute to significant cumulative degradation of regional air quality. BAAQMD also commented that it was unable to determine how the project emissions presented in Table 4.6–1 were obtained. Table 4.6–1 of the FEIS was based on a mobile source emissions inventory generated by Radian International (1997) for DON. The data was adjusted to consider variations in project alternative operational characteristics between 2001 and 2010.

The TDM program and other transportation mitigation measures recommended in the FEIS (and discussed above) would reduce vehicle trips and associated vehicle miles generated by the project and would increase the flow of future traffic within the project region. Implementation of these transportation measures would reduce project emissions from the unmitigated levels presented in Table 4.6–1. In response to this comment from BAAQMD, DON identified additional potential mitigation measures and included them in the preceding mitigation discussion.

One individual commented that the FEIS failed to address a ''Maximum Homeless-Use'' Alternative. The individual cites the BCCRHA Act of 1994, which mandates that a redevelopment plan take into consideration a number of homeless issues, including the size and nature of the homeless population in the local communities, the availability of existing homeless services, and the suitability of the redevelopment plan for the use and needs of the homeless. Chapter 2.2.1 of the FEIS describes the Homeless Assistance planning process, including the opportunities for local communities to participate in the decision regarding disposal of military properties by requiring homeless providers to work through TIDA. As previously stated, the extent of the DON's role in meeting homeless assistance needs is limited by the review conducted by HUD. Representatives of the homeless submit notices outlining their needs and proposals to TIDA and not to the

Federal agency that owns the property. TIDA may address those needs either on or off base. TIDA, as the LRA, must prepare a redevelopment plan for the closing installation that considers the expressed needs of the homeless. DON has a role if and only if HUD determines that the redevelopment plan submitted by TIDA does not meet regulatory criteria set forth at 24 CFR part 586 and TIDA fails to revise the redevelopment plan in a manner that HUD determines meets those regulatory requirements.

On November 1, 1995, the Treasure Island Homeless Development Initiative (TIHDI) submitted a Notice of Interest to the LRA for surplus property including homeless housing, support services, employment, and economic development programs and services. On November 26, 1996, HUD approved the San Francisco Office of Military Base Conversion's homeless assistance submission including its proposed agreements with TIDHI. TIDA was not established as the LRA until the 1998, at which time they inherited the approved plan. Currently, TIHDI operates one of the most intensive San Francisco homeless provider initiatives at Treasure Island. In addition to a day care center, TIHDI manages 190 units housing formerly homeless individuals. DON has met the requirements of both NEPA and BCCRHA Act in its analysis of homeless requirements through the consideration of the 1996 Draft Reuse Plan. Under the requirements of DBCRA of 1990, as amended, any entity responsible for developing NSTI or implementing the redevelopment plan would be bound by the homeless assistance requirements set forth in the BCCRHA Act.

The San Francisco Municipal Railway Service Planning (MUNI) staff commented that it currently provides bus service between the NSTI and Transbay Terminal in San Francisco for residents and visitors to the island. They concur that bus service may need to increase to meet demand under the proposed redevelopment plan for NSTI. MUNI also comments that they cannot commit to any service expansion to the East Bay without a concurrent commitment of funding from an identified source. Determining funding for increased bus service is beyond the scope of this FEIS and should be addressed by the city and county of San Francisco in a subsequent CEQA analysis to ensure the effectiveness of the transportation mitigation measures associated with the proposed maximum build-out scenario. MUNI requested a breakdown of bus service demands in the FEIS analysis by mode, direction, and time of day. The FEIS provided estimates of MUNI bus demand based on three different levels of development for NSTI. These development scenarios were designed to evaluate a range of potential environmental impacts, from low to high. The actual development (both land uses and quantities of land uses) that will be approved by the city and county of San Francisco may ultimately differ from those analyzed in the FEIS. Consequently, MUNI demand and transit usage patterns could be different from those presented in the FEIS. The Reuse Plan assumes that ferry services will be a travel mode between San Francisco and NSTI, in addition to bus services. Bus passenger estimates were made for bus trips to and from NSTI, not within NSTI. MUNI bus demand should be analyzed in depth when the city and county approve specific development plans for NSTI, based on the approved land use. This would include both trips to and from NSTI as well as internal shuttle bus demand.

Conclusion: After considering the analysis contained in the FEIS, comments from Federal, State, and local agencies, and comments from the public, I conclude that Alternative 1 is the NEPA alternative that best meets DON's purpose and need regarding disposal of the NSTI property while allowing TIDA to execute redevelopment that will provide the best opportunity for economic recovery from the closure of NSTI. While Alternative 1 presents the potential for significant impacts in several respects, especially traffic, reuse of the property in accordance with TIDA's reuse plan can be accomplished without significant harm to the environment through implementation of the mitigation measures by TIDA or subsequent developers.

Although the No Action alternative is the environmentally preferred alternative, it would not meet DON's purpose and need regarding property disposal and would preclude the economic recovery intended by Congress when it enacted the DBCRA 1990. The No Action alternative would result in continued caretaker activities; therefore, socioeconomic gains in terms of new jobs and increased revenue in the region from disposal and subsequent reuse of NSTI would not be realized.

Dated: November 17, 2005.

Eric Mcdonald,

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

[FR Doc. E5–6507 Filed 11–23–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 27, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, hve been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, were submitted on November 18, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

NM05000–2

SYSTEM NAME:

Administrative Personnel Management System (November 16, 2004, 69 FR 67128).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Records and correspondence needed to

manage personnel and projects, such as: Name; Social Security Number; date of birth; photo id; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; trade; hire/termination dates; type of appointment; leave; location; (assigned organization code and/or work center code); Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; and other data needed for personnel, financial, line, safety and security management, as appropriate.''

* * * * *

PURPOSE(S):

Delete entry and replace with: ''To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. For use by arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with: ''Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, and supervisor's shop and code.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Individual; Defense Manpower Data Center; employment papers; records of the organization; official personnel jackets; supervisors; official travel orders; educational institutions; applications; duty officer; investigations; OPM officials; and/or members of the American Red Cross.''

* * * * *

NM05000–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel and projects, such as: Name; Social Security Number; date of birth; photo id; grade and series or rank/rate; biographical data; training histories; qualifications; trade; hire/termination dates; type of appointment; leave; location; (assigned organization code and/or work center code); Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel such as preparing rosters/locators, contacting appropriate personnel in emergencies, training, identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. For use by arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 55a(b) of the Privacy Act, these records or information contained therein may specially be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 55a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, and supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings

and activities; grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Defense Manpower Data Center; employment papers; records of the organization; official personnel jackets; supervisors; official travel orders; educational institutions; applications; duty officer; investigations; OPM officials; and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23267 Filed 11–23–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Standby Support for Certain Advanced Nuclear Facilities

AGENCY: Department of Energy.

ACTION: Notice of inquiry, request for comments and public workshop.

SUMMARY: The Department of Energy is seeking comment and information from the public to assist the Department in deciding how to implement section 638 of the Energy Policy Act of 2005. That section authorizes the Secretary of Energy to enter into standby support contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to facility licensing or litigation.

DATES: Interested persons must submit written comments by December 23, 2005. Comments may be mailed to the address given in the **ADDRESSES** section below. Comments also may be submitted electronically by e-mailing them to: *StandbySupport@Nuclear.Energy.gov.* We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail. A public workshop will be held on December 15, 2005 from 8:30 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. Requests to speak at the workshop should be made through the *http://www.Nuclear.gov* Web site at least one week before the workshop.

ADDRESSES: Written comments should be addressed to Kenneth Wade, Office of Nuclear Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Department requires, in hard copy, a signed original and three copies of all comments.

Copies of the public workshop transcripts, written comments received, and any other docket material may be reviewed on the Web site specifically established for this proceeding. The Internet Web site is *http://www.Nuclear.gov.*

The public workshop will be held at the Marriot Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814 on December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Wade, Project Manager, Office of Nuclear Energy, NE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–1889 or Marvin Shaw, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–52, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 585–2906.

SUPPLEMENTARY INFORMATION:

I. Overview and Purpose of the Statute

No new nuclear power electric generation facility has been ordered or licensed in the United States in almost 30 years. Some utilities attribute their reluctance to invest in such facilities to potential or anticipated delays resulting from the Nuclear Regulatory Commission (''Commission'') licensing process or delays attributable to potential litigation. Recognizing the reluctance of utilities or other potential investors to order and construct new facilities, Congress, the Department of Energy (''Department''), the Commission and other governmental entities have attempted to facilitate and encourage the licensing and full power operation of new nuclear facilities.

In 1989, the Commission promulgated 10 CFR part 52 in order to establish the early site permit, design certification, and combined license processes to enhance the efficiency and effectiveness of the regulatory approval process for siting and licensing new plants. In the Energy Policy Act of 1992 (Title XXVIII of Pub. L. 102–486), Congress amended the Atomic Energy Act of 1954 (AEA) to further facilitate the standardization and streamlining of nuclear power plant licensing by providing explicit authority to the Commission for the issuance of combined construction and operating licenses (COL). An integral part of the COL process is the use of ''Inspections, Tests, Analyses and Acceptance Criteria'' (ITAAC) to serve as a basis for ascertaining, during plant construction, whether the licensee is meeting the requirements of the COL so that plant operations can commence predictably upon construction completion. However, since there has not been any application for a COL in the 16 years since the Commission published 10 CFR part 52, the efficiency and effectiveness of these processes have neither been demonstrated in actual practice nor tested in court.

In February 2002, the Department established the Nuclear Power 2010 program, a joint government/industry cost-shared effort to identify sites for new nuclear power plants, to develop and bring to market advanced nuclear plant technologies, evaluate the business case for building new nuclear power plants, and demonstrate untested regulatory processes leading to an industry decision in the next few years to seek Commission approval to build and operate at least one new advanced nuclear power plant in the United States. In 2003, as part of the Nuclear Power 2010 program, the Department funded a report titled, *The Business Case for New Nuclear Power Plants* (July

2003) (see *http://www.nuclear.gov/home/bc/businesscase.html*) which defined critical risks and investment issues.

On April 27, 2005, in a speech at the National Small Business Conference, President George W. Bush called for ''changes to existing law that will reduce uncertainty in the nuclear plant licensing process, and also provide Federal risk insurance that will protect those building the first four new nuclear plants against delays that are beyond their control.'' (see *http://www.whitehouse.gov/news/releases/2005/04/print/20050427–3;* see also *http://www.whitehouse.gov/news/releases/2005/06/print/20050622.html*).

Several months later, Congress passed and President Bush signed into law the Energy Policy Act of 2005 (the Act). Section 638 of the Act addresses the President's proposal to reduce uncertainty in the licensing of advanced nuclear facilities. (42 U.S.C. 16014). The overriding purpose of section 638 is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for such projects. Such insurance is intended to reduce financial disincentives and uncertainties for utilities that are beyond their control so that they will invest in the construction of new nuclear facilities. By providing insurance to cover certain of these risks, the Federal Government can reduce the financial risk to project sponsors that invest in electric generation facilities that the Administration and Congress believe are necessary to promote a more diverse and secure supply of energy for the Nation.

II. Discussion of Section 638 and Request for Public Comment

A. Overview

Subsection (g) of section 638 provides for regulations necessary to carry out section 638. This NOI discusses some of the major topics related to section 638, including the types of sponsors and facilities covered, the Secretary's contracting authority, appropriations and funding accounts, covered and excluded delays, covered costs and requirements, and disagreements and dispute resolution. For some topics, this NOI indicates implementation approaches and interpretations that the Department is considering. It also identifies topics on which the Department specifically requests comments. The Department requests comments from the public about these topics and any other issues related to the implementation of section 638. The Department also welcomes comments about the extent to which potential sponsors may be interested in entering into standby support contracts with the Department, and how the authority in section 638 can be implemented most effectively to achieve the objective of reducing uncertainty in the nuclear plant licensing process and thereby facilitate the expeditious construction and operation of new nuclear power plants.

B. Definitions

Subsection (a) of section 638 defines the terms ''advanced nuclear facility,'' ''sponsor,'' and ''combined license'' as follows. ''Advanced nuclear facility'' is any nuclear facility for which the Commission approves the reactor design after December 31, 1993, provided that the Commission has not approved such design or a substantially similar design of comparable capacity on or before that date. ''Sponsor'' is any person who has applied for or been granted a combined license. ''Combined License'' is a combined construction permit and operating license issued by the Commission for an advanced nuclear facility. While the Department believes these terms are clear, it requests comments as to whether the implementation of section 638 would be facilitated by the Department further clarifying, either in regulations or in the standby support contracts themselves, these terms or any other terms set forth in section 638 (such as ''the fair market price of power'' in subsection (d)(5)(B)). If a commenter believes that it would be more appropriate for certain clarifications and definitions to be provided in regulations instead of the contracts themselves, or vice versa, the commenter should explain why.

C. Contract Authority

Subsection (b) of section 638 authorizes the Secretary to enter into standby support contracts with sponsors of advanced nuclear facilities that would provide risk insurance against certain regulatory or legal delays that are not the fault of the sponsors but which have the potential to dramatically increase the cost of bringing new nuclear power plants on line. Subsection (b) directs that sufficient funding to pay the covered costs under these contracts be placed in designated Departmental accounts when the contracts are entered into. Subsection (b) provides that only six reactors can receive benefits under these contracts. In addition, subsection (d) provides for different amounts of covered costs with respect to the initial two reactors that receive their COL and commence construction and the subsequent four reactors.

Section 638 grants the Secretary considerable discretion as to when, how and with whom to enter into standby support contracts. The Department believes that the objectives of section 638 are best achieved by maximizing the opportunities for sponsors to enter into standby support contracts as early as practical. The Department recognizes, however, that entering into a contract with a sponsor before the sponsor receives a COL and commences construction may raise a number of implementation issues. These issues arise from, among other things, the requirement to have adequate funding in the accounts before entering into a contract, the different treatment of the initial two facilities and the subsequent four facilities, and the disposition of funds received from a sponsor (see discussion in subsection D of this NOI).

The Department's initial view is that these considerations can be addressed best by the Department being willing to enter into binding agreements with sponsors that submit COL applications to the Commission, at any time on or after such an application is submitted. These agreements between the Department and project sponsors would not themselves be standby support contracts, but would commit the Department to enter into standby support contracts under section 638 with the sponsors of the first six reactors for which a COL is granted and construction commenced. In commenting on this potential approach, consideration should be given as to what provisions might be included in the agreements to deal with issues such as calculating the amount of funding, if any, from the sponsors and taking into account the extent to which appropriated funds are available. The Department requests comments on whether, at the time the Department and the sponsors enter into the binding agreement or at any other specified time, the sponsors should be required to deposit funds in an escrow account to cover all or some of the anticipated funding requirements of the contract. The Department also welcomes comments on whether other options would be more effective in achieving the objectives of section 638, and, if so, what regulatory or contractual provisions would be useful in implementing these options.

In a related matter, the Department requests comments on whether to utilize an application process. There are many contract process and implementation issues that may be addressed in an application process. For example,

should the Department require a fee to accompany the application, and, if so, how much should the fee be and should it be refundable? Should the application process be used to assist in determining the amount of funding needed prior to entering into a contract? Should the applicant/sponsor be required to submit an analysis showing the proposed ''cost'' of the standby support contract? Should the application process be open to all sponsors or should there be criteria to exclude certain entities or to select among applicants? What level of detail should the Department institute in any application process? The Department requests comments on the advantages and disadvantages of a detailed application process, including comments on the content and how best to implement such an application process.

The Department also requests comments on whether the regulations or the contracts themselves should provide DOE with the right to cancel a contract should a sponsor not proceed diligently to construct a facility that has received a COL and on which construction has commenced. The Department believes that the objective of section 638 is not to simply encourage the licensing of facilities, but to see that they are successfully constructed and brought online. Yet it is possible that, for a variety of potential reasons, a sponsor might be unable or unwilling to proceed with expeditious construction and completion of a licensed facility. Because the Act only allows DOE to enter into standby support contracts ''that cover a total of 6 reactors,'' should DOE be able to cancel a contract in certain circumstances, thereby potentially ''freeing up'' one or more of the authorized spots so that DOE could enter into a standby support contract with another sponsor? If so, what are the circumstances that should allow DOE to do so? DOE requests comment on all aspects of this issue.

D. Appropriations and Funding Accounts

Subsection (b)(2) establishes a funding requirement that must be met before the Secretary can enter into any standby support contract. Specifically, the Department must establish two separate accounts and have a specified amount of funds in the account before entering into a contract. The first account is labeled as a ''Standby Support Program Account'' (''Program Account''), and the second account is labeled as a ''Standby Support Grant Account'' (''Grant Account''). Subsection (b)(2)(C) specifies that the Program Account contains funds either appropriated to the Secretary in advance of the contract or a combination of appropriated funds and loan guarantee fees. This funding is required to be in an amount sufficient to cover loan costs. Subsection (b)(2) specifies that the term ''loan cost'' has the meaning given the term ''cost of a loan guarantee'' under section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is ''the net present value, at the time when the guarantee loan is disbursed,'' of certain costs. The costs for purposes of subsection (b)(2)(C)(i) are identified by a cross-reference to the costs described in subsection (d)(5)(A) which are the principal or interest on any debt obligation of an advanced nuclear facility owned by a non-Federal entity. Subsection (b)(2)(C)(ii) specifies that the ''Grant Account'' contains funds either appropriated to the Secretary in advance of the contract, funds paid to the Secretary by the sponsor, or a combination of appropriations and payments. This funding is required to be in an amount sufficient to cover the costs described in subsection (d)(5)(B) which are the incremental difference between (i) the fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for the delay, and (ii) the contractual price of power from the advanced nuclear facility subject to the delay.

Funding for both the Program Account and the Grant Account may be provided by either or both the Federal Government and sponsors of advanced nuclear facilities. In this regard, the Department notes that the provision in subsection (d)(4)(B) allowing acceptance of non-federal funds makes those non-federal funds available to the Secretary only to pay covered costs. Because the funds are made available to the Secretary ''for payment of the covered costs'' and not for any other purpose, the Secretary is only able to use the funds for that purpose (see 31 U.S.C. 1301(a)). If funds are not expended on covered costs, the Department anticipates that at the end of the program the government would move to close the account under 31 U.S.C. 1555 and deposit the funds into the general Treasury (see 31 U.S.C. 1555, 31 U.S.C. 3302(b)). The Department requests comment as to what extent, if any, these provisions will affect participation in the program. The Department also requests comment on what is the appropriate mix between government appropriations, sponsor payments, and a combination of both.

Congress specified certain details of the methodology for calculating the funding that must be in the two accounts prior to entering into a contract. However, the Department has considerable discretion in the implementation of that methodology. The Department must decide whether to calculate the funding on a generic basis that would result in the same funding for each facility or on a facility specific basis that would result in different funding for each facility. The Department also must decide whether to differentiate between the initial two facilities and the subsequent four facilities. The Department requests comments on how it should exercise this discretion and, in particular, what factors it should consider in determining both the overall amount of funding and the portion, if any, required from the sponsors.

In a related matter, the Department requests comments on whether, if a sponsor participates in the section 638 risk insurance program, and any loan guarantee program for which the sponsor may be eligible pursuant to Title XVII of the Act, and/or the production tax credits for advanced nuclear facilities in section 1306 of the Act, there should be any adjustment in the amount paid to the Department by the sponsor to participate in more than one program or in the amounts that a sponsor can receive under more than one program.

E. Covered and Excluded Delays

Covered Delays. Subsection (c) specifies situations in which the Secretary will pay the ''covered costs'' and situations in which the Secretary is precluded from paying such costs. Among the situations set forth in subsection (c)(1) in which the Secretary will pay such costs are (A) ''the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria established under the combined license or the conduct of preoperational hearings by the Commission * * *'' or (B) ''litigation that delays the commencement of full-power operations * * *''. The terms of subsection (c)(1)(A) are closely related to the part 52 COL licensing process. The COL issued to the licensee specifies the inspections, tests, analyses and acceptance criteria (which are known as ITAACs) with which the licensee must comply. The Commission requires verification that the licensee has completed the required inspections, tests, and analyses, and that the acceptance criteria have been met before the reactor can operate. However, the

Commission's regulations do not set any schedules for completing ITAAC review. Rather, under the COL, the licensee sets the schedule for ITAACs and may change the schedule as circumstances warrant. Although the Commission may set informal, internal schedules for auditing the licensee's performance of its ITAAC and will provide public notice upon completion of its review, there is no regulatory requirement for the Commission's conduct or timing of such auditing.

The part 52 regulations provide that the Commission give notice of intended operation not less than 180 days prior to the scheduled date for initial fuel load. During this time, the Commission intends to complete its review of the ITAACs and make a final determination whether the acceptance criteria have been met and reactor operations can begin. Given the complexity of the ITAAC review process, a back-loading of submissions to the Commission toward the end of the 180-day period might cause the Commission to be unable to complete its audit process prior to the fuel loading date. Thus, while a delay in operation might initially appear to be attributable to delays by the Commission, in fact the delay might be more attributable to a sponsor's relatively late completion and submittal of the ITAACs. The Department notes that these issues likely could be satisfactorily addressed through Commission regulations, audit procedures or guidance as they currently exist, or modified as appropriate and necessary. If no changes were made to the Commission's current regulations or procedures, however, the Department requests comments on how to address this situation either through the Department's section 638 regulations or through the standby support contracts.

The Department also believes it is possible that even if there is an ITAAC-related delay attributable to Commission regulatory delays, such a delay in the regulatory schedule might not be the cause of any delay in the full power operation of a nuclear facility that does in fact occur. For example, other factors (such as construction or engineering delays) might contribute to or be the primary cause of the delay. The Department requests comment on how best to establish whether the Commission failed to comply with the ITAAC schedules and, if so, whether such delay by the Commission is in fact the cause of a delay in full power operation. Specifically, are there any objective, unambiguous triggers that the Department could include in a regulation or in individual contracts to better ascertain whether a delay should be attributable to the Commission and thus covered by the contracts.

In addition, some delays may be caused by other governmental entities, including the Federal Emergency Management Agency (FEMA) and State and local governments. Before full power reactor operations may commence, the Commission must determine that the off-site emergency plans are adequate and in place. Specifically, under 10 CFR part 50, subsection 50.47(a) ''Emergency Plans,'' (which is also applicable to facilities licensed under part 52), the Commission will base its emergency planning findings on review of a related FEMA determination whether ''State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented.'' Similarly, under section 50.47(c), State and local governments may be responsible for some delays, if they decide not to participate in the emergency planning process with FEMA. The Department requests comment as to how best to treat delays that are caused by other governmental agencies and thus may be beyond the control of the Commission.

Subsection (c)(1)(A) also refers to delays in full power operation of advanced nuclear facilities caused by ''the conduct of preoperational hearings by the Commission * * *'' This section is susceptible of two different interpretations; it either can be interpreted to allow coverage only for delays associated with preoperational hearings where the Commission has failed to comply with applicable schedules, or it can be interpreted to allow coverage for delays associated with any preoperational hearings, regardless of who requested or caused the hearing and regardless of whether there was a ''failure'' of any kind by the Commission.

After issuance of the COL, there is only one opportunity for a public hearing in part 52 (*i.e.*, when a sponsor is ready to load fuel, it must notify the Commission and the Commission must, at least 180 days prior to the load fuel date, issue a public notice and opportunity for hearing on the proposed operation. See section 52.103.) The hearing may be held at the discretion of the Commission based on the showing by an outside entity that the acceptance criteria have not been met. There is no preset schedule for the conduct of the pre-operational hearing if it is granted, and the hearing may be formal or informal. If formal, the timing related to and the conclusion of the process is very uncertain. Given the undefined and untested process for a COL, it is not clear which party would be at fault for a delay caused by a pre-operational hearing, or even if ''fault'' is a relevant concept in holding another hearing to ascertain if the public's overriding need for safety is satisfied.

As a result, the Department is inclined to interpret subsection (c)(1)(A) as meaning that a ''covered delay'' includes any delay caused by the conduct of preoperational hearings by the Commission. The Department requests comments on this interpretation, how best to implement it, any alternatives, and all other aspects of subsection (c)(1)(A). In particular, given the potential interpretation that some portion of a delay caused by a preoperational hearing might not be considered a ''covered'' delay, the Department requests comments on whether a regulatory delay should only be considered a ''covered delay'' after a certain time period, as specified by contract or regulation. If so, what time period would be appropriate?

Subsection (c)(1)(B) refers to ''litigation that delays the commencement of full-power operations * * *'' Black's Law Dictionary broadly defines the term ''litigation'' as ''The process of carrying on a lawsuit,'' and the term ''lawsuit'' is defined as: ''any proceeding by a party or parties in a court of law.'' In the context of the COL process, there may be litigation both before an administrative board to adjudicate claims in the Commission licensing process and in Federal court. The Act is silent as to what type of litigation section 638 refers. Because subsection (c)(1)(A) already refers to certain Commission proceedings that may delay full power operation, the Department is inclined to interpret the term ''litigation'' in subsection (c)(1)(B) as meaning only litigation in State, Federal, or tribal courts, including appeals of Commission licensing decisions, and excluding administrative litigation that occurs at the Commission as part of the COL process. The Department requests comment as to what type of litigation delays should be covered by the Program.

Although the term ''full power operation'' is not defined in section 638 or 10 CFR part 52, the Commission generally considers this to be operation at five percent or greater. (See 10 CFR 2.340(g)(1); and *Statement of Policy on Issuance of Uncontested Fuel Loading and Lower Power Testing Operating Licenses,* 46 FR 47906, September 30, 1981) The Department intends to follow the Commission practice but nevertheless requests comments on how to incorporate this interpretation of ''full

power operation'' into the regulations carrying out section 638.

Exclusions. Subsection (c)(2) expressly precludes the Secretary from paying costs resulting from three general areas: ''(A) The failure of the sponsor to take any action required by law or regulation; (B) events within the control of the sponsor; or (C) normal business risks.'' The Department requests comment on how best to interpret and apply this subsection, including examples of each category of exclusion. The Department particularly invites the public to respond to the following questions. What areas of laws and regulations are likely to be involved? What events should be considered within the control of the sponsor and what events should be considered beyond its control? What should be considered a normal business risk, and thus not coverable under the Program? How should these exclusions be implemented with respect to the expressly covered delay caused by the ''conduct of preoperational hearings''? In other words, for example, if a sponsor's alleged failure to take an action required by law is the reason that the Commission holds a preoperational hearing, is the delay caused by that hearing a covered delay or an excluded delay? For each of these questions, the Department requests that commenters provide examples.

Due Diligence. Subsection (e) specifies that any standby support contract requires ''the sponsor to use due diligence to shorten, and to end, the delay covered by the contract.'' Black's Law Dictionary defines ''diligence as (1) a continual effort to accomplish something and (2) the attention and care required from a person in a given situation. In turn, Black's Law Dictionary defines ''due diligence'' as ''[t]he diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or a discharge of an obligation.'' The Department requests comments on how this term should be used in the context of a standby support contract, whether it should be further defined in the regulations or contracts, specific examples of situations that commenters believe should or should not come within the term, and how the Department should determine due diligence by the sponsor.

F. Covered Costs and Requirements

Subsection (d) provides for the coverage of costs that result from a delay during construction and in gaining approval for full power operation, specifically (A) principal and interest and (B) incremental cost of purchasing power to meet contractual agreements. The Department requests comments on how these costs should be documented, especially the extent to which they are used in calculating the funding needed prior to entering into a contract.

In addition, while the Department anticipates only covering those costs specifically described in subsection (d)(5)(i) and (ii), it notes that subsection (d)(5) states that the covered costs shall be those that result from certain delays ''including'' the costs specifically described in subsection (d)(5)(i) and (ii). As a result, it might be possible to interpret subsection (d)(5) as authorizing the Department to provide coverage for costs in addition to those specifically described in subsections (d)(5)(i) and (ii). The Department requests comment on whether those are the only costs that should be covered under the contracts and whether the Grant Account and the Program Account are restricted to covering a particular type of cost (*i.e.*, the cost on which funding is based).

Subsection (d) distinguishes between the ''Initial Two Reactors'' that receive combined licenses and on which construction is commenced and the ''Subsequent Four Reactors.'' With respect to each of the Initial Two Reactors, the Secretary is required to pay 100 percent of the covered costs of delay, but not more than $500 million per contract. With respect to the Subsequent Four Reactors, the Secretary is required to pay ''50 percent of the covered costs of delay that occur after the initial 180-day period of covered delay, but not more than $250 million per contract. The Department requests comment on the following issues: If there are two reactors being constructed by one sponsor at one location/facility, should there be two contracts in order for the sponsor to receive up to $500 million in coverage per reactor? Should a sponsor be precluded from entering into a contract that includes more than one reactor? In addition, the Department requests comment about the term ''commencement of construction'' given that neither part 52 nor section 638 defines this term. The commencement of construction of a facility may be defined in several ways, including activities such as the planning and design of a reactor facility, a firm purchase order for a reactor facility, or preparation of a site in anticipation of facility construction. On the other hand, under part 52, the Commission will issue a COL only upon finding that applicable regulatory requirements have been met, and that ''there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations.'' 10 CFR part 52.97. The Department believes it is reasonable to interpret ''commencement of construction'' in a manner consistent with Commission practice and requests comments on what would be the elements of such an interpretation.

G. Disagreements and Dispute Resolution

Just as with any commercial insurance contract, there may be potential areas in which a sponsor may disagree with the Department as to an interpretation of a section 638 risk insurance contract provision. The Act does not require any particular dispute resolution mechanism or procedure, and therefore the Department requests comment on how disputes between sponsors and the Department should be resolved, and what dispute resolution provisions should be included in the applicable regulations or contracts.

The Department notes that an important consideration is to make the standby support regulations that implement section 638 workable, so that they can be readily administered in an efficient and effective manner. Specifically, the regulations may need to include a mechanism to resolve factual and legal disputes as to whether a delay is covered or excluded as well as which party is at fault for a particular delay or event. Other Federal agencies that provide financial assistance have established oversight offices to monitor the projects they fund. For instance, the Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which provides grants for surface transportation projects, has established a TIFIA Joint Program Office to coordinate and manage the implementation of the TIFIA credit program. (See ''TIFIA Project Oversight and Credit Monitoring Guidance'' (*http://tifia.fhwa.dot.gov/oversight.htm*)) Similarly, the Oversees Private Investment Corporation (OPIC), which provides political risk insurance to U.S. businesses that invest oversees, has established its Office of Accountability to monitor OPIC supported projects. (see *http://www.opic.gov*) Although these programs cover or potentially cover far more entities and projects than the finite number of projects that may be covered by the Standby Support Program, they may provide guidance as to how the Department should resolve disputes.

H. Monitoring and Reporting Requirements

Subsection (f) requires the Commission to report to the Secretary and Congress on a quarterly basis regarding the licensing status of advanced nuclear facilities covered by a standby support contract. Apart from the Commission's statutory reports, the Department requests comments on the need to require any other reporting by the sponsor or others to the Department to assist the Department in its monitoring responsibilities, including the content, timing and impact of such reporting. Similarly, the Department requests comment on any other reporting or monitoring activities it should engage in to fulfill its responsibilities under the contract.

III. Public Participation

A. Attendance at Public Workshop

The time and date of the public workshop are listed in the **DATES** section at the beginning of this notice of inquiry. Anyone who wants to attend the public workshop should register on the Web site (*http://www.nuclear.gov*) of the Department's Office of Nuclear Energy, Science and Technology.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to the address shown in the **ADDRESSES** section at the beginning of this notice, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Persons requesting to speak should briefly describe the nature of their interest in this public workshop and provide a telephone number for contact. The Department requests persons selected to be heard to submit an advance copy of their statements at least one week before the public workshop. At its discretion, the Department may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Office of Nuclear Energy. A person requesting to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Workshop

The Department will designate a Departmental official to preside at the public workshop and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing. A court reporter will be present to record the proceedings and prepare a transcript. The Department reserves the right to schedule the order of presentations and to establish procedures governing the conduct of the public workshop. After the public workshop, interested parties may submit further comments on the proceedings as well as any aspect of section 638 until the end of the comment period set forth in this notice.

The public workshop will be conducted in an informal, conference style. The Department will allow time for presentations by participants and encourage all interested parties to share their views on issues affecting this proceeding. Each participant will be allowed to make a prepared general statement (within the time limits determined by the Department), before the discussion of specific topics. The Department will permit other participants to comment briefly on any general statements. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

The Department will make the entire record of this proceeding, including the transcript from the public workshop available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9127 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript of the public workshop proceedings from the transcribing reporter.

D. Submission of Comments

The Department requests written comments from interested persons on all aspects of implementing the standby support program authorized by section 638 of the Act. All information provided by commenters will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW. Washington, DC 20585 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except for Federal holidays.

The Department also intends to enter all written comments on a Web site specifically established for this proceeding. The Internet Web site is *http://www.nuclear.gov.* To assist the Department in making public comments available on a Web site, interested persons are encouraged to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice.

Because the Department intends to make all submissions publicly available on a Web site, the Department requests that commenters not submit information believed to be confidential and exempt from public disclosure. However, if any person chooses to submit information that he or she considers to be privileged or confidential and potentially exempt from public disclosure, that person must clearly identify the information that is considered to be privileged or confidential and explain why the submitter thinks the information is exempt from disclosure, addressing as appropriate the criteria for nondisclosure in the Department's Freedom of Information Act regulations at 10 CFR 1004.11(f). The Department also requests such submitters provide one copy of their comments from which the information believed to be exempt from disclosure has been redacted, with the areas where information or data sought to be protected from disclosure is exempt from such disclosure in accordance with the procedures set forth in its Freedom of Information Act regulations at 10 CFR 1004.11.

Factors of interest to the Department when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on November 17, 2005.

R. Shane Johnson,

Acting Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 05–23177 Filed 11–23–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Goodnoe Hills and White Creek Wind Energy Projects, October 2005

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: BPA has decided to offer contract terms for interconnection of the Goodnoe Hills and White Creek Wind Energy Projects into the Federal Columbia River Transmission System (FCRTS) at the Rock Creek substation in Klickitat County, Washington. The Large Generation Interconnection Agreement (LGIA) provides for interconnection of the Wind Projects with the FCRTS, the operation of Goodnoe Hills and White Creek Wind Energy Projects in the BPA Control Area (including control area services such as generation imbalance service), and the maintenance of reliability of the FCRTS and interconnected systems. It also provides for the construction, operation and maintenance of the interconnection facilities (*i.e.*, the Rock Creek substation). As described above, BPA has considered both the economic and environmental consequences of taking action to integrate power from the Wind Projects into the FCRTS. This notice announces the availability of the ROD to offer terms to interconnect the Wind Projects based on the Business Plan Final Environment Impact Statement (BP EIS) (DOE/EIS–0183, June 1995), and the Business Plan Record of Decision (BP ROD, August 15, 1995). BPA has decided to offer terms to interconnect the Wind Projects in Klickitat County, Washington.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION, CONTACT: Nancy Wittpenn, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *nawittpen@bpa.gov*.

Issued in Portland, Oregon, on November 16, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E5–6522 Filed 11–23–05; 8:45 am]

BILLING CODE 6450–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–92–000]

ANR Pipeline Company; Notice of Tariff Filing

November 17, 2005.

Take notice that on November 15, 2005, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets attached to the filing, to become effective on December 16, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6483 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–027]

Colorado Interstate Gas Company; Notice Negotiated Rate

November 18, 2005.

Take notice that on November 16, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 11D to be effective December 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6489 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–17–000]

Colorado Interstate Gas Company; Notice of Application

November 18, 2005.

Take notice that Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP06–17–000 on October 31, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization for CIG to abandon, by removal, its Sanford Compressor Station and Gas Sweetening Plant, comprised of three 880 horsepower (ISO) reciprocal compressor units and miscellaneous gas processing and sweetening facilities, located in Hutchinson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Richard Derryberry, Director, Regulatory Affairs, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: December 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6490 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–6–003]

Cranberry Pipeline Corporation; Notice of Compliance Filing

November 17, 2005.

Take notice that on November 14, 2005, Cranberry Pipeline Corporation (Cranberry) tendered for filing a revised statement of operating conditions in compliance with the Commission's ''Order Rejecting Partial Settlement, Establishing Transportation and Storage Rates, and Directing Filings,'' issued on September 13, 2005 in Docket Nos. PR04–6–000 and PR04–6–001.

Cranberry states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6480 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–96–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

November 17, 2005.

Take notice that on November 15, 2005, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 251, to become effective December 15, 2005.

Cove Point states that the purpose of this filing is to change Cove Point's penalty provisions from the existing fixed price penalties to the higher of a fixed price penalties or multiples of daily indexed prices.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6474 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–95–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 2005.

Take notice that on November 15, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 15, 2005:

Sixteenth Revised Sheet No. 39
Fourth Revised Sheet No. 39A
First Revised Sheet No. 103
Second Revised Sheet No. 212A
Second Revised Sheet No. 508
First Revised Sheet No. 653
First Revised Sheet No. 1043
Second Revised Sheet No. 1088
Third Revised Sheet No. 1183
First Revised Sheet No. 1503

DTI states that the purpose of this filing is to change DTI's penalty provisions from the existing fixed price penalties to the higher of its fixed price penalties or multiples of daily indexed prices.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6486 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–469–010, RP01–22–012, and RP03–177–007]

East Tennessee Natural Gas, LLC; Notice of Segmentation Report

November 17, 2005.

Take notice that, on November 4, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing a segmentation report pursuant to the Order on Rehearing and Compliance Filings, issued by the Commission on November 4, 2004 in Docket No. RP00–469–000.

East Tennessee states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6479 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–91–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

November 17, 2005.

Take notice that on November 14, 2005, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on December 14, 2005.

First Revised Sheet No. 303
Original Sheet No. 303A
First Revised Sheet No. 315
Original Sheet No. 315A
First Revised Sheet No. 326
Original Sheet No. 326A
First Revised Sheet No. 338
First Revised Sheet No. 339
First Revised Sheet No. 347
First Revised Sheet No. 348
First Revised Sheet No. 359
First Revised Sheet No. 360

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6482 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–94–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 2005.

Take notice that on November 15, 2005, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 15, 2005:

Fourth Revised Sheet No. 3
Second Revised Sheet No. 15
Second Revised Sheet No. 16
Second Revised Sheet No. 25
Second Revised Sheet No. 26
Second Revised Sheet No. 27
Third Revised Sheet No. 34
Second Revised Sheet No. 35
Sheet Nos. 36–56
Tenth Revised Sheet No. 57
First Revised Sheet No. 140
Original Sheet No. 141
Original Sheet No. 142
Sheet Nos. 143–209

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6485 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–97–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 18, 2005.

Take notice that on November 16, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as

part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective December 19, 2005:

Fourth Revised Sheet No. 117
Third Revised Sheet No. 155

GTN states that these tariff sheets are being submitted to add tariff language that will allow GTN to mutually agree to provide nomination and consolidated invoicing services to shippers requesting such services.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6503 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–2–000]

Lee 8 Storage Partnership; Notice of Petition for Rate Approval

November 18, 2005.

Take notice that on November 15, 2005, Lee 8 Storage Partnership (Lee 8) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Lee 8 proposes system-wide maximum rates of $3.28 per Dt of deliverability and $0.0328 per Dt of capacity. In addition, Lee 8 states that it will charge 0.37 percent of the injection volumes and 0.37 percent of the withdrawal volumes as an allowance for compressor fuel and lost-and-unaccounted-for gas on Lee 8's system.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6501 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–498–003]

Nautilus Pipeline Company; Notice of Compliance Filing

November 18, 2005.

Take notice that on November 14, 2005, Nautilus Pipeline Company, L.L.C., (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute Eighth Revised Sheet No. 216, to become effective September 1, 2005.

Nautilus states that the filing is being made to change ''GISB'' to read ''NAESB'' on the tariff sheet.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6502 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–23–000]

Northwest Pipeline Corporation; KN Gas Gathering, Inc. and Rocky Mountain Natural Gas Company; Notice of Joint Application for Abandonments

November 17, 2005.

Take notice that on November 10, 2005, Northwest Pipeline Corporation (Northwest), KN Gas Gathering, Inc. (KNGG), and Rocky Mountain Natural Gas Company (RMNG) (collectively, the parties) tendered for filing with the Commission an abbreviated joint application, for permission and approval to abandon transportation, exchange and sales services under: (1) Northwest's Rate Schedules X–33 and X–45 in its FERC Gas Tariff, Original Volume No. 2, (2) KNGG's Rate Schedules X–1 and X–2 in its FERC Gas Tariff, Original Volume No. 1; and (3) RMNG's Rate Schedule T–1 in its FERC Gas Tariff, Original Volume No. 1.

The Parties states that the service agreements set forth in such Rate Schedules have been terminated due to inactivity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6475 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–24–000]

Paiute Pipeline Company; Notice of Application for Abandonment

November 17, 2005.

Take notice that on November 10, 2005, Paiute Pipeline Company (Paiute) filed an abbreviated application, pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's regulations, for permission and approval to abandon a firm transportation service rendered to United Engine & Machine Company (United Engine) pursuant to Part 284 of the Commission's regulations.

Paiute states that United Engine has provided Paiute with notice of termination of its service agreement, effective as of February 28, 2006. Paiute also indicates that the terms of the service agreement require that Paiute obtain from the Commission a specific grant of abandonment authorization prior to abandoning service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6476 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–25–000]

Paiute Pipeline Company; Notice of Application for Abandonment

November 17, 2005.

Take notice that on November 10, 2005, Paiute Pipeline Company (Paiute) filed an abbreviated application, pursuant to section 7(b) of the Natural

Gas Act and Part 157 of the Commission's regulations, for permission and approval to abandon a firm transportation service rendered to EaglePicher Filtration & Minerals, Inc. (EaglePicher) pursuant to Part 284 of the Commission's regulations.

Paiute states that EaglePicher has provided Paiute with notice of termination of its service agreement, effective as of February 28, 2006. Paiute also indicates that the terms of the service agreement require that Paiute obtain from the Commission a specific grant of abandonment authorization prior to abandoning service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6477 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–93–000]

Questar Pipeline Company; Notice of Tariff Filing

November 17, 2005.

Take notice that on November 15, 2005, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective December 16, 2005:

Fifth Revised Sheet No. 42
Eighth Revised Sheet No. 43
Eighth Revised Sheet No. 44
Tenth Revised Sheet No. 45
Fourteenth Revised Sheet No. 46
Eleventh Revised Sheet No. 71
Seventh Revised Sheet No. 71A

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6484 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–668–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Compliance Filing

November 17, 2005.

Take notice that on November 14, 2005, Southern Star Central Gas Pipeline, Inc. as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 300, to become effective November 1, 2005.

Southern Star is submitting the above-referenced revised tariff sheet in compliance with the Commission's Order issued on October 31, 2005, in the above-referenced docket.

Southern Star states that copies of the filing were served on jurisdictional customers, interested state commissions and parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an

original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6481 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–26–000, et al.]

Rainy River Energy Corporation—Wisconsin, et al.; Electric Rate and Corporate Filings

November 16, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Rainy River Energy Corporation—Wisconsin

[Docket No. EC06–26–000]

Take notice that on November 9, 2005, Rainy River Energy Corporation—Wisconsin (RR Wisconsin) submitted an application pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations, requesting authorization for RRW Wisconsin to acquire membership units in American Transmission Company LLC and Class A non-voting stock in ATC Management Inc.

Comment Date: 5 p.m. Eastern Time on November 30, 2005.

2. Michigan Electric Transmission Co., LLC

[Docket No. EC06–27–000]

Take notice that on November 10, 2005, Michigan Electric Transmission Company, LLC (METC) submitted an application under section 203 of the Federal Power Act, 16 U.S.C. § 824b and part 33 of the Commission's regulations, 18 CFR part 33, for any required authorizations associated with its acquisition of certain electric facilities from Consumers Energy Company.

Comment Date: 5 p.m. Eastern Time on December 1, 2005.

3. Wildorado Wind, LP

[Docket No. EG06–5–000]

Take notice that on November 9, 2005, Wildorado Wind LP (Wildorado Wind), filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Wildorado Wind states that it is a 161 MW facility located in Oldham County, Texas with transmission line extending into Potter and Randall Counties and is owned and operated by Wildorado Wind, a wholly-owned subsidiary of Cielo Wind Power Corporation.

Comment Date: 5 p.m. Eastern Time on November 30, 2005.

4. Wind park Bear Creek, LLC

[Docket No. EG06–6–000]

Take notice that on November 9, 2005, Wind park Bear Creek, LLC, a Delaware limited liability company (WpBC), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

WpBC states that it intends to operate a 24-MW wind powered generation facility currently under construction in the Township of Bear Creek, Luzerne County, Pennsylvania (Facility). WpBC further states that when completed, the electric energy produced by the Facility will be sold into the wholesale power market of the PJM Region. The Facility is expected to begin commercial operation by December 31, 2005.

Comment Date: 5 p.m. Eastern Time on November 30, 2005.

5. Xcel Energy Services Inc.

[Docket No. ER05–1307–001]

Take notice that on November 3, 2005, Xcel Energy Services Inc. (XES) tendered for filing revised tariff sheets to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff, First Revised Volume No. 1. XES states that these revised tariff sheets are being submitted on behalf of its operating companies Northern States Power Company—Minnesota and Northern States Power Company—Wisconsin and Southwestern Public Service Company.

Comment Date: 5 p.m. Eastern Time on November 25, 2005.

6. Michigan Electric Transmission Company, LLC

[Docket Nos. ER05–1472–001 and EC05–137–000]

Take notice that on November 4, 2005, Michigan Electric Transmission Company, LLC (METC) submitted revisions to its previously filed September 12, 2005, Interconnection Facilities Agreement between METC and the Wolverine Power Supply Cooperative, Inc. METC requests an effective date of November 11, 2005.

METC states that copies were served on Wolverine and the Midwest ISO.

Comment Date: 5 p.m. Eastern Time on November 25, 2005.

7. Michigan Electric Transmission Company, LLC

[Docket No. ER06–4–001]

Take notice that on November 4, 2005, Michigan Electric Transmission Company, LLC (METC) submitted revisions to its previously filed Interconnection Facilities Agreement (IFA) between METC and the Wolverines Power Supply Cooperative, Inc. (Wolverine). METC requests an effective date for the IFA of October 4, 2005. Copies of this filing were served on Wolverine and on the Midwest Independent Transmission System Operator, Inc.

Comment Date: 5 p.m. Eastern Time on November 22, 2005.

8. Arizona Public Service Company

[Docket No. ER06–134–000]

Take notice that on November 2, 2005, the Arizona Public Service Company (APS) submitted for filing a Notice of Cancellation of it FERC Electric Rate Schedule No. 247.

APS states that copies of this filing have been served upon PacifiCorp and the Arizona Corporation Commission.

Comment Date: 5 p.m. Eastern Time on November 23, 2005.

9. Kentucky Utilities Company; Louisville Gas and Electric Company; and LG&E Energy LLC

[Docket Nos. ES06–3–000 and EC06–23–000]

Take notice that on October 31, 2006, Louisville Gas and Electric Company (LG&E), Kentucky Utilities Company (KU), and LG&E Energy LLC (LG&E Energy) tendered for filing an application requesting authorization, pursuant to section 204 of the Federal Power Act, for KU to issue debt securities in an amount not to exceed $400 million outstanding at any one time, and authorization, pursuant to section 203 of the Federal Power Act, for the purchase or acquisition by LG&E and LG&E Energy of debt of its affiliate

KU in an amount not to exceed $400 million outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on November 22, 2005.

10. Louisville Gas and Electric Company; Kentucky Utilities Company; and LG&E Energy LLC

[Docket Nos. ES06–4–000 and EC06–22–000]

Take notice that on October 31, 2005, Louisville Gas and Electric Company (LG&E), Kentucky Utilities Company (KU and LG&E Energy LLC, (LG & E Energy), tendered for filing an application requesting authorizing pursuant to section 204 of the Federal Power Act, for LG&E to issue debt securities in an amount not to exceed $400 million outstanding at any one time, and authorization, pursuant to section 203 of the Federal Power Act, for the purchase or acquisition by KU and LE&E Energy of debt of its affiliate LG&E in an amount not to exceed $400 million outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on November 22, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6471 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 16, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–874–002.

Applicants: Energy West Resources, Inc.

Description: Energy West Resources, Inc. submits a compliance filing to correct a typographical error in its market behavior rules in FERC's November 3, 2005 Order.

Filed Date: November 7, 2005.

Accession Number: 20051114–0011.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER01–3000–009; EC01–146–001; RT01–101–001; ER05–1435–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc.'s additional signature pages to the Supplemental Agreement with Midwest ISO International Transmission Co. *et al.*

Filed Date: November 7, 2005.

Accession Number: 20051114–0014.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER04–776–006.

Applicants: PJM Interconnection, LLC.

Description: PJM submits for filing a State Certification by General Counsel of Public Service Commission of Maryland as required by the Operating Agreement.

Filed Date: October 19, 2005.

Accession Number: 20051019–5076.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 28, 2005.

Docket Numbers: ER06–158–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an unexecuted Large Generator Interconnection Agreement with Summit Wind, LLC and Interstate Power and Light Co., effective October 26, 2005.

Filed Date: November 7, 2005.

Accession Number: 20051109–0008.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–164–000.

Applicants: Duke Energy Corporation.

Description: Duke Energy Corp on behalf of Duke Electric Transmission submits Second Revised Sheet No. 10 *et al.* to FERC Electric Tariff, Third Revised Volume No. 4 in compliance with FERC's October 7, 2005 order.

Filed Date: November 7, 2005.

Accession Number: 20051109–0171.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–165–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Co submits revised Tariff Sheets adopting the revised TLR procedures.

Filed Date: November 7, 2005.

Accession Number: 20051109–0170.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–166–000.

Applicants: Aquila, Inc.

Description: Aquila, Inc. on behalf of Aquila Networks-MPS *et al.* submits First Revised Sheet No. 7 *et al.* to FERC Electric Tariff, Fourth Revised Volume No. 24 pursuant to section 205 of the Federal Power Act.

Filed Date: November 7, 2005.

Accession Number: 20051109–0169.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–167–000.

Applicants: Liberty Power Maryland LLC.

Description: Liberty Power Maryland LLC submits petition for acceptance of initial rate schedule, waivers & blanket authority.

Filed Date: November 7, 2005.

Accession Number: 20051109–0250.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2005.

Docket Numbers: ER06–168–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corp. submits Original Sheet 1 *et al.* to FERC Electric Tariff, First Revised Volume No. 2 for its South Dakota operations etc.

Filed Date: November 7, 2005.

Accession Number: 20051109–0210.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–169–000.

Applicants: Suez Energy Marketing NA.

Description: Suez Energy Marketing NA submits notice of succession to reflect new corporate name re an application to make sales of ancillary services at market-based rates etc.

pursuant to section 205 of the Federal Power Act.

Filed Date: November 7, 2005.

Accession Number: 20051109–0174.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–173–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. as agent on behalf of Entergy Operating Companies submits an amendment to its OATT, consisting of First Revised Sheet No. 54 *et al.* to FERC Electric Tariff, Second Revised Volume No. 3.

Filed Date: November 7, 2005.

Accession Number: 20051109–0245.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–174–000.

Applicants: Mid-Continent Area Power Pool.

Description: Mid-Continent Area Power Pool *et al.* submits Second Rev. Sheet No. 137 reflecting that their Schedule F is modified to adopt North American Electric Reliability Council's most recent version of its TLR Procedures.

Filed Date: November 7, 2005.

Accession Number: 20051109–0246.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–175–000.

Applicants: Sierra Pacific Power Company.

Description: Sierra Pacific Power Co. submits revisions to Exhibit F of the General Transfer Agreement with Bonneville Power Administration.

Filed Date: November 7, 2005.

Accession Number: 20051109–0247.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–176–000.

Applicants: PSEG Waterford Energy LLC.

Description: PSEG Waterford Energy LLC submits notice of cancellation of market-based authority under Applicant's FERC Electric Tariff, Original Volume No. 1.

Filed Date: November 7, 2005.

Accession Number: 20051109–0248.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–177–000.

Applicants: Econnergy Energy Company, Inc.

Description: Econnergy Energy Co., Inc. requests cancellation of Market Based Rate Authority.

Filed Date: November 7, 2005.

Accession Number: 20051109–0236.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER94–142–029; ER05–570–004; ER98–3774–004; ER03–717–003; ER00–2603–004.

Applicants: Tractebel Energy Marketing, Inc.; Hot Spring Power Company, LP; Choctaw Generation Limited Partnership; Chehalis Power Generation Ltd; Trigen-Syracuse Energy Corporation.

Description: Tractebel Energy Marketing Inc. *et al.* submits a triennial market power update and revisions to market-based rate tariffs.

Filed Date: November 7, 2005.

Accession Number: 20051110–0103.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER95–1787–018.

Applicants: Texaco Natural Gas, Inc.

Description: Texaco Natural Gas, Inc. submits a compliance filing to correct a typographical error in its market behavior rules in FERC's November 3, 2005 Order.

Filed Date: November 7, 2005.

Accession Number: 20051114–0010.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER96–2830–007.

Applicants: Washington Gas Energy Services, Inc.

Description: Washington Gas Energy Services, Inc. submits a compliance filing to correct a typographical error in its market behavior rules in FERC's November 3, 2005 Order.

Filed Date: November 7, 2005.

Accession Number: 20051114–0013.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER99–3077–002.

Applicants: Colorado Power Partners.

Description: Colorado Power Partners submits an amendment to the Triennial Updated Market Power Analysis and a request for shortened notice period.

Filed Date: November 10, 2005.

Accession Number: 20051115–0033.

Comment Date: 5 p.m. Eastern Time on Monday, November 21, 2005.

Docket Numbers: ER99–3197–002.

Applicants: BIV Generation Company, LLC.

Description: BIV Generation Co., LLC submits an amendment to the Triennial Updated Market Power Analysis and a request for shortened notice period.

Filed Date: November 10, 2005.

Accession Number: 20051115–0032.

Comment Date: 5 p.m. Eastern Time on Monday, November 21, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6472 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 17, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1221–002.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Co's Transmission Interconnection Agreement with ComEd, Ameren Services Co, MidWest ISO and PJM and request that FERC defer for consideration ComEd's 7/15/05 filing pending refiling of the service agreement.

Filed Date: 11/08/2005.

Accession Number: 20051114–0009.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER05–524–001.

Applicants: Xcel Energy Services.

Description: Xcel Energy Services, on behalf of, Northern States Power Co submits the Refund Report required by FERC's 11/4/05 Order which accepted an executed Generation Interconnection Agreement with Dan Mar Transmission, LLC.

Filed Date: 11/09/2005.

Accession Number: 20051114–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 30, 2005.

Docket Numbers: ER05–751–000.

Applicants: American Electric Power Service Company.

Description: American Electric Power on behalf of the American Electric Power System submits a Settlement Agreement.

Filed Date: 11/08/2005.

Accession Number: 20051109–0238.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER06–178–000.

Applicants: Exelon Corporation.

Description: Exelon Corp submits a notice of cancellation, as Attachment A, regarding the cancellation of Unicom Power Marketing, Inc's FERC Electric Rate Schedule No. 1.

Filed Date: 11/08/2005.

Accession Number: 20051109–0249.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER06–179–000.

Applicants: MEP Investments, LLC.

Description: Aquila Merchant Services, LLC on behalf of MEP Investment, submits a notice of cancellation of its FERC Electric Rate Schedule Volume No. 1.

Filed Date: 11/08/2005.

Accession Number: 20051110–0070.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER06–180–000.

Applicants: MEP Pleasant Hill Operating, LLC.

Description: Aquila Merchange Services, LLC on behalf of MEP Pleasant Hill Operating, LLC submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1.

Filed Date: 11/08/2005.

Accession Number: 20051110–0069.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER06–181–000.

Applicants: Pleasant Hill Marketing, LLC.

Description: Aquila Merchange Services, LLC on behalf of Pleasant Hill Marketing, LLC submits a Notice of Cancellation of its FERC Electric Rate Schedule Volume No. 1.

Filed Date: 11/08/2005.

Accession Number: 20051110–0068.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER06–182–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co submits an amended Electric Transmission Interconnection Agreement with Corn Belt Power Cooperative dated 10/31/05 pursuant to section 205 of the Federal Power Act.

Filed Date: 11/09/2005.

Accession Number: 20051110–0120.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 30, 2005.

Docket Numbers: ER06–183–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Corp submits Second Revised Sheet No. 8 et al to FERC Electric Tariff, Second Revised Volume No. 5 in compliance with FERC's 10/7/05 Order.

Filed Date: 11/08/2005.

Accession Number: 20051110–0123.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Docket Numbers: ER06–184–000.

Applicants: Midwest Independent System Operator.

Description: Midwest Independent Transmission System Operator, Inc & American Transmission Co, LLC et al submit a notice of cancellation for the Stratford Water & Electric Utility Service Agreement.

Filed Date: 11/09/2005.

Accession Number: 20051114–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 30, 2005.

Docket Numbers: ER06–189–000.

Applicants: Electric Energy, Inc.

Description: Electric Energy, Inc submits a Letter Supplement to its 9/2/87 Power Supply Agreement with Union Electric Co, Ameren Energy Resources Co, and Kentucky Utilities Co.

Filed Date: 11/09/2005.

Accession Number: 20051114–0082.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 30, 2005.

Docket Numbers: ER06–190–000.

Applicants: Electric Energy, Inc.

Description: Electric Energy, Inc submits Modification No. 16 to its 9/2/87 Power Contract with the Unites States Department of Energy.

Filed Date: 11/09/2005.

Accession Number: 20051114–0083.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 30, 2005.

Docket Numbers: ER99–230–010; ER03–762–011.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Alliant Energy Corporate Services, Inc. on behalf of its Alliant Energy Operating Companies in compliance 9/19/05 Order submitted a refund report.

Filed Date: 11/08/2005.

Accession Number: 20051108–5007.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 29, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an

eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6473 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Friday, November 18, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1325–001; ER05–1319–001; ER05–1324–001.

Applicants: Southern California Edison Company; Pacific Gas & Electric Company; San Diego Gas & Electric Company.

Description: Southern California Edison Co. submits a compliance filing for the wholesale distribution access tariff small generation interconnection procedures & small generation interconnection agreement.

Filed Date: 11/10/2005.

Accession Number: 20051117–0081.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER05–1491–001.

Applicants: Vermont Yankee Nuclear Power Corporation.

Description: Vermont Yankee Nuclear Power Corp submits an amendment to its 9/19/05 filing of a market-based sales tariff, designated as FERC Electric Tariff, Original Volume No. 1.

Filed Date: 11/10/2005.

Accession Number: 20051116–0187.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER05–1497–001.

Applicants: Dearborn Industrial Generation, L.L.C.

Description: Dearborn Industrial Generation, L.L.C's submits revised FERC Electric Tariff Volume No. 1, First Revised Sheet No. 18.

Filed Date: 11/02/2005.

Accession Number: 20051102–5049.

Comment Date: 5 p.m. Eastern Time on Monday, November 28, 2005.

Docket Numbers: ER06–9–001.

Applicants: FPL Energy Burleigh County Wind, LLC.

Description: FPL Energy Burleigh County Wind, LLC's response to FERC Staff.

Filed Date: 11/10/2005.

Accession Number: 20051116–0188.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–187–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission Operator, Inc submits a Large Generation Interconnection Agreement among Valley View Transmission, LLC, the Midwest ISO, and Great River Energy.

Filed Date: 11/10/2005.

Accession Number: 20051114–0081.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–188–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a revised Network Integration Service Agreement with the City of Eaton Rapids, MI.

Filed Date: 11/10/2005.

Accession Number: 20051114–0086.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–191–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc et al. jointly submits its Order 2006 compliance filing for New England's Standardization of Small Generator Interconnection Agreements & Procedures.

Filed Date: 11/10/2005.

Accession Number: 20051115–0034.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–192–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to their Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 11/10/2005.

Accession Number: 20051115–0103.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–193–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. et al. submits transmittal letter and proposed improvements to Schedule 22 of the ISO OATT pursuant to section 205 of the Federal Power Act and Part 35 of FERC's Regulations.

Filed Date: 11/10/2005.

Accession Number: 20051115–0008.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–194–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an unexecuted Large Generator Interconnection Agreement among Wisconsin Electric Co. et al.

Filed Date: 11/10/2005.

Accession Number: 20051115–0004.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–195–000.

Applicants: K Road BG Management LLC.

Description: K Road BG Management, LLC's request Commission approval of the market-based rate authorization and request for certain waivers and blanket authorization.

Filed Date: 11/10/2005.

Accession Number: 20051115–0005.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–196–000.

Applicants: Cantor Fitzgerald Brokerage, L.P.

Description: Cantor Fitzgerald Brokerage, LP submits its proposed market-based rate schedule FERC Electric Rate Schedule No. 1.

Filed Date: 11/10/2005.

Accession Number: 20051115–0006.

Comment Date: 5 p.m. Eastern Time on Thursday, December 01, 2005.

Docket Numbers: ER06–197–000.

Applicants: Cabrillo Power I LLC.

Description: Cabrillo Power I LLC et al. submit revisions to the Reliability Must-Run Service Agreements with the California Independent System Operator Corp.

Filed Date: 11/10/2005.

Accession Number: 20051115–0009.

Comment Date: 5 p.m. Eastern Time on Thursday, December 1, 2005.

Docket Numbers: ER06–198–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric & Power Co. dba Dominion Virginia Power submits a revised unexecuted Mutual Operating Agreement, First Revised Service Agreement No. 1301 with North Carolina Electric Membership Corp.

Filed Date: 11/10/2005.

Accession Number: 20051115–0001.

Comment Date: 5 p.m. Eastern Time on Thursday, December 1, 2005.

Docket Numbers: ER06–199–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits revisions to the PJM Open Access Transmission Tariff to comply with FERC's Final Rule in RM02–12–000.

Filed Date: 11/10/2005.

Accession Number: 20051115–0003.

Comment Date: 5 p.m. Eastern Time on Thursday, December 1, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6488 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2630–004 Oregon]

PacifiCorp; Notice of Availability of Draft Environmental Assessment

November 18, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for new license for the Prospect Nos. 1, 2, and 4 Hydroelectric Project, located on the Rogue River, Middle Fork Rogue River, and Red Blanket Creek in Jackson County, Oregon, and has prepared a Draft Environmental Assessment (Draft EA) for the project. The Draft EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the Draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice and should be addressed to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2630–004 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, contact Nicholas Jayjack at (202) 502–6073.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6500 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–20–000]

Unocal Windy Hill Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Windy Hill Gas Storage Project and Request for Comments on Environmental Issues

November 18, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Windy Hill Gas Storage Project involving construction and operation of facilities by Unocal Windy Hill Gas Storage, LLC (Unocal) in Morgan County, Colorado. These facilities would consist of about 14.1 miles of 16-inch-diameter pipeline, a 14,200-horsepower (hp) compressor station, four water supply wells, a solution mining facility, a brine disposal facility, six groundwater monitoring wells, four gas storage caverns, a gas dehydration facility, and electric utilities. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a Unocal representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. Unocal would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Unocal could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' was attached to the project notice that Unocal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the

Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Unocal wants to provide up to 6 billion cubic feet of working gas storage capacity and transportation to customers, with a maximum injection rate of 135 million cubic feet per day (MMcf/d), and a maximum withdrawal rate of 400 MMcf/d. Unocal seeks authority to construct and operate in Morgan County, Colorado:

Phase I Facilities (2006)

- Two solution-mined gas storage salt caverns (4–17S and 5–17S);
- Four water supply wells;
- Four 400-horsepower (hp) pumps for the four water supply wells;
- Two 800-hp booster pumps for injection of water for cavern development;
- Two 3,000-gallon diesel tanks for cavern development;
- Three 1,500-barrel (bbl) fiberglass skim tanks to separate diesel oil from brine solution;
- One 210-bbl steel tank for holding recovered diesel oil;
- A 125- by 30-foot mining pump building and electrical control room;
- A 178- by 178-foot brine disposal retention pond;
- Four brine disposal wells;
- Two 300-hp brine disposal pumps, including two 1,000-hp pumps if needed;
- A 1,000-bbl fiberglass feed-water suction tank for the brine disposal pumps;
- Six shallow groundwater monitoring wells;
- A dehydration facility consisting of three 1.5-million British thermal unit triethylene glycol dehydrators for drying out the caverns;
- A compressor station consisting of four 3,550-hp compressors driven by natural gas-fired reciprocating engines, totaling 14,200 hp;
- An inlet scrubber for liquid removal from in-coming gas;
- A gas cooler to cool the gas leaving the compressor station;
- A 1.75-mile extension from the existing Morgan County Rural Electric Association's 12.47 kilovolt power line;
- About 4.4 miles of permanent access roads;
- A 20-foot widening of about 0.7 mile of the existing County Road Q; and
- Two 60-foot-wide all-weather gravel roads totaling 0.41 mile.

Phase II Facilities (2008)

- Two additional solution-mined gas storage salt caverns (6–17S and 7–17S).

The location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would require about 201.7 acres of land. Following construction, about 119.6 acres would be maintained as new aboveground facility sites and permanent rights-of-way. The remaining 82.1 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP06–20–000.
- Mail your comments so that they will be received in Washington, DC on or before December 23, 2005.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6491 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Temporary Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

November 16, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for temporary deviation from that required to expand the operating limits for the upper reservoir from December 1 through March 31, 2006, for the purpose of additional operating flexibility under ISO–NE emergency conditions.

b. *Project No.:* 2485–028.

c. *Date Filed:* November 16, 2005.

d. *Applicant:* Northeast Generation Company (NGC).

e. *Name of Project:* Northfield Mountain Pumped Storage Hydroelectric Project.

f. *Location:* The project is located on the east side of the Connecticut River, in the towns of Northfield and Erving, in Franklin County, Massachusetts. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* 18 CFR 4.201.

h. *Applicant Contact:* Mr. William J. Nadeau, Vice President and Chief Operating Officer, Northeast Generation Services Company, 273 Dividend Road, Rocky Hill, Connecticut 06067, (860) 665–5315 with copies of all correspondence and communications to:

Mr. John Howard, Station Manager, Northfield Mountain Station, 99 Millers Falls Road, Northfield, Massachusetts 01360, (413) 659–4489; and

Ms. Catherine E. Shively, Senior Counsel, Public Service Company of New Hampshire, P.O. Box 330, Manchester, New Hampshire 03105, (603) 634–2326.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon (202) 502–8887, or *diana.shannon@ferc.gov*.

j. *Deadline for filing motions to intervene, protests, comments:* November 23, 2005.

k. *Description of Proposed Action:* NGC seeks temporary authorization to modify the upper reservoir's upper and lower water service elevation limits from 1000.5 and 938 feet, to 1004.5 and 920 feet, respectively, and to allow maximum daily generation of 10,465 megawatt hours only under certain ISO–NE emergency operating conditions from December 1, 2005–March 31, 2006. At all other times, the reservoir would be operated between 1004.5 to 947.7 feet, with a maximum daily generation of 8,475 MWh, which is the existing allowable generation limit. The project uses some of the storage behind Turner Falls Dam (FERC No. 1889) as the lower reservoir for the pumped storage operations and proposes no changes in the operating limits of the Turners Falls Reservoir. NOC requests that the temporary authority become effective December 1, 2005.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and

reproduction at the address in item (h) above

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2485–028). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6478 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11588–011]

Alaska Power and Telephone Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license.

b. *Project No.:* P–11588–011.

c. *Date Filed:* October 17, 2005.

d. *Applicant:* Alaska Power and Telephone Company.

e. *Name of Project:* Otter Creek Hydroelectric Project.

f. *Location:* The project would be located on Kasidaya Creek at Taiya Inlet, in the First Judicial District of Alaska. The project would occupy about 6 acres of Federal land within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Glen D. Martin, Alaska Power and Telephone Company, 193 Otto Street, Port Townsend, WA 98368. Phone (360) 385–1733.

i. *FERC Contact:* Any questions on this notice should be addressed to Eric Gross, P.E. at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 5, 2005.

k. *Description of Application:* The licensee proposes to: (1) Construct a 675-foot-long, 9-foot horseshoe tunnel to provide a route for the upper portion of the penstock and access to the diversion structure instead of a 1,000-foot-long equipment trail; (2) change the penstock composition and alignment, as well as the alignment and width of the proposed access road that would run alongside the penstock for a length of 2,860 feet from the powerhouse area to the lower portal of the tunnel; (3) move the powerhouse 80 feet to the south, (4) increase tailrace length from 75 to 163 feet; and (5) move the marine access 600 feet to the north and include a 250-foot-long rockfill jetty with a 35-foot-long quay and a boat ramp on the north side, and a 15,000 square-foot rockfill staging area onshore. These modifications would require changing the specific Federal lands occupied by the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–2246–047). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6492 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 12379–005.

c. *Date Filed:* August 26, 2005.

d. *Applicant:* Lake Dorothy Hydro, Inc., Alaska.

e. *Name of Project:* Lake Dorothy Hydroelectric Project.

f. *Location:* The project is located on Dorothy Creek, near Juneau, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Corry V. Hildebrand, Lake Dorothy Hydro Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201.

i. *FERC Contact:* Any questions on this notice should be addressed to Eric Gross, P.E. at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 19, 2005.

k. *Description of Request:* In their August 26, 2005 filing, Lake Dorothy Hydro, Inc. (licensee) proposes to amend the license for the Lake Dorothy Hydroelectric Project to replace the proposed lake tap at Bart Lake with a rock fill diversion dam and outlet works. According to the licensee the geology of Bart Lake will not support the lake tap and that the natural debris dam that contains the lake is subject to periodic failure and cannot be relied upon for constant lake levels. In a supplemental October 21, 2005, filing the licensee also proposes to relocate the powerhouse and the substation. The license calls for the powerhouse and substation to be built on a beach fill site. According to the licensee, a geotechnical investigation determined that the beach fill site would not be stable in an earthquake, so the licensee proposes relocating the structures to separate rock benches upstream of the beach fill site. The licensee states that there will be no additional environmental impacts due to these revisions, and that the project operation would be unchanged.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6493 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 18, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12612–000.

c. *Date filed:* September 15, 2005.

d. *Applicant:* Tacoma Power.

e. *Name of Project:* Narrows Tidal Energy Project.

f. *Location:* The project would be located in the southern portion of Puget Sound, an inland marine waterway of the northern Pacific Ocean, Pierce County, Washington. The project would not occupy Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ted Beatty, Power Management, City of Tacoma, Department of Public Utilities, Light Division, (dba) Tacoma Power, 3628 South 35th Street, Tacoma, WA 98409–319, (253) 502–8341.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed tidal energy project would consist of: (1) Units resembling windmills with slow-moving blades, using tidal flow on a vertical shaft with blades, with hour-glass-shaped generators that use pressure differential to move turbines, having installed capacity ranging from 90 to 750 kilowatts, and placed deep enough in the Tacoma Narrows to allow unencumbered marine traffic; (2) a proposed 115-kilovolt transmission line; and (3) appurtenant facilities. The proposed project would be connected to Tacoma Power's existing transmission system.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6494 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filingand Soliciting Motions To Intervene, Protests, and Comments

November 18, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12613–000.

c. *Date filed:* September 19, 2005.

d. *Applicant:* Tygart, LLC.

e. *Name of Project:* Tygart Dam Hydroelectric Project.

f. *Location:* The project would be located in the Tygart Creek, in Taylor County, West Virginia. The project would use the Tygart Dam owned by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Larson, Tygart, LLC, 500 IDS Center, Minneapolis, MN 55402, Phone (612) 632–3355.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would use the U.S. Army Corps of Engineer's Tygart Dam and consist of: (1) A proposed powerhouse containing two generating units with a total installed capacity of 20 megawatts, (2) a proposed 6,700-foot-long, 138-kilovolt transmission line; and (3) appurtenant facilities. The project would have an annual generation of 117 gigawatt hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6495 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2005.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Minnesota Municipal Power Company filed the application for Project No. 12616–000 on October 3, 2005 at 8:35 a.m.

Three Rivers Park District filed the application for Project No. 12618–000 on October 3, 2005 at 8:35 a.m.

c. Name of the project is Coon Rapids Project. The project would be located on the Mississippi River in Hennepin and Anoka Counties, Minnesota. The

existing dam is owned and operated by the Three Rivers Park District.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Minnesota Municipal Power Company: Mr. James D. Larson, Minnesota Municipal Power Company, 200 South Sixth Street, Suite 300, Minneapolis, MN 55402, (612) 349–6868. For Three Rivers Park District: Mr. Douglas F. Bryant, Three Rivers Park District, 3000 Xenium Lane N, Plymouth, MN 55441, (763) 559–6764.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Minnesota Municipal Power Company would consist of: (1) An existing 260-foot-long, 30-foot-high dam, (2) an existing impoundment having a surface area of 600 acres with negligible storage and a normal water surface elevation of 830.1 feet NGVD, (3) a proposed powerhouse containing 2 generating units having a total installed capacity of 8 MW, (4) a proposed 600-foot-long, 4.16 kV underground transmission line; and (5) appurtenant facilities. The project would have an annual generation of 45.3 GWh, which would be sold to a local utility.

The project proposed by Three Rivers Park District would consist of: (1) An existing 260-foot-long, 30-foot-high dam, (2) an existing impoundment having a surface area of 600 acres with negligible storage and a normal water surface elevation of 830.1 feet NGVD, (3) a proposed powerhouse containing 2 generating units having a total installed capacity of 7.2 MW, (4) a proposed 600-foot-long, 4.16 kV underground transmission line; and (5) appurtenant facilities. The project would have an annual generation of 41.3 GWh, which would be sold to a local utility.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6496 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing And Soliciting Motions To Intervene, Protests, and Comments

November 18, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12619–000.

c. *Date filed:* October 12, 2005.

d. *Applicant:* Cascade Creek, LLC.

e. *Name of Project:* Ruth Lake Project.

f. *Location:* The project would be located in the Ruth Lake and Delta Creek, in Petersburg-Wrangell Borough, Alaska. The project would be located within the Tongrass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steven C. Marmon, Cascade Creek, LLC, 3633 Alderwood Avenue, Bellingham, WA 98225, Phone (360) 738–9999.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing natural lake having a storage capacity from 500 acre-feet to 17,000 acre-feet, (2) a proposed lake tap structure, (3) a proposed 10,000-foot-long, 8-foot-diameter steel tunnel/penstock, (4) a proposed powerhouse containing two generating units with a total installed capacity of 20 megawatts, (5) a proposed 20-mile-long 138-kilovolt transmission line; and (6) appurtenant facilities. The project would have an annual generation of 60 gigawatt hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6497 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 18, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12621–000.

c. *Date filed:* October 11, 2005.

d. *Applicant:* Cascade Creek, LLC.

e. *Name of Project:* Scenery Lake Project.

f. *Location:* The project would be located on Scenery Lake and Scenery Creek, in Petersburg-Wrangell Borough, Alaska. The project would be located within the Tongrass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steven C. Marmon, Cascade Creek, LLC, 3633 Alderwood Avenue, Bellingham, WA 98225, Phone (360) 738–9999.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing natural lake having a storage capacity of 50,000 acre-feet and normal water surface elevation of 1,070 feet mean sea level, (2) a proposed lake tap structure, (3) a proposed 7,500-foot-long, 8-foot-diameter steel tunnel/penstock, (4) a proposed powerhouse containing two to four generating units with a total installed capacity from 40 to 80 megawatts, (5) a proposed 7-mile-long, 138-kilovolt transmission line; and (6) appurtenant facilities. The project would have an annual generation of 60 gigawatt hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6498 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands And Waters And Soliciting Comments, Motions to Intervene, and Protests

November 18, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2042–033.

c. *Date Filed:* November 1, 2005.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* Pend Oreille River in northeastern Washington and northwestern Idaho. The project occupies about 717 acres of federal lands, including about 190 acres within the Colville National Forest, about 493 acres within the Kalispel Indian Reservation, and lands administered by the Bonneville Power Administration, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Mark Cauchy, Director, Regulatory and Environmental Affairs, Public Utility District No. 1 of Pend Oreille County, P.O. Box 190, Newport, WA 99153, (509) 447–9331

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* December 19, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2042–033) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* Public Utility District No. 1 of Pend Oreille County is requesting Commission approval to permit the development of a 40-slip marina within the project boundary. The marina is to be included in a proposed RV resort community near Cusick, Washington in Pend Oreille County. With the exception of the marina, the RV resort will be constructed on non-project lands.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6499 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–13–000]

Joint Boards on Security Constrained Economic Dispatch; Notice Announcing the Agenda for the PJM/MISO Joint Board Meeting

November 16, 2005.

On September 30, 2005, the Commission announced its intention to hold initial joint board meetings.[1] These joint board meetings are being held pursuant to section 1298 of the Energy Policy Act of 2005,[2] which added section 223 to the Federal Power Act (FPA).[3] FPA section 223 requires the Commission to convene joint boards on a regional basis pursuant to FPA section 209 ''to study the issue of security constrained economic dispatch for the various market regions,'' ''to consider issues relevant to what constitutes 'security constrained economic dispatch' and how such a mode of operating * * * affects or enhances the reliability and affordability of service,'' and ''to make recommendations to the Commission.'' Subsequently, several notices were issued providing details on the joint boards and the joint board meetings.[4]

[1] Joint Boards on Security Constrained Economic Dispatch, 112 FERC ¶ 61,353 (2005) (September 30 Order).

[2] Pub. L. No. 109–58, § 1298, 119 Stat. 594, 986 (2005).

[3] 16 U.S.C. §§ 824 *et seq.* (2000).

[4] Three notices were issued on October 14, 21 and 27, 2005, in accordance with the September 30 Order. The first notice announced the location and other details for the joint board meetings. The

Continued

This notice provides the agenda for the initial joint board meeting for the PJM/MISO region scheduled for Monday, November 21, 2005 from 10 a.m. to 4 p.m. (Central Time) at the Doubletree Hotel O'Hare—Rosemont, 5460 N. River Road, Rosemont, IL 60018.

Attachment A of this notice contains the agenda for the joint board meeting.

Electronic copies of presentation materials will be made available on the Commission Web site *www.ferc.gov* as they are received (select the ''Month View'' under the Calendar of Events, then click the ''View Events'' link for the date of the conference and finally click ''View Details'' next to the conference to access the information).

A free Web cast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the Web casts; and offers access to the open meetings via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 704–993–3100.

Transcripts of the meeting will be immediately available for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

Comments related to the meeting may be filed in the captioned docket no later than December 13, 2005. The comments will be publicly available for review on the Commission's e-Library.

For more information about the meeting, please contact Sarah McKinley at 202–502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–6487 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

second notice provided a list of the members of each joint board. A third notice provided hotel information for the joint board meetings for the PJM/MISO and Northeast regions and noted that the Province of Manitoba was participating as an observer in the PJM/MISO joint board. Subsequent notices announcing the agenda for the West and South joint board meetings were issued on November 9, 2005.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–13–000]

Joint Boards on Security Constrained Economic Dispatch; Notice Announcing the Agenda for the Northeast Joint Board Meeting

November 18, 2005.

On September 30, 2005, the Commission announced its intention to hold initial joint board meetings.[1] These joint board meetings are being held pursuant to section 1298 of the Energy Policy Act of 2005,[2] which added section 223 to the Federal Power Act (FPA).[3] FPA section 223 requires the Commission to convene joint boards on a regional basis pursuant to FPA section 209 ''to study the issue of security constrained economic dispatch for the various market regions,'' ''to consider issues relevant to what constitutes 'security constrained economic dispatch' and how such a mode of operating * * * affects or enhances the reliability and affordability of service,'' and ''to make recommendations to the Commission.'' Subsequently, several notices were issued providing details on the joint boards and the joint board meetings.[4]

This notice provides the agenda for the initial joint board meeting for the Northeast region scheduled for Tuesday, November 29, 2005 from 10 a.m. to 4 p.m. (Eastern Time) at the Colonnade, 120 Huntington Avenue, Boston, Massachusetts 02116.

Attachment A of this notice contains the agenda for the joint board meeting.

Electronic copies of presentation materials will be made available on the Commission Web site *http://www.ferc.gov* as they are received (select the ''Month View'' under the Calendar of Events, then click the ''View Events'' link for the date of the conference and finally click ''View Details'' next to the conference to access the information).

A free Web cast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the Web casts; and offers access to the open meetings via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be immediately available for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

Comments related to the meeting may be filed in the captioned docket no later than December 21, 2005. The comments will be publicly available for review on the Commission's e-Library.

For more information about the meeting, please contact Sarah McKinley at 202–502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–6504 Filed 11–23–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Joint Boards on Security Constrained Economic Dispatch, 112 ¶ 61,353 (2005) (September 30 Order).

[2] Pub. L. No. 109–58, § 1298, 119 Stat. 594, 986 (2005).

[3] 16 U.S.C. §§ 824 *et seq.* (2000).

[4] Three notices were issued on October 14, 21 and 27, 2005, in accordance with the September 30 Order. The first notice announced the location and other details for the joint board meetings. The second notice provided a list of the members of each joint board. A third notice provided hotel information for the joint board meetings for the PJM/MISO and Northeast regions and noted that the Province of Manitoba was participating as an observer in the PJM/MISO joint board. Subsequent notices announcing the agenda for the West and South joint board meetings were issued on November 9, 2005 and for the PJM/MISO board meeting on November 16, 2005.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8001–9; NV–TV–001]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for El Dorado Energy, LLC in Clark County, NV

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This notice announces that the EPA Administrator has responded to a citizen petition requesting that EPA object to an operating permit issued by the Clark County Department of Air Quality and Environmental Management (DAQEM). The Administrator has denied in full a petition submitted by Robert Hall requesting that the Administrator object to the state operating permit issued to El Dorado Energy in Boulder City, Nevada.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of any portion of the petition which EPA denied in the United States Court of Appeals for the Ninth Circuit. Any petitions for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: Copies of the final order, petition, and other supporting information are available at the Environmental Protection Agency, Region IX, AIr Division, 75 Hawthorne Street, San Francisco, CA 94105. The final order is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/el_dorado_decision2003.pdf*

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, Chief, Air Permits Office, EPA Region IX, telephone (415) 972–3964, e-mail *r9airpermits@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA approves state and local permitting authorities to administer the operating permit program set forth in title V of the Clean Air Act, 42 U.S.C. 7661–7661f. DAQEM administers a fully approved title V operating permit program. The Clean Air Act affords EPA the opportunity for a 45-day period to review, and object to as appropriate, operating permits proposed by permitting authorities. Section 505(b)(2) of the act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to a state operating permit if EPA has not done so. Petitions must be based on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

DAQEM submitted the proposed permit to EPA on June 3, 2003. EPA received the petition to object to the permit on August 29, 2003, prior to the deadline for section 505(b)(2) petitions.

On September 22, 2005, the Administrator issued an order denying in full the petition submitted by Robert Hall. The order explains the reasons behind EPA's decisions to grant or deny each issue.

Dated: November 10, 2005.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 05–23231 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7746–9]

Access to Confidential Business Information by Logistics Management Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Systems Research and Applications (SRA) Corporation's subcontractor Logistics Management Institute (LMI), of McLean, Virginia, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number EP-W-05-024, LMI of 2000 Corporate Ridge, McLean, VA 22102, will assist EPA in implementing OPPT's Target Information Architecture which involves enterprise architecture documentation, development, requirements analysis, design, testing, change management and updates to the information management systems that store TSCA CBI data.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP-W-05-024, LMI will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

LMI personnel will be given information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide LMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under Contract Number EP-W-05-024

may continue until May 31, 2006. Extensions for performance of work required under this contract may extend a necessity for clearance until September 30, 2006. Access will commence no sooner than December 2, 2005.

LMI personnel have signed non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: November 11, 2005.

Brion Cook,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–23279 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6669–7]

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 FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050360, ERP No. D–AFS–J65454–SD, Bugtown Gulch Mountain Pine Beetle and Fuels Projects, To Implement Multiple Resource Management Actions, Black Hills National Forest, Hell Canyon Ranger District, Custer County, SD.

Summary: EPA has environmental concerns about impacts from runoff, related soil erosion and sediment losses; cumulative impacts from other large scale timber projects to vegetation and wildlife habitat; and adverse impacts to water quality.

Rating EC2

EIS No. 20050370, ERP No. D–AFS–L65494–OR, Middle Fork John Day Range Planning Project, Livestock Grazing Authorization, Implementation, Blue Mountain Range and Prairie City Ranger Districts, Malheur National Forest, Grant County, OR.

Summary: EPA has concerns related to impacts to water qualtiy, aquatic habitiat and ecosystem recovery. EPA requested that ''hybrid'' alternatives be included that provide greater protections from grazing.

Rating EC2

EIS No. 20050383, ERP No. D–AFS–F65059–IL, Shawnee National Forest Trails Designation Project, Phase 1, Designation, Construction and Maintenance for Trail System within Four Watershed: Eagle Creek, Big Grand Pierre Creek, Lusk Creek and Upper Bay Creek, Hidden Springs Ranger District, Gallatin, Hardin, Johnson, Pope and Saline Counties, IL.

Summary: EPA expressed environmental concerns about reducing trail density standards, weather-related trail closures, and the potential for adverse impacts to water quality.

Rating EC2

EIS No. 20050367, ERP No. DS–NOA–B91026–ME, Atlantic Herring Fishery Management Plan (FWP), Amendment 1, Management Measure Adjustment, Implementation, Gulf of Maine, George Bank, ME.

Summary: EPA had lack of objections to the proposed project.

Rating LO

Final EISs

EIS No. 20050194, ERP No. F–AFS–D65031–PA, Martin Run Project, To Implement Management Direction as Outlined in Allegheny National Forest Plan, Bradford Ranger District, Allegheny National Forest, Warren and McKean Counties, PA.

Summary: EPA had lack of objections to the proposed action.

EIS No. 20050243, ERP No.F–AFS–L65469–OR, West Maurys Fuels and Vegetation Management Project, Prescribed Fire, Commercial and Noncommercial Thinning, Grapple Piling and Hand Piling, Implementation, Lookout Mountain Range District, Ochoco National Forest, Crook County, OR.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050379, ERP No. F–FRA–K53009–CA, California High-Speed Train System, High-Speed Train (HST) System for Intercity Travel, Extend from Sacramento and the San Francisco Bay Area, in the North, through Central Valley, to Los Angeles and San Diego in the South, Orange County, CA.

Summary: EPA's earlier objections regarding potential impacts to resources in the Bay Area to Central Valley area have been addressed by deferring an alignment decision until an additional, more comprehensive environmental analysis can be completed. However, EPA continues to have environmental concerns about the cumulative impact analysis.

EIS No. 20050380, ERP No. F–FHW–E40779–NC, Fayetteville Outer Loop Corridor Study, Transportation Improvement Program (TIP) Cape Fear River, Cumberland, Hoke and Robeson Counties, NC.

Summary: Substantial impact reductions have been accomplished for wetland and stream impacts. However, EPA continues to have environmental concerns about the high numbers of sensitive noise receptors that are impacted, and about the loss of Red-cockaded woodpecker habitat.

EIS No. 20050403, ERP No. F–AFS–K65286–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.

Summary: EPA continued to express concerns about impacts to riparian resources, water quality, soils and wildlife habitat.

EIS No. 20050418, ERP No. F–AFS–K65288–CA, Bald Mountain Project, Proposes to Harvest Trees Using Group and Individual Trees Selection Methods, Feather River Ranger District, Plumas National Forest, Plumas and Butte Counties, CA.

Summary: EPA continues to have concerns about harvest in impaired watersheds with high susceptibility for cumulative watershed effects, and the lack of a timeline or funding certainty for restoration and road decommissioning.

EIS No. 20050431, ERP No. F–FHW–H40181–00, South Omaha Veterans Memorial Bridge Improvements, Across the Missouri River for Highway US–275 between the Cities of Omaha, Nebraska and Council Bluffs, Iowa, NPDES and U.S. Army COE Section 404 Permit, NE and IA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050434, ERP No. F–FHW–G40169–AR, Springdale Northern Bypass Project, U.S. Highway 412 Construction, Additional Information, Designation of a Preferred Alternative,

Funding and NPDES Permit Issuance, Benton and Washington Counties, AR.

Summary: EPA does not object to the proposed action.

EIS No. 20050437, ERP No. F–AFS–G65097–NM, Tajique Watershed Restoration Project, Proposes Fuel Reduction and Restore Forest Health, Cibola National Forest, Torrance County, NM.

Summary: No formal comment letter was sent to the preparing agency.

Dated: November 21, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–23272 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6669–6]

Environmental Impact 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 November 14, 2005 Through November 18, 2005 Pursuant to 40 CFR 1506.9.

EIS No. 20050486, Final EIS, AFS, OR, Timberline Express Project, To Improve the Winter Recreational Opportunities, Implementation, Zigzag Ranger District, Mt. Hood National Forest, Clackamas County, OR, Wait Period Ends: 12/27/2005, Contact: Mike Redmond 503–668–1776.

EIS No. 20050487, Draft EIS, NRS, UT, Coal Creek Flood Control and Parkway Project, Proposed Channel Improvements, Two Irrigation Division Structures on Coal Creek (the Main Street Diversion and the Woodbury Diversion), Cedar City, Iron County, UT, Comment Period Ends: 01/09/2006, Contact: Marine Wilson 801–524–4591.

Programmatic

EIS No. 20050488, Final EIS, EPA, 00, Mountaintop Mining and Valley Fills Program Guidance, Policies or Regulations to Minimize Adverse Environmental Effects to Waters of the U.S. and Fish and Wildlife Resources, Implementation, Appalachia, Appalachian Study Area, WV, KY, TN and VA, Wait Period Ends: 12/27/2005, Contact: John Forren (EPA) 215–814–2705; Katherine Trott (COE) 202–761–5542; Mike Robinson (OSM) 412–937–2882, Cindy Tibbott (SFW) 814–234–4090; Russell Hunter, (WV Dept. of Environmental Protection) 304–926–0499 215–814–2705 This document is available on the Internet at: *http://www.epa.gov/region3/mtntop/index.htm.*

EIS No. 20050489, Final EIS, IBR, 00, Operation of Flaming Gorge Dam Colorado River Storage Project, Protection and Assistance in the Recovery of Populations and Designated Critical Habitat of Four Endangered Fishes: Bony Tail, Colorado Pikeminnow, Humpback Chub, and Razorback Sucker, Green River, UT and WY , Wait Period Ends: 12/27/2005, Contact: Peter Crookston 801–379–1152.

EIS No. 20050490, Draft EIS, COE, CA, San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP), Proposed Watershed-Based SAMP to Balance Aquatic Resource Protection and Reasonable Economic Development, Southern Portion of Orange County, CA, Comment Period Ends: 01/16/2006, Contact: Jae Chung 213–452–3292.

EIS No. 20050491, Final EIS, AFS, 00, White Mountain National Forest Land and Resource Management Plan, Forest Plan Revision, Implementation, Carroll, Coos, Grafton Counties, NH and Oxford County, ME, Wait Period Ends: 12/27/2005, Contact: Barbara Levesque 603–528–8743.

EIS No. 20050492, Final EIS, AFS, SD, Bugtown Gulch Mountain Pine Beetle and Fuels Projects, To Implement Multiple Resource Management Actions, Black Hills National Forest, Hell Canyon Ranger District, Custer County, SD, Wait Period Ends: 12/27/2005, Contact: Patricia Hudson 605–673–4853.

EIS No. 20050493, Draft EIS, NPS, AR, Pea Ridge National Military Park General Management Plan, Implementation, AR, Comment Period Ends: 01/09/2006, Contact: John Scott 479–451–8122.

EIS No. 20050494, Final EIS, NOA, AK, Amendments to the Alaska Coastal Management Program, Approval, Implementation and Funding, U.S. Army COE 404 Permit, AK , Wait Period Ends: 12/27/2005, Contact: Helen C.P. Bass 301–713–3155, ext 175.

EIS No. 20050495, Final EIS, SFW, NC, Roanake River National Wildlife Refuge, Comprehensive Conservation Plan, To Determine and Evaluate a Range of Reasonable Management Alternative, Bertie County, NC, Wait Period Ends: 12/27/2005, Contact: Bob Glennon 252–482–2364.

EIS No. 20050496, Final EIS, DOE, ME, Bangor Hydro-Electric Northeast Reliability Interconnect, Construct, Connect, Operate and Maintain an Electric Transmission Line Amend Presidential Permit (PP–89), DOE/EIS–0372, Hancock, Penobscot and Washington Counties, ME, Wait Period Ends: 12/27/2005, Contact: Dr. Jerry Pell 202–586–3362.

Amended Notices

EIS No. 20040527, Draft EIS, AFS, IN, German Ridge Restoration Project, To Restore Native Hardwood Communities, Implementation, Hoosier National Forest, Tell City Ranger District, Perry County, IN, Comment Period Ends: 01/09/2006, Contact: Ron Ellis 812–275–5987. Revision of FR Notice Published on 11/19/2004: CEQ Comment Period Ending 01/03/2005 has been Reestablished to 01/09/2006. Per Request of the Preparing Agency by Letter Dated 11/10/05.

EIS No. 20050410, Draft EIS, COE, FL, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Implementation, Everglades Agricultural Area Storage Reservoirs, Palm Beach County, FL, Comment Period Ends: 01/09/2006, Contact: Janet Cushing 904–232–2259. Revision of FR Notice Published 10/14/2005: Comment Period Extended from 11/21/2005 to 01/09/2006.

Withdrawn

EIS No. 20050455, Final EIS, AFS, IN, German Ridge Restoration Project, To Restore Native Hardwood Communities, Implementation, Hoosier National Forest, Tell City Ranger District, Perry County, IN, Wait Period Ends: 12/05/2005, Contact: Ron Ellis 812–275–5987. Revision of FR Notice Published on 11/04/2005: Officially Withdrawn by the Preparing Agency by Letter Dated 11/10/2005.

Dated: November 21, 2005.

Ken Mittleholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–23273 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0323; FRL–7747–1]

Sethoxydim Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide sethoxydim, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the Sethoxydim Docket. Sethoxydim is a member of the cyclohexanedione or cyclohexenone class of herbicides, and functions by inhibiting fat biosynthesis. Sethoxydim is used post-emergent for selective control of annual and perennial grass weeds in broadleaf crops. It is currently registered for use on at least 86 agricultural crops with principal usage on soybeans, sunflowers, alfalfa, dry peas/beans, sugar beets, peanuts, and corn. Non-agricultural sites include ornamentals and flowering plants, lawns, recreational areas, right-of-ways, and public and commercial buildings and structures. EPA has reviewed sethoxydim through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0323, must be received on or before January 24, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8180; fax number: (703) 308–8041; e-mail address: dobak.pat@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0323. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the '' **Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact

information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0323. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0323. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0323.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0323. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful, if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, sethoxydim under section 4(g)(2)(A) of FIFRA. Sethoxydim is a member of the cyclohexanedione or cyclohexenone class of herbicides, and functions by inhibiting fat biosynthesis. Sethoxydim is used post-emergent for selective control of annual and perennial grass weeds in broadleaf crops. It is currently registered for use on at least 86 agricultural crops with principal usage on soybeans, sunflowers, alfalfa, dry peas/beans, sugar beets, peanuts, and corn. Non-agricultural sites include ornamentals and flowering plants, lawns, recreational areas, right-of-ways, and public and commercial buildings and structures. EPA has determined that the data base to support reregistration is substantially complete and that products containing sethoxydim are eligible for reregistration. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (to address concerns identified or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing sethoxydim.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA reviewed and made the requisite safety finding for the sethoxydim tolerances in establishing new uses prior tp reregistration.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal**

Register on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, sethoxydim was reviewed through the modified 4–phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for sethoxydim.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the sethoxydim RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for sethoxydim. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA will also publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the sethoxydim RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 14, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–22994 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8002–1]

Northeast Chemical Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Cost Recovery Settlement.

SUMMARY: Under Section 122(h) (1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency has entered into a Cost Recovery Settlement with Solitron Devices, Inc. to settle liability at the following Superfund Sites: Solitron Devices Superfund Site located in Riviera Beach, Florida; Solitron Microwave Superfund Site located in Port Salerno, Florida; Petroleum Products Corporation Superfund Site located in Pembroke Park, Florida; City Industries, Inc. Superfund Site located in Orlando, Florida; and Casmalia Resources Superfund Site located in Santa Barbara County, California. EPA will consider public comments on the settlement until December 27, 2005. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887, *Batchelor.Paula@epa.gov.*

Written or e-mail comments may be submitted to Ms. Batchelor at the above address within the 30 days specified above.

Dated: November 4, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 05–23274 Filed 11–23–05; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board Policy Statements

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Farm Credit Administration (FCA) Board recently undertook a review of all FCA policy statements, resulting in their repeal, amendment or readoption. All 15 current policy statements are included in this notice.

DATES: The effective date is indicated on each individual policy statement set forth below.

FOR FURTHER INFORMATION CONTACT: Wendy Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: A list of all current FCA Board policy statements and the text of each are set forth below in their entirety:

FCA Board Policy Statements

FCA–PS–34 Disclosure of the Issuance and Termination of Enforcement Documents
FCA–PS–37 Communications During Rulemaking
FCA–PS–41 Alternative Means of Dispute Resolution
FCA–PS–44 Travel
FCA–PS–53 Examination Philosophy
FCA–PS–59 Regulatory Philosophy
FCA–PS–62 Equal Employment Opportunity Programs and Diversity
FCA–PS–64 Rules for the Transaction of Business of the Farm Credit Administration Board
FCA–PS–65 Release of Consolidated Reporting System Information
FCA–PS–67 Nondiscrimination on the Basis of Disability in Agency Programs and Activities
FCA–PS–68 FCS Building Association Management Operations Policies and Practices
FCA–PS–71 Disaster Relief Efforts by Farm Credit Institutions
FCA–PS–72 Financial Institution Rating System (FIRS)
FCA–PS–77 Borrower Privacy
FCA–PS–78 Official Names of Farm Credit Institutions

Disclosure of the Issuance and Termination of Enforcement Documents

FCA–PS–34

Effective Date: 27–JAN–05.

Effect on Previous Actions: BM–13–JAN–94–03 (FCA–PS–57).

Source of Authority: None.

The Farm Credit Administration (FCA) Board finds that it is in the best interest of the Farm Credit System (FCS), the FCA, and the public that certain information concerning the issuance and any subsequent termination of final enforcement orders, formal agreements and conditions imposed in writing (Enforcement Documents) be disclosed to the FCS and the public. Specifically, the basis for disclosing this information is to communicate to the FCS and the public that the FCA is effectively using its enforcement powers through the issuance of Enforcement Documents and the subsequent termination of such Enforcement Documents, when appropriate.

The FCA Board Hereby Adopts the Following Policy Statement

Upon issuance or termination of any Enforcement Document, the Office of Examination shall notify the Director of the Office of Communications and Public Affairs (OCPA) of such event. OCPA shall prepare, for release to the FCS and the public, a disclosure, subject to the concurrence of the Office of General Counsel (OGC). If the OGC determines that a disclosure adversely affects a civil or criminal investigation, the disclosure will not be made. The disclosure shall include the information described below:

1. The type and date of action taken;

2. The type of institution to which the action pertains, or if the action pertains to an individual or entity, the relationship between the individual or entity and the institution; and

3. A description of the essential facts pertaining to the action, excluding information that would identify the institution and/or persons involved.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Communications During Rulemaking

FCA–PS–37

Effective Date: 27–JAN–05.

Effect on Previous Actions: Replaces previous Farm Credit Administration (FCA or Agency) Board policy on public communications during a rulemaking, adopted March 25th, 1992. See 57 FR 11083, April 1, 1992.

Source of Authority: None.

The FCA Board finds that it is in the public interest and consistent with the requirements of the Administrative Procedure Act to revise its policy on communications with the public during the rulemaking process.

The FCA Board Hereby Adopts the Following Policy Statement

In keeping with the need to ensure an open, freely accessible, and well-informed rulemaking process while balancing the need for impartiality and fairness, the FCA adopts the following guidelines governing substantive oral communications between the public and Board members and staff during the course of a related rulemaking.

Before a Rulemaking Begins

Unrestricted communication with the public before rulemaking begins supports and promotes the Agency's efforts to design creative and effective regulatory policy. No specific guidelines apply to that communication.

From Publication of Notice of Proposed Rulemaking to the End of the Comment Period

After a particular rulemaking has begun with publication of a notice of proposed rulemaking (including publication of an advance notice of proposed rulemaking), FCA encourages members of the public to provide written comments during the public comment period. All written comments are placed in a public file, where they are available for examination and copying during normal business hours. The comments receive careful consideration and become part of the public record of the rulemaking.

Where appropriate, FCA may also conduct public hearings or open meetings to take testimony or hold discussions on a rulemaking. Such opportunities for comment from the public will be announced in advance and the comments received will be placed in the public rulemaking file.

Substantive oral communications during the comment period between FCA personnel, including Board members and staff, and members of the public regarding the subject of an ongoing rulemaking will be summarized in writing and placed in the public rulemaking file. While FCA personnel are always available to explain or clarify proposed rules, if an individual wants to engage FCA personnel in substantive discussion concerning a published proposed rule, he or she should first file a written comment covering the matter to be discussed, particularly if he or she has not already filed a written comment. If new substantive comments are discussed, FCA staff will reduce the substance of such comments to writing, promptly place it in the public rulemaking file, and urge the individual to submit a written comment.

From the Close of the Comment Period to the Adoption of the Final Rule

From the close of the comment period until adoption of the final rule, substantive discussions between members of the public and FCA personnel relating to the proposed rule should be curtailed. In the interest of fairness, if new facts or arguments must be brought to the attention of the FCA, the communication must be in writing so that it can promptly be placed in the public rulemaking file.

FCA believes these guidelines will help ensure a complete rulemaking record for future agency consideration of the rule or in the event of court review. Further, FCA strongly believes that the rulemaking process must be open and evenhanded in order to avoid even the appearance of impropriety or undue influence that might arise from private communication during certain periods. Finally, if a substantive comment on a proposed rule were transmitted to FCA in a private communication that did not become part of the public record, other members of the public would not have an opportunity to respond to any new arguments or facts contained in that communication. Because FCA believes that its rulemaking process benefits from give and take among commenters who are able to consider each others' comments, this policy statement requires all comments to be placed in the public rulemaking file.

This policy statement does not apply to public communications regarding any rulemaking issue unless and until the matter becomes the subject of a notice of proposed rulemaking. Nothing in the policy statement is meant to affect the ability of FCA to use negotiated rulemakings, open meetings or other types of public forums to augment its rulemaking under section 553 of the Administrative Procedure Act.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Alternative Means of Dispute Resolution

FCA–PS–41

Effective Date: 27–JAN–05.

Effect on Previous Action: Originally adopted 16–JUL–92 (*see* 57 FR 33198,

July 27, 1992); amended 30–MAY–96; amended 10–FEB–97.

Source of Authority: Administrative Dispute Resolution Act of 1996, Public Law 104–320, 110 Stat. 3870 (1996), and codified at 5 U.S.C. 571 *et seq.*

The Administrative Dispute Resolution Act of 1996 (Act), addresses the concern that traditional methods of dispute resolution, such as litigation and administrative adjudication, have become increasingly time-consuming and expensive. The Act authorizes and encourages greater use of alternative means of dispute resolution (ADR), requiring each Federal agency to adopt a policy addressing the use of ADR.

ADR consists of informal, voluntary procedures used by parties who seek to resolve their disputes by consent. Such procedures include, but are not limited to, mediation, conciliation, facilitation, fact-finding, arbitration, and mini-trials, or any combination thereof. By emphasizing the common goals of the parties and fostering an atmosphere of cooperation, ADR can offer a less contentious and more expeditious alternative to traditional methods of dispute resolution such as litigation and administrative adjudication.

The use of ADR in appropriate circumstances is consistent with the Farm Credit Administration's (FCA or Agency) mission as an agency. To promote a safe and sound, competitive Farm Credit System, the FCA always strives to effectively and efficiently manage its resources. By expediting the resolution of certain disputes, ADR can reduce the FCA's transaction costs, increase the FCA's productivity, and help the FCA accomplish its goals.

The FCA Board Hereby Adopts the Following Policy Statement

It is the policy of the FCA to resolve disputes in an effective and efficient manner. Many of the disputes encountered by the FCA are resolved most effectively and efficiently through settlement negotiations between the FCA and the other parties to the disputes prior to the initiation, or in the early stages of, more formal litigation or administrative adjudication. The FCA will continue to use settlement negotiations as a method of dispute resolution.

In addition, the FCA will consider whether it is appropriate to use ADR when a dispute arises. In assessing the advisability of using ADR procedures, as defined in 5 U.S.C. 571(3), the FCA will consider whether such procedures are likely to reduce the FCA's transaction costs, increase the FCA's productivity, and help the FCA accomplish its goals of effective regulations and policies and the enhancement of FCA's effectiveness and cost efficiency. The FCA will also consider the factors set forth in 5 U.S.C. 572(b) in deciding whether it is appropriate to use such ADR procedures.

The FCA's Dispute Resolution Specialist (ADR Specialist), designated by the Chairman, is responsible for the implementation of this policy statement. The ADR Specialist is available to assist FCA personnel in considering the appropriate application of ADR procedures. Before deciding whether it is appropriate to use an ADR procedure, FCA personnel will consult with, and obtain the concurrence of, the ADR Specialist or his or her designee.

The ADR Specialist and those FCA personnel involved in resolving disputes are encouraged to attend educational and training programs relating to the theory and application of ADR on a regular basis, as the FCA budget permits.

Based on the voluntary nature of ADR, all parties to a dispute must agree to use an ADR procedure before it can be initiated.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Travel

FCA–PS–44

Effective Date: 27–JAN–05.

Effect on Previous Actions: Originally adopted 13–JUN–91; amended 12–NOV–92.

Source of Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 12 U.S.C. 2242 (Section 5.8 of the Farm Credit Act of 1971, as amended), 41 CFR Part 301.

The FCA Board Hereby Adopts the Following Policy Statement

Members of the Farm Credit Administration (FCA or Agency) Board (we) are not subject to the same requirements regarding allowances for travel and subsistence that generally apply to officers and employees of the United States (section 5.8 of the Farm Credit Act of 1971, as amended). Nevertheless, it is the general policy of the FCA Board (Board) that we will travel on official business in the most economical fashion reasonable under the circumstances.

We are subject to Federal laws, rules, and Executive Orders relating to conflicts of interest that may result from accepting gifts, including travel related expenses, from outside sources. Generally, we may not accept anything of value from:

- A person seeking official action from, doing business with, or conducting activities regulated by the FCA, or
- A person whose interests may be substantially affected by the performance or nonperformance of our official duties.

Such persons are *prohibited sources.* (*See* Executive Order 12674, as amended; 5 U.S.C. 7353; and 5 CFR Part 2635, the Executive Branch-wide standards of ethical conduct issued by the Office of Government Ethics.) An organization is also a *prohibited source* if more than half of its members are *prohibited sources*.

The gift rule under the standards of ethical conduct and the Agency's gift acceptance authority at 31 U.S.C. 1353 outline the limited circumstances in which we may accept gifts and the payment of travel expenses from outside sources. Unless an exception applies, ethics rules prevent us from accepting gifts offered to us because of our official position. Under no circumstances may we accept anything of value in return for being influenced in the performance of an official act. The aim of these rules is to prevent an actual conflict of interest or the appearance of a conflict and to uphold public confidence in the integrity of the Government and the Agency.

Except as noted above, third parties may not pay for official Agency expenditures. Because the Agency is responsible for the cost of conducting official business, we will ensure that the Agency is billed directly for travel expenses whenever possible (for example, by using our Government credit card for travel expenses). On those occasions when direct Agency payment is impossible or impractical (for example, a large group business dinner arranged and paid for in advance by the organizer), we will promptly notify the Agency of the obligation and ensure that the payer is promptly reimbursed. We recognize that it is important not to create the impression that a third party, particularly a prohibited source, is paying for our expenses.

Travel

Transportation

We will use less than first-class accommodations for all modes of transportation except in circumstances where:

1. We must use first-class accommodations because no other space accommodations are reasonably available or where other practical considerations exist (such as to accommodate a disability or other special need);

2. Exceptional security circumstances require it;

3. The conduct of Agency business requires it; or

4. We receive first-class travel benefits on an unsolicited basis from a carrier (such as free first-class coupons) and the benefit cannot be used by the Agency either in the present or the future, cannot be redeemed for cash value, and does not require the redemption of official miles. Under these circumstances, we can use the first-class benefit for either official or personal travel.

We will use a commercial charter flight at Agency expense only when no commercially scheduled flights are available in time to meet the requirements of the travel or when the charter flight would be more economical than a commercial flight. We will avoid the use of private aircraft whenever possible and use them only where commercial or charter flights are not reasonably available or would impose undue hardships. When reporting travel expenses, we must adequately justify the use of a commercial charter flight, private aircraft, or first-class accommodations.

Lodging

When available and practical, we will book lodging at the Government rate or another available reduced rate at hotels and motels. When attending a convention, meeting, or other official activity, we ordinarily obtain lodging at the hotel or motel holding the activity even if reduced rates are available elsewhere. We may book more than one room when necessary for the conduct of official business on the premises.

The Agency will not ordinarily reimburse us for lodging in the metropolitan Washington, DC, area. When conducting business in and around the official duty station in McLean, Virginia, we ordinarily reside at home.

Other Expenses for Official Activities

The FCA will reimburse us for the usual and reasonable expenses we incur as a consequence of official activities in the Washington, DC, metropolitan area and in other locations. The Agency will allow the repayment of expenses for:

1. Transportation costs;

2. Meal costs;

3. Registration fees or other fees assessed for attendance or participation;

4. The cost of miscellaneous supplies needed to participate in a particular function or activity; and

5. Other costs we incur by participating in official activities.

The Agency will *not* allow reimbursement of expenses for official activity incurred on behalf of other persons, including relatives, except as provided in the Board policy on Official Function (Representation and Reception) Expenses.

Form of Payment

We will arrange for official travel using the Agency's travel management system whenever possible. We may use cash to pay for official travel expenses and seek repayment from the Agency afterwards but, whenever possible, we will use the Government-issued credit card for all official travel expenses.

Receipts

When filing claims for reimbursement of travel expenses, we will provide receipts for expenses as normally required of other FCA employees under the Federal Travel Regulation, which currently requires receipts for all lodging and travel expenses over $75. However, failure to provide a receipt as normally required is not grounds for denial of a claim. If we do not have a receipt, we will provide a statement explaining the nature and amount of the expense and the reason for not having a receipt.

Combining Official Business Travel With Personal Activities

Although it is permissible to engage in personal activities while on official travel, the purpose of the trip must always be the need to conduct official business. The Agency pays for travel and related expenses incurred in performing official business. However, the Agency may *not* pay for personal expenses incurred while on official travel. Therefore, it is important to record and allocate expenses carefully to ensure that official expenses are clearly differentiated from personal expenses. Proper handling of Agency expenses is always important, but particularly so when engaging in personal activities while on official Agency business.

We are aware that, in certain circumstances, engaging in personal activities while on official travel could create an appearance that personal activities, not official business, prompted the trip. When we take a trip to conduct official business, it is usually clear from the nature of our business that the trip is proper and necessary. If we are concerned that personal activities during the trip might suggest otherwise, we will consult the DAEO to avoid a possible appearance of impropriety. We understand that engaging in official travel that takes us to a given destination (for example, our home state) on a disproportionate basis may raise questions about whether the travel truly is necessary. Again, we will consult with the DAEO about such concerns.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Examination Philosophy

FCA–PS–53

Effective Date: 08–JUN–05.

Effect on Previous Action: Responds to NV 93–04 (15–JAN–93) and Amends FCA Policy Statement 53 dated 15–JUL–93.

Source of Authority: Sections 5.9 and 5.19 of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration (FCA or Agency) Board Hereby Adopts the Following Policy Statement

This policy provides a general philosophy and direction for the examination and oversight of the Farm Credit System (System).

The FCA Board provides for the examination and supervision of each System institution in accordance with the Farm Credit Act of 1971, as amended (the ''Act''). The Board fulfills this responsibility primarily through the Office of Examination (OE) The FCA fulfills its supervision and examination responsibilities for Farmer Mac, a separate government-sponsored enterprise, through its Office of Secondary Market Oversight. OE develops oversight plans, conducts examinations, monitors the System's condition, current and emerging risks, and develops supervisory strategies to ensure that the System operates in a safe and sound manner and fulfills its public policy purpose. The Act also provides that the Farm Credit System Insurance Corporation (FCSIC) Board of Directors should utilize FCA examiners to conduct examinations of System institutions, to the extent practicable.

Oversight and Examination

The FCA Board directs the maintenance of a ''risk-based'' approach to oversight and examination for System institutions, which maximizes OE's effectiveness and strategically addresses the System's safety and soundness and

compliance with laws and regulations. Examination resources will be allocated to matters of highest risk or potential risk to the System at large and specific institutions to proactively address emerging risks. The amount of examination resources devoted to a System institution and the scope of an examination will depend on an institution's ability to identify and manage its risks. Accordingly, oversight and examination efforts will be heightened and accompanied by appropriate preventive, corrective, or enforcement actions when institutions are unable or unwilling to address material unsafe and unsound practices or comply with law and regulations. This risk-based approach is critical to maintaining shareholder, investor, and public confidence in the financial strength and future viability of the System.

Examination Staff and Communications

The risk-based approach must promote effective communications with System institutions. Examiners are an essential communication link with System institutions through ongoing institution oversight, on-site examinations, meetings with boards and management, and written reports and correspondence. The examination program shall therefore maintain adequately trained examiners who understand the unique risks and opportunities of agriculture as principally a biological industry, maintain an appropriate level of regulatory and financial industry experience and skills, and communicate and work effectively with System institutions to ensure they remain safe and sound and able to fulfill their public policy purpose.

Reporting to the FCA Board

Annually, the Chief Examiner will provide the Board an annual oversight and examination plan (plan) for approval. This plan will:

- Assess the condition of and risks affecting the System at large and in specific institutions;
- Establish priorities and identify staffing, training, and budgetary needs;
- Include an examination schedule that ensures statutory requirements are met; and,
- Include operational objectives and strategies for meeting the plan.

The Chief Examiner will report semi-annually to the Board on the status of, and proposed adjustments to, the plan. The Chief Examiner will also report quarterly on the current condition of the Farm Credit System, emerging risks, and any necessary follow-up strategies.

Dated this 8th day of June, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Regulatory Philosophy

FCA–PS–59

Effective Date: 08–JUN–05.

Effect on Previous Action: Originally adopted BM–17–FEB–94–02 (*see* 59 FR 32189, June 22, 1994); *see also* 60 FR 26034, May 16, 1995.

Sources of Authority: Farm Credit Act of 1971, as amended; 12 U.S.C. 2001 *et seq.*

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

The FCA shall develop regulations consistent with its authorities under the Farm Credit Act of 1971 (Act), as amended, and other relevant statutes. It is the FCA Board's philosophy to (1) Promulgate regulations that are necessary to implement the law; (2) support achievement of the Farm Credit System's (System) public mission; and (3) ensure the System's safety and soundness.

The FCA Board will strive to create an environment that promotes the confidence of customers and shareholders, investors, Congress, and the public in the System's financial strength and future viability. The FCA Board believes that safe and sound operations of System institutions will instill: (a) Investor confidence in System debt securities, which helps ensure that adequate funds are available at reasonable rates; and, (b) shareholder/member confidence in each cooperatively owned System institution by ensuring that sufficient financial resources are maintained to support an adequate supply of credit and other services to its shareholders/members in both good and bad times.

FCA will give high priority to issues that enable the System to more effectively accomplish its mission and to those issues that pose significant risks to the successful operation of the System, with the intent of ensuring an adequate and flexible flow of money into rural areas. As such, the FCA Board intends to provide System institutions with the flexibility consistent with changes in law, agriculture, and rural America so institutions can offer high quality, reasonably priced credit and related services to farmers, ranchers, their cooperatives, rural residents, and other entities upon which farming operations are dependent.

The strategies for accomplishing the Board's regulatory philosophy are as follows:

1. We will develop regulations based on a reasoned determination that benefits of any proposed regulation justify its cost.
2. We will focus our regulatory efforts on issues that address identified risks in System institutions or enhance the ability of System institutions to better meet the needs of agriculture and rural America. Preambles to regulations will explain the rationale for the regulatory approach adopted.
3. We will utilize diverse approaches to encourage public participation in the development and review of regulatory proposals in appropriate circumstances.
4. We will emphasize the cooperative principles of a farmer-owned Government-sponsored enterprise by advancing regulatory proposals that encourage farmer- and rancher-borrowers to participate in the management, control, and ownership of their institutions.
5. We will work to eliminate unnecessary regulations that impair the ability of the System to accomplish its mission to serve agriculture and rural America and any regulations that are unduly burdensome, costly, or not based on the law.

The details of how the FCA will implement these strategies will be described in the Agency's Five-Year Strategic and Annual Performance Plans and in its Unified Agenda.

Semi-annually, the Director of the Office of Policy Analysis (OPA) will provide the Board a proposed Unified Agenda for approval. The Unified Agenda will describe the regulatory projects the Agency plans to work on during the next 12 month period and apply the principles and strategies reflected in this policy. Quarterly, the OPA Director will report to the Board on the status of, and proposed adjustments to, regulatory projects scheduled on the Unified Agenda.

Dated this 8th day of June, 2005.

By Order of the Board.

Jeannette C. Brinkley,
Secretary to the Board.

Equal Employment Opportunity Programs and Diversity

FCA–PS–62

Effective Date: 12–SEP–02.

Effect on Previous Action: Updates FCA–PS–62 [NV–94–44] 8–3–94.

Source of Authority: Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*); Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.*); Rehabilitation Act of 1973, as amended (29 U.S.C. 721 *et seq.*); Equal Pay Act of 1974 (29 U.S.C. 206(d)); Civil Service Reform Act of

1978 (5 U.S.C. 3112); Executive Order 11478, as amended on May 2, 2000; Executive Order 13145, February 8, 2000; 29 CFR Part 1614; Equal Employment Opportunity Commission Management Directives.

Purpose

The Farm Credit Administration (FCA) Board affirms its commitment to Equal Employment Opportunity and Diversity (EEOD) and provides guidance to Agency management and staff for deciding and taking action in these critical areas.

Importance

Unquestionably, the employees who comprise the FCA are its most important resource. The Board fully recognizes the Agency draws its strength from the dedication, experience, and diversity of its employees. The Board is firmly committed to taking whatever steps are needed to protect the rights of its staff and to carrying out programs that foster the development of each employee's potential. We believe an investment in efforts that strongly promote EEOD will prevent the conflict and the high costs of correction for taking no, or inadequate, action in these areas.

The Farm Credit Administration (FCA) Board Adopts the Following Policy Statement

It is the policy of the FCA to prohibit discrimination in Agency policies, program practices, and operations. Employees, applicants for employment, and members of the public who seek to take part in FCA programs, activities, and services will be treated fairly. FCA, under the appropriate laws and regulations, will:

- Ensure equal employment opportunity based on merit and qualification, without discrimination because of race, color, religion, sex, age, national origin, disability, sexual orientation, status as a parent, genetic information or participation in discrimination or harassment complaint proceedings;
- Provide for the prompt and fair consideration of complaints of discrimination;
- Make reasonable accommodations for qualified applicants for employment and employees with physical or mental disabilities under law;
- Provide an environment free from harassment to all employees;
- Create and maintain an organizational culture that recognizes, values, and supports employee and public diversity;
- Implement affirmative programs to carry out this policy; and
- Develop objectives within the strategic planning process to meet the goals of EEOD.

Affirmative Employment and Diversity

The FCA intends to be a model employer. That is, as far as possible, FCA will build and maintain a workforce that reflects the rich diversity of individual differences evident throughout this Nation. The Board views individual differences as complementary and believes these differences can enrich our organization. When individual differences are respected, recognized, and valued, diversity becomes a powerful force that can contribute to achieving superior results. Therefore, we will create, maintain, and continuously improve on an organizational culture that fully recognizes, values, and supports employee diversity. The Board is committed to promoting and supporting an inclusive environment that provides to all employees, individually and collectively, the chance to work to their full potential in the pursuit of the Agency's mission. We will provide everyone the opportunity to develop to his or her fullest potential. When a barrier to someone achieving this goal exists, we will strive to remove this barrier.

The Board expects full cooperation and support from everyone associated with recruitment, selection, development, and promotion to ensure such actions are free of discrimination. Though staff commitment is important, the role of supervisors is paramount to success. Agency supervisors must be coaches and are responsible for helping every employee to develop their talents and to give their best efforts in contributing to the mission of the FCA. Therefore, all supervisors will be evaluated on their EEOD achievements as part of their overall job performance.

Workplace Harassment

It is the policy of the FCA to provide a work environment free from unlawful discrimination in any form, and to protect all employees, male or female, from any form of harassment, either physical or verbal. The FCA will not tolerate harassment in the workplace for any reason. The FCA also will not tolerate retaliation against any employee for reporting harassment or for aiding in any inquiry about reporting harassment.

Disabled Veterans Affirmative Action Program (DVAAP)

A disabled veteran is defined as someone who is entitled to compensation under the laws administered by the Veterans Administration or someone who was discharged or released from active duty because of a service-connected disability.

The FCA is committed to increasing the representation of disabled veterans within its organization. Our Nation owes a debt to those veterans who served their country, especially those who were disabled because of service. To honor these disabled veterans, the FCA shall place emphasis on making vacancies known to and providing opportunities for employing disabled veterans.

Responsibilities

The Chairman and Chief Executive Officer (CEO) is ultimately responsible for developing and carrying out all EEOD requirements and initiatives in accordance with laws and regulations to fulfill diversity initiatives in approved program plans.

To help in fulfilling these responsibilities the CEO, or designee, will select individuals to fill the following positions:

- An EEO Director;
- Special Emphasis Program Managers required by law or regulation; and
- EEO Counselors in sufficient number to ensure the needs of each Agency office are met.

Individuals selected for these positions will:

- Perform duties as determined by the CEO, and as formally expressed in position descriptions or individual performance rating elements, as appropriate;
- Serve on a collateral-duty basis—the CEO will decide the percent of time devoted to these collateral duties, which may be adjusted over time as circumstances and program requirements dictate;
- Attend appropriate training in the areas they have responsibility for; and
- Develop, monitor progress, report on, and periodically update program plans in their respective areas of responsibility.

The CEO or EEO Director may also establish standing committees to deal with specific issues as they arise. The Head of each Agency office will provide support to the individuals identified above on an as needed basis upon request from the EEO Director.

Dated this 12th day of September, 2002.

By Order of the Board.

Jeanette C. Brinkley,

Acting Secretary to the Board.

Rules for the Transaction of Business of the Farm Credit Administration Board

FCA–PS–64

Effective Date: 27–JUN–05.

Effect on Previous Action: Originally adopted by NV–94–05 (07–FEB–94)[FCA–PS–58]; corrected by memo 09–FEB–94; amended by NV–95–03 (13–JAN–95)[FCA–PS–64]; amended by NV–95–18 (20–MAR–95); amended by NV–95–46 (9–AUG–95); amended by BM–24–OCT–95–02; amended by NV–95–69 (02–JAN–96). *See also* 58 FR 6633, Feb. 1, 1993 and 59 FR 17537, Apr. 13, 1994; reaffirmed by NV–96–22 (30–MAY–96); amended by NV–96–36 (26–AUG–96); amended by NV–98–16 (8–MAY–98); amended by NV–99–09 (16–MAR–99); amended by NV–99–25 (24–SEP–99).

Source of Authority: Sections 5.8, 5.9, 5.10, 5.11 and 5.17 of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement:

Rules for the Transaction of Business of the Farm Credit Administration Board

Purpose, Scope, and Definitions

Section 1. Purpose and Scope. These Rules adopted under section 5.8(c) of the Farm Credit Act of 1971, as amended (Act), concerning the transaction of business of the Farm Credit Administration (FCA) Board (Board) supplement the statutes and regulations that govern the procedures and practice of the Board (including, without limitation, the Act, the Sunshine Act, and FCA regulations, 12 CFR 600 *et seq.*). Unless otherwise provided in these Rules, or relevant statutes or regulations, this Board will transact its business in accordance with Robert's Rules of Order (Newly Revised) (10th Edition).

Section 2. Definitions, Reporting Relationships, and Performance Appraisals.

• ''Act'' means the Farm Credit Act of 1971, as amended.

• ''Board Member'' means each of the three individuals appointed by the President, by and with the advice and consent of the Senate, to serve as Members of the Board, including the Chairman, unless the context requires otherwise. Each Board Member appraises the performance of his or her staff.

• ''Chairman'' means the Board Member designated by the President to serve as Chairman of the Board. The Chairman also serves as the Agency's Chief Executive Officer (CEO) and is designated by the Director of the Office of Management and Budget to serve as Head of the Agency. After consultation with the other Board Members, the Chairman appraises the performance of the Secretary, Inspector General, EEO Director, Designated Agency Ethics Official, Senior Agency Official, and all Office Directors reporting directly to him or her.

• ''Designated Agency Ethics Official'' means an employee of the FCA designated by the Head of the Agency to administer the provisions of Title I of the Ethics in Government Act of 1978, to coordinate and manage the Agency's ethics program, and to provide liaison with the Office of Government Ethics on all aspects of FCA's ethics program. The DAEO reports directly to the Chairman on the Agency's ethics program.

• ''Equal Employment Opportunity (EEO) Director'' means an employee of the FCA designated by the Head of the Agency to administer the provisions of the Agency's EEO program as set forth in 29 CFR Part 1614.

• ''General Counsel'' means an employee of the FCA who serves as the chief legal officer of the Board. The General Counsel reports to the Chairman concerning administrative matters and to the FCA Board on matters of Agency policy. By the nature of the position the General Counsel, as appropriate and necessary, maintains special advisory relationships in confidence with the individual Board Members. The General Counsel must also keep the FCA Board fully informed of all litigation in which the Agency is involved.

• ''Office Director'' means an employee of the FCA serving as head of an FCA Office, excluding the Inspector General unless specified.

• ''Secretary'' means an employee of the FCA who serves as Secretary to the Board as appointed by the Chairman. The Secretary, or another FCA employee designated by the Chairman, serves as the parliamentarian for the Board. The Secretary keeps permanent and complete records and minutes of the acts and proceedings of the Board.

• ''Senior Agency Official'' means an employee of the FCA in a senior position other than Office Director, such as a Chief of Staff or Chief Operating Officer. The Senior Agency Official appraises the performance of staff that report directly to him or her. The Chairman, in consultation with the other Board Members, reviews the performance appraisals conducted by the Senior Agency Official.

• ''Sunshine Act'' means the Government in the Sunshine Act, 5 U.S.C. 552b.

Amendments

Section 1. The business of the Board will be transacted in accordance with these Rules, which may be amended from time to time: Provided, however, that upon agreement of at least two Board Members convened in a duly called meeting, the Rules may be waived in any particular instance, except that action may be taken on items at a Special Meeting only in accordance with Part I, Article I, § 3(b) of this policy.

Section 2. These Rules may be changed or amended by the concurring vote of at least two Board Members upon notice of the proposed change or amendments having been given at least thirty days before such vote.

Section 3. These Rules will be reviewed by the Board at least every five years or as needed.

Part I—Rules for the FCA Board Meetings

Article I. Board Meetings.
Article II. Board Action.
Article III. Board and Chairman Delegations.

Article I

Board Meetings

Section 1. Sunshine Act. All FCA Board meetings will be announced and conducted in conformance with the Government in Sunshine Act.

Section 2. Presiding Officer. The Chairman will preside at each meeting. In the event the Chairman is unavailable, the other Board Member from the Chairman's political party will preside. If there is no other Board Member from the Chairman's political party, then the Board Member serving the longest on the Board will preside.

Section 3. Calls and Agenda.

(a) *Regular Meeting.* The Secretary, at the direction of the Chairman, issues a call for items for the agenda to the other Board Members and the Office Directors of FCA. The Secretary provides to the Chairman a list of all the items submitted, including a list of outstanding notational votes and matters voted ''not appropriate for notational vote.'' The Chairman then establishes the agenda to be published in the **Federal Register** at least one week before the meeting date. At each meeting, the Board votes to approve or amend the agenda established by the Chairman. The Board may amend the agenda to add items that the Board Members believe need to be considered at that meeting.

(b) *Special Meeting.* Special meetings of the Board may be called:

(1) By the Chairman; or

(2) By the other two Board Members; or

(3) If there is at the time a vacancy on the Board, by a single Board Member.

Any call for a Special Meeting will specify the business to be transacted and state the place and time of such meeting. No business will be brought before a Special Meeting that has not been specified in the notice of call of such meeting without the unanimous consent of all Board Members.

(c) *Notice.* The Secretary will give appropriate notice of any and all meetings and make the call for Special meetings. Reasonable efforts to provide such notice to Board Members will be made for all meetings of the Board, but failure of notice will in no case invalidate a meeting or any action taken during that meeting.

Section 4. Board Materials. The Secretary will distribute complete Board Briefing Books to each Board Member at least two full business days before any Regular Meeting. Unless agreed to by all Board Members, no vote may be taken on an issue unless the necessary material has been provided to the Board Members not less than twenty-four hours before the meeting to consider such issue.

Section 5. Supporting Documentation. The Secretary will maintain one copy of all Board Briefing Book material. All copies of the Board Briefing Book material for Closed Sessions provided to anyone other than the Secretary will be returned to the Secretary for disposal or maintained in a secure location approved by the Secretary. One copy of each Executive Summary provided to a Board Member will be provided to and maintained by the Secretary. Board Briefing Books and Executive Summaries are not part of the minutes of the Board unless expressly incorporated therein.

Section 6. Telephone Conference. Any Board Member, including the Chairman, may participate in a meeting of the Board through the use of conference call telephone or similar equipment, provided that all persons participating in the meeting can simultaneously speak to and hear each other. Any Board Member so participating will be deemed present at the meeting for all purposes.

Section 7. Public Attendance.

(a) *Attendance.* Members of the public may attend all meetings of the Board except those meetings or portions of meetings that are closed as directed by the Board, consistent with the Sunshine Act.

(b) *Public Appearances Before the Board.* While members of the public are invited and encouraged to attend Board meetings, no member of the public has a right to speak in a Board meeting. However, the Board may, in its sole discretion, permit a member of the public to address the Board if he or she provides a written request and statement covering the intended subject matter at least fifteen days before the meeting.

Section 8. Minutes.

(a) *Format.* The format of minutes of the Board meetings, unless otherwise stated in these rules or relevant statutes or regulations, will comply with Robert's Rules of Order (Newly Revised) (10th Edition) and the Sunshine Act. The minutes will clearly identify the date, time, and place of the meeting, the type of meeting held, whether the meeting was open or closed, the identity of Board Members present and, where applicable, that they participated by telephone, and the identity of the Secretary and the General Counsel in attendance, or, in their absence, the names of the persons who substituted for them. The minutes will contain a separate paragraph for each subject matter, and will note all main motions or motions to bring a main motion before the assembly, except any that were withdrawn. The minutes will not contain any reference to statements made unless a request is specifically made that a statement be made a part of the record, or if required by the Sunshine Act. The minutes of meetings will indicate the substance and disposition of any notational votes completed since the last meeting. Except in the case of a voice vote, the Secretary will record the vote of each Board Member on a question or will note a unanimous consent. The Chairman and the Secretary will sign the minutes of the Board, indicating the date of approval by the Board.

(b) *Circulation.* The Chairman and General Counsel will review draft minutes. The Secretary will circulate draft minutes to all Board Members one week before their consideration at a Board Meeting. The Secretary will place in all Board Briefing Books copies of the minutes of the meetings of the Board (Open Session) to be voted on at a Board Meeting. The Secretary will place only in the Board Briefing Books of the Board Members, the Secretary, and the General Counsel copies of the minutes of the meetings of the Board (Closed Session) to be voted on at a Board Meeting.

Article II

Board Action

Section 1. Affirmative Vote Required. Action on any matter requires the affirmative vote of at least two Board Members, except as provided in Article III, § 1 of this Part.

Section 2. Records of Board Action.

(a) *Meetings.* The vote of each Board Member, including the Chairman, on a question voted on at a meeting will be recorded in the minutes. The Chairman may, if there is no objection, call for a voice vote on adjournment or other actions. If a voice vote is taken, its result will be recorded in the minutes.

(b) *Notational Votes.* The Secretary will provide a summary of any action taken by notational vote to the Board Members and Chairman and the action taken will be reflected in the minutes of the next meeting of the Board.

Section 3. Notational Voting.

(a) Nothing in these Rules precludes the transaction of business by the circulation of written items (notational votes) to the Board Members.

(b) The Board may use notational voting procedures to decide any matter that may come before it. Any Board Member may submit a motion to the Secretary for distribution as a notational vote. However, in view of the public policy of openness reflected in the Sunshine Act and the desire to allow any Board Member to present viewpoints to the other Board Members, any Board Member can veto the use of the notational voting procedure for the consideration of any particular matter by voting ''not appropriate for notational vote.''

(c) Upon submission of an item for notational vote, the Secretary will provide each Board Member a complete package of all relevant information and a notational vote ballot specifying the Board Member making the motion, the motion itself, and the deadline for return of the ballot. Within ten business days of receipt, or earlier if the motion requires, each Board Member will act on the matter by returning the ballot to the Secretary. Each Board Member is to indicate his/her position in writing on the ballot in the following manner: (1) Approve; (2) disapprove; (3) abstain; or (4) not appropriate for notational vote.

(d) No partial concurrences or amendments are permitted; however, a Board Member may suggest a revision to the proponent of the motion, subject to compliance with the Sunshine Act, and the proponent may withdraw his motion at any time before receipt by the Secretary of all the ballots of all Board Members or the end of the time period provided for on the ballot.

(e) A Board Member who is absent from the office may authorize a staff member to initial the ballot for him/her, provided that the Board Member has a designation memorandum on file with the Secretary.

Section 4. Board Records. The Secretary will maintain the records of the Board including, without limitation,

the minutes of the Board meetings and notational votes.

Article III

Board and Chairman Delegations

Section 1. Two Vacancies/Authority to Act. In the event two Board Members are not available by reason of refusal, resignation, temporary or permanent incapacitation, or death, to perform the duties of their offices, the Board hereby delegates to the remaining Board Member the authority to exercise, in his/her discretion, the authorities of the FCA granted to the Agency or the Board by statute, regulation or otherwise, except those authorities which are nondelegable. This delegation of authority does not include authority to establish general policy and promulgate rules and regulations, or any delegation expressly prohibited by statute. This delegation will include but is not limited to the exercise of the following powers:

(a) The approval of actions of the Farm Credit System (System) institutions that are required by statute, regulations or otherwise to be approved by the FCA or its Board;

(b) The exercise of all powers of enforcement granted to the FCA by statute, including but not limited to, the authorities contained in 12 U.S.C. 2154, 2154a, 2183, 2202a, and 2261–2274; and

(c) Any actions or approvals required in connection with the conduct of a receivership or conservatorship of a System institution.

Authorities delegated by this Section may be redelegated, in writing, at the discretion of the remaining Board Member, to other FCA officers or employees.

Section 2. National Security Emergencies. Pursuant to Executive Order 12656, as amended, in the event of a national security emergency, if the Chairman is unable to perform his or her duties for any reason, the Chairman, at his or her sole discretion, delegates to the following individuals, in the order mentioned and subject to being available, the authority to exercise and perform all the functions, powers, authority and duties of the Chairman in an acting capacity until such time as either the Chairman can resume his/her position or, if no longer able to serve as Chairman, the President of the United States designates a new Chairman:

(a) Member of the Board of the Chairman's political party;

(b) If there is no other Board Member from the Chairman's political party, then the Board Member serving the longest on the Board;

(c) General Counsel.

The Chairman or Acting Chairman will ensure that FCA has an alternative location for its headquarters functions in the event a national security emergency renders FCA's headquarters inoperative. The Chairman or Acting Chairman may establish such branch office or offices of the FCA as are necessary to coordinate its operations with those of other government agencies.

Section 3. Individual Assignments. To the extent consistent with law, the Board or the Chairman may offer another Member of the Board a special assignment and define the duties incident thereto, and the Chairman may delegate to another Board Member certain duties and responsibilities of the Chairman.

Section 4. Other Delegations. The FCA Board may delegate such authorities as it deems necessary and appropriate. Such delegations are included in Attachments A and B to this policy.

Part II—Board and Staff Governance

Article I. Board Governance.
Article II. Staff Governance.

Article I

Board Governance

Section 1. General. The purpose of this Part is to ensure the efficient operation of the FCA in light of the various authorities and operational responsibilities of Board and the FCA Chairman and CEO.

The Board recognizes that for the Agency to run efficiently, the Chairman/CEO must have sufficient latitude and discretion to direct the implementation of Board policies and run the Agency's day-to-day affairs. Notwithstanding such latitude, the other Board Members must have access to staff and must be able to request information from staff that they find necessary to fulfill their policy- and rulemaking responsibilities under the Act.

The Chairman/CEO is always free to bring to the Board issues that do not require Board action. Conversely, the Board may involve itself in operational matters ordinarily reserved for the Chairman/CEO if it concludes that they rise to the level of policy due to their sensitivity, seriousness, or controversial nature.

Section 2. Board Authorities. The Board, acting as a unit, must manage, administer, and establish policies for the FCA. The Board specifically approves the rules and regulations implementing the Act; provides for the examination, enforcement, and regulation of System institutions; provides for the performance of all the powers, functions, and duties vested in the FCA; and requires any reports deemed necessary from System institutions. The Board also adopts the FCA seal. Each Board Member has the authority to appoint and direct regular, full-time staff in his or her immediate office.

Section 3. Chairman Authorities. The Chairman, in carrying out his or her responsibilities, is governed by the general policies adopted by the Board and by such regulatory decisions, findings, and policy determinations as the Board may by law be authorized to make.

The Chairman, in carrying out policies as directed by the Board, acts as spokesperson for the Board and represents the Board and the FCA in official relations within the Federal Government. Under policies adopted by the Board, the Chairman must consult on a regular basis with the Secretary of the Treasury concerning the exercise of the System's powers under section 4.2 of the Act; the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy; and the Secretary of Agriculture concerning the effect of System policies on farmer, ranchers, and the agricultural economy. As to third persons, all acts of the Chairman will be conclusively presumed to be in compliance with general policies and regulatory decisions, findings, and determinations of the Board.

The Chairman enforces the rules, regulations, and orders of the Board. The Chairman designates attorneys to represent the Agency in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships and in civil proceedings or civil actions when so authorized by the Attorney General under provisions of title 28 of the United States Code. The Chairman, subject to the approval of the Board, may establish one or more advisory committees in accordance with the Federal Advisory Committee Act.

The Chairman may not delegate any of the foregoing powers without prior Board approval.

The Chairman also exercises those powers conferred on the Head of the Agency, including the power to make certain designations.

Section 4. CEO Authorities. The Chairman of the FCA Board is also the Agency's CEO. The CEO, in carrying out his or her responsibilities, directs the implementation of policies and regulations adopted by the Board and, after consultation with the Board,

executes the administrative functions and duties of the FCA.

''Consultation with the Board'' is achieved when the Chairman/CEO makes a good faith attempt to seek advice, guidance, and input from the Board before taking significant action on matters related to the execution of administrative functions or duties.

The Chairman as CEO runs the day-to-day operations of the Agency. This includes the power to implement the policies and regulations adopted by the Board; appoint personnel as necessary to carry out Agency functions; set staff pay and benefits; and direct staff. As provided in section 5.11(b) of the Act, the Chairman/CEO appoints heads of major administrative divisions subject to the approval of the Board.

The Chairman as CEO may designate to other FCA officers and employees the authority to exercise and perform those powers necessary for the day-to-day management of the Agency.

Article II

Staff Governance

Section 1. Authority over Staff. The Chairman/CEO has authority to hire the personnel necessary to carry out the mission of the Agency and to direct staff, except that each Board Member is entitled to appoint and direct his or her regular, full-time staff within the constraints of the adopted budget for the Office of the Board.

Subject to the approval of the Board, the Chairman/CEO appoints and removes the ''heads of major administrative divisions.'' The Board defines the ''heads of major administrative divisions'' as all Office Directors who are career appointees. The Board must approve the conversion of an existing career position to a noncareer (political) position.

Section 2. Organization Chart. Consistent with its mandate to approve regulations and appointments outlined above, the Board approves the FCA organizational chart down through the Office level along with relevant functional statements for each Office. Authority to make organizational changes within any division rests with the Chairman/CEO, and may be delegated to the Senior Agency Official or Office Directors.

Part III—Board Operations

Article I. Committee and Financial Operations, and Other Activities.
Article II. Board Member Travel and Related Expenses.

Article I

Committee and Financial Operations, and Other Activities

Section 1. Committee Operations. To assist the Board in exercising its authority for oversight and approval of the Strategic Plan, the formulation of regulations and policy, and the monitoring and assessment of risk, the Board directs the formation of three committees.

Each Committee Chair will be designated by the Chairman. Each committee will be comprised of the Board Members' Executive Assistants and such Agency staff as determined by the Committee Chair. The Committee Chair will designate a Coordinator with expertise in, or significant accountability for, the activities of the committee. Committees will meet as often as determined by the Committee Chair to achieve committee objectives. The Chairman may also approve the use of external consultants to assist the committees on an as-needed basis.

(a) *Strategic Planning Committee.* The objective of this committee is to provide a forum for Board input on (1) the development of, and periodic updates to, the Strategic Plan, and (2) changes in processes and procedures that will improve the quality of this key Agency document.

(b) *Regulation and Policy Development Committee.* The objective of this committee is to provide a forum to (1) Obtain Board input throughout the entire process of developing, modifying, or eliminating individual regulations, (2) discuss changes in processes and procedures that will improve the Agency's regulation and policy development process, and (3) foster open discussion during the development and periodic update of the Agency's regulatory agenda.

(c) *Risk Committee.* The objective of this committee is to provide a forum to (1) Facilitate Board awareness of risks to the ongoing mission fulfillment and safety and soundness of the System and Farmer Mac, (2) ensure an integrated and coordinated Agency risk analysis process that effectively uses information from a wide variety of internal and external sources, and (3) foster open discussion about risks to the System and Farmer Mac and the implications of such risks for future Agency operations.

Section 2. Financial Operations.

(a) *Budget Approval.* The Chairman, consistent with the provisions of the Act, other law and regulations, and applicable policy, oversees the development of budget proposals and causes the expenditure of funds within approved budgets to meet the Agency's mission and objectives. The Board approves an object class budget for the Agency as a whole and a budget for each office. Any reallocation of funds in excess of $100,000 requires FCA Board approval. Reallocation of funds of $100,000 or less requires the Chairman's approval (or that of the Chairman's designee). The objective of single procurements and the provision of services or materials in excess of $100,000 will be made during the budget approval process. The Chief Financial Officer will report monthly on all budgetary reallocations that occur after the FCA Board approves a fiscal year budget.

Section 3. Other Board Operations.

(a) *Audit Resolution Process.* The Chairman is responsible for overseeing the audit resolution process and, through a designee, for audit resolution implementation and follow-up. However, the Chairman must obtain Board approval of audit resolutions where the issue would normally require Board action. The Inspector General and Audit Follow-up Official will report to the Board the status of any unresolved audit recommendations, unimplemented management decisions, and other issues on a semiannual basis following the Inspector General's Semi-Annual Report to Congress.

(b) *Litigation.* The Chairman has authority to undertake litigation to defend the Agency, consistent with established Board policy. The Board will approve litigation where the Agency is plaintiff, will approve recommendations to the Justice Department to pursue an appeal, and will approve positions advanced in litigation that conflict with existing Board policy or establish a significant new policy. The Chairman's authority to settle certain claims against the Agency have been delegated to the General Counsel (GC) provided the GC consults with the Chairman.

(c) *Documents and Communications.*

(1) *Approval, Review, and Consultation.* The FCA Board is responsible for determining the Agency's position on policy. Board Policy Statements should be reviewed at least every five years.

The Board must approve all documents published in the **Federal Register**, including proposed and final FCA regulations, except for notices of effective dates or technical corrections of regulations. Board approval is not necessary prior to **Federal Register** publication of Privacy Act systems notices or notices of other routine or administrative matters unless they raise policy issues requiring Board approval. Bookletters, informational memoranda,

and other mass mailings to Farm Credit institutions (except documents listed in Attachment A) must be approved by the Board prior to distribution. Documents may be added to or deleted from Attachment A by Board vote.

The issuance of a ''no action'' letter is a policy matter requiring Board approval. For the purposes of this statement, a ''no action'' letter is a statement to a Farm Credit institution that, notwithstanding any other provision of law or regulation, the Board will take no action against a System institution solely because it engaged in conduct specified in the letter.

Authority to promulgate internal administrative issuances, including FCA Policies and Procedures Manual (PPM) issuances, rests with the Chairman and may be delegated to the Senior Agency Official. The Chairman will provide the Board with final drafts of PPM issuances and other administrative issuances for an appropriate consultative period if those issuances relate to examination and supervision, audits, internal controls, the budget, the strategic planning process, regulation development, or personnel matters relating strictly to promotion or pay.

(2) *Signature Authority.* Authority to sign official Board documents, including, but not limited to, proposed and final regulations, **Federal Register** notices, no-action letters, minutes, and other Board actions is delegated to the Secretary. After any action by the Board required under paragraph (c)(1) of this section, the Chairman has the authority to sign bookletters, informational memoranda, and other mass mailings to Farm Credit institutions. This signature authority may be delegated to senior staff members.

(3) *Correspondence.* The Chairman approves and signs routine correspondence (that is, correspondence in the ordinary course of business), to members of Congress, correspondence responding to White House referrals, or other correspondence on behalf of the Board or the Agency. The Chairman may delegate approval and signature authority for such correspondence to FCA Office Directors when the subject matter involves congressional or White House case work. When the subject matter involves the presentation of an Agency position or policy relative to regulations, legislation, or any other significant matter, the Chairman may not delegate authority, and the correspondence must be approved by the Board, except that the Board need not approve a previously approved response or a restatement of previously adopted Board policy. Board approval does not apply when the Chairman is speaking only for him-or herself and includes the appropriate disclaimer. Likewise, on similar matters, Board Members should include appropriate disclaimers. The Chairman or the Chairman's designee has authority to sign acknowledgments or interim responses without Board approval, provided such responses contain no policy statements or only previously approved statements.

(4) *Authentication and Certification of Records and Documents.* The Chairman designates the person authorized and empowered to execute, issue and certify under the seal of the FCA:

- Statements authenticating copies of, or excerpts from official records and files of the FCA;
- Effective periods of regulations, orders, instructions, and regulatory announcements on the basis of the records of the FCA;
- Appointment, qualification, and continuance in office of any officer or employee of the FCA, or any conservator or receiver acting in accordance with the FCA receivership regulations at 12 C.F.R. Part 627 on the basis of the records of the FCA.

The Chairman may further empower the designated official(s) to sign official documents and to affix the seal of the FCA thereon for the purpose of attesting the signature of officials of the FCA.

Article II

Board Member Travel and Related Expenses

Section 1. Pre-confirmation Travel. Travel expenses incurred by an FCA Board nominee that are solely for the purpose of attending his or her Senate confirmation hearings will be considered the personal expense of the nominee and will not be reimbursed by FCA. However, consistent with existing Government Accountability Office interpretations, the FCA will pay for a nominee's travel expenses to the Washington, D.C. metropolitan area (including lodging and subsistence), if payment is approved, in advance whenever practicable, by the Chairman based on a determination that the nominee's travel is related to official business that will result in a substantial benefit to the FCA. That determination will be made on a case-by-case basis and is within the sole discretion of the Chairman. The same standards and policies that apply to the reimbursement of Board Members' travel expenses will apply to the reimbursement of nominee's expenses. As part of the documentation for the approval process, the Chairman must execute a written finding that a nominee's travel would substantially benefit the FCA.

Travel that may result in substantial benefit to the FCA could include meetings, briefings, conferences, or other similar encounters between the nominee and FCA Board Members, office directors, the Senior Agency official, or other senior congressional and executive branch officials, for the purpose of developing substantive knowledge about the FCA, its role, its interaction with other Government entities, or the institutions that it regulates. Meetings or briefings of this nature may enable a nominee to more quickly and effectively assume leadership at the Agency after confirmation by the Senate and could thus substantially benefit the Agency.

Section 2. Board Member Relocation. Board Members will be reimbursed by FCA for travel and transportation expenses incurred in connection with relocation to their first official duty station. Expenses for which reimbursement will be allowed generally include, but are not limited to the following:

(a) Travel and per diem for the Board Member.

(b) Travel, but not per diem, for immediate family of the Board Member.

(c) Mileage if privately owned vehicle is used in travel; and

(d) Transportation and temporary storage of household goods.

Each relocation will be considered separately and all rates and allowances will be determined at the time of authorization, notwithstanding the limitations of 5 U.S.C., Chapter 57 and the Federal Travel Regulations. Reimbursement of additional expenses may be authorized if warranted by specific circumstances. Board Members will be issued a specific prior written authorization by the Chief Administrative Officer detailing the expenses that may be reimbursed.

Section 3. Representation and Reception Fund. The Act allows the payment of FCA funds for official representation and reception expenses. Expenses incurred from official functions may be paid for with funds from the Representation and Reception (R&R) Fund only under this policy statement and decisions from the Department of Justice or guidance from the Comptroller General of the United States (Comptroller General).

''Official functions'' include meetings and other contacts with the public to explain or further the Agency's mission and typically are activities of the FCA Board, individual Board Members, or other FCA officials acting for the Board. For example, while

extending official courtesies to the public on occasions associated with the mission of the Agency, FCA staff may use the R&R Fund to cover catering services, rental of facilities, receptions, coffee, snacks, refreshments, supplies, services and tips.

Consistent with opinions of the Comptroller General, the FCA Board has determined, as a matter of policy, that it will not permit the R&R Fund to be used for events or functions in which attendance is restricted to Agency employees.

Similarly, the R&R Fund may not be used for activities relating solely to ''personal entertainment'' (interpreted by the Comptroller General to include attendance at a sporting event or concert, for example) or for personal favors, even if the entertainment is enjoyed with, or is a favor given to, members of the public, such as Farm Credit System representatives.

The FCA Board has determined, as a matter of policy, that the R&R Fund shall be a fund of last resort and shall not be used for expenses that can properly be classified as another type of Agency expense.

The FCA Board will decide how much to budget for the R&R Fund. The FCA Board will approve any amount available for R&R expenses for the Chairman and each Board Member, and an amount available for general R&R expenses. The amount approved for use by the Chairman and each Board Member will be maintained in their budget code. The amount approved for general R&R will be maintained in a separate budget class code by the Secretary.

Amended this 27th day of June, 2005.

By Order of the Board.

Jeannette C. Brinkley,
Secretary to the Board.

Attachment A

Documents Mailed in Mass to Farm Credit Institutions That Need No Review by the FCA Board Prior to Distribution

1. Farm Credit Administration (FCA) communications that *do not* communicate Agency policy; Agency legal interpretations; substantive Agency positions on examination, corporate or accounting issues; or no-action positions.

(a) Issue or revise:

- The FCA Examination Manual, examination criteria, and examination procedures;
- The FCA Uniform Call Report instructions;
- Examination plans and general guidance provided to examiners, except those relating to Agency positions not previously approved by the Board.

(b) Request information on:

- Call Reports/LARS;
- Young, beginning, and small farmers and ranchers reports;
- Other reports as required by statute or determined necessary by the Board (consistent with Board instruction).

(c) Provide information on:

- Fraudulent activities;
- Removals/suspensions/prohibitions;
- Other related activities.

(d) Transmit documents issued by other Federal agencies including regulations, official staff commentary on regulations, and forms.

2. PPM mailings.

3. Vacancy Announcements.

4. Office of Inspector General mailings for official audit purposes.

5. Annual Report of Assessments and Expenses under 12 CFR 607.11.

6. FCA Handbook Updates.

Attachment B

Delegations

1. The FCA Board delegates to the Chairman the authority to:

a. Sign letters notifying Farm Credit System institutions of final approval for any approved corporate application, after all conditions for final approval have been met and in accordance with applicable procedures;

b. Execute and issue under the FCA seal the new charter or charter amendment document for such institutions; and

c. Sign certificates of charter after new charters and charter amendments are executed.

The Chairman may redelegate this authority to other FCA officers or employees.

2. The FCA Board delegates to the Chairman the authority to approve (preliminary and final) corporate applications from associations requesting to merge or consolidate provided the applications are deemed noncomplex, noncontroversial, and low risk.

Applications for mergers or consolidations approved under authority of section 7.8 of the Act will be considered noncomplex, noncontroversial, and low risk if they meet all of the following criteria:

a. The applicant association(s) has a current FIRS rating of 1, 2, or 3 (with no 3 rated association having a formal enforcement action);

b. The continuing or resulting association(s) has a gross loan volume of $500 million or less;

c. The application(s) is consistent with the Act and regulations governing its approval, and;

d. There are no policy or precedent-setting decisions embedded in the request.

3. The FCA Board delegates to the Chairman the authority to approve, execute, and issue under the seal of the FCA, amendments to charters requested by Farm Credit associations, limited to name changes and/or headquarters relocations. The Chairman may redelegate this authority to other FCA officers or employees.

Release of Consolidated Reporting System Information

FCA–PS–65

Effective Date: 27–JAN–05

Effect on Previous Action: None. *See* 60 FR 15921, Mar. 28, 1995.

Source of Authority: 12 CFR Part 621, Subpart D; Freedom of Information Act, 5 U.S.C. 552; 12 CFR Part 602; OMB Circular A–130 (Nov. 28, 2000).

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

Purpose: The FCA Board has adopted a policy to disclose reports of condition and performance (Call Reports) and any subsequent reports containing nonexempt information that are produced from the FCA's Consolidated Reporting System (CRS) [hereinafter nonexempt CRS reports]. For purposes of this policy, nonexempt CRS reports are defined as reports produced from the CRS containing information that has been routinely disclosed in Farm Credit System (System) institutions' quarterly and annual financial reports and filed with the FCA.

The nonexempt CRS reports include the Uniform Performance Report (UPR), Uniform Peer Performance Report (UPPR), Six-Quarter Trend Report, Six-Year Trend Report, and Institution Comparison Report. Under this policy, the Call Reports and subsequent reports for the institution that submitted the information will be available to that institution on the FCA Web site approximately 35 days after the end of a quarter or a fiscal year.

Objectives: The FCA facilitates the competitive delivery of financial services to agriculture while protecting the public, the taxpayer, and the investor. Consistent with that mission, the FCA endeavors to provide information to System institutions and to the public. Call Reports and other nonexempt CRS reports contain information of value to the Agency, the System, and the public that enables an evaluation of the financial condition of a System institution in comparison to its peers. This information will provide

institutions with a succinct assessment of performance, in addition to that provided in the examination process. The FCA believes that implementation of this policy statement will enhance the FCA's information management activities in an efficient, effective, and economical manner consistent with OMB Circular A–130.

Operating Principles: Certain information reported to the Agency in compliance with Call Report instructions and not routinely disclosed by an institution, such as asset and liability repricing schedules or loan specific data, will continue to be exempt from disclosure and the FCA will not make it available under this policy statement.

Availability of Reports: All nonexempt CRS reports will be available within 45 days after the end of a quarter or a fiscal year free of charge on the FCA Web site.

The FCA often receives special requests for new reports containing nonexempt CRS information not produced from the CRS. Consistent with the Freedom of Information Act, the FCA will grant such special requests when the record is readily reproducible with reasonable efforts. We will assess fees to recover the direct costs of complying with the request, including the cost of collecting, processing, and disseminating the information. The FCA may grant a request for a fee waiver to an educational institution, a researcher, a governmental agency, a newspaper, and others, when the benefit derived from releasing the information exceeds the waived fee. Requests should be directed to the Office of Policy and Analysis.

Delegated Authority: The Director, Office of Policy and Analysis, in concurrence with the Director, Office of Examination, and the General Counsel, is responsible for implementing this policy statement, developing operating procedures, and assessing requests for fee waivers. Any of these responsibilities may be redelegated to appropriate staff in their respective offices.

Reporting Requirements: The Director, Office of Policy and Analysis, shall report annually to the Chief Executive Officer on the number of special requests for new reports containing nonexempt CRS information and fees received.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Nondiscrimination on the Basis of Disability in Agency Programs and Activities

FCA–PS–67

Effective Date: 27–JAN–05.
Effect on Previous Action: Supplements 12 CFR Part 606. *See* 60 FR 26033, May 16, 1995.
Source of Authority: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*); 36 CFR part 1191.

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) prohibits Executive agencies from discriminating on the basis of disability in the operation of agency programs and activities. Each agency is responsible for enforcing Section 504 as it applies to the agency's own programs, services, and employment practices. Under the provisions of Executive Order 12250, ''Leadership and Coordination of Nondiscrimination Laws,'' the Assistant Attorney General for the U.S. Department of Justice Civil Rights Division is responsible for coordinating the federal government's implementation and enforcement of Section 504. The FCA has issued regulations at 12 CFR Part 606 to carry out the nondiscrimination mandate of Section 504.

The Architectural Barriers Act of 1968 (ABA) requires certain buildings housing federal agencies to be accessible to people with disabilities. The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) establishes, and ensures compliance with, minimum accessibility standards in connection with the construction and alteration of facilities. The federal government and private entities follow different accessibility standards. The accessibility standards applying to the federal government (known as the ''Uniform Federal Accessibility Standards'' or UFAS) were revised to conform more closely to the accessibility standards applying to private entities (known as the ''Americans with Disabilities Act Accessibility Guidelines'' or ADAAG). The Access Board issued the revised standards on July 23, 2004, providing an effective date of September 21, 2004.

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

The FCA prohibits discrimination on the basis of disability in the operation of Agency programs and activities. Each FCA program or activity, when viewed in its entirety, shall be readily accessible to and usable by individuals with disabilities. Accessibility may be achieved through a variety of methods, including the redesign of equipment, the assignment of aides to beneficiaries, the reassignment of services to alternate accessible sites, the alteration of existing facilities, and the construction of new facilities. The FCA is not required to alter an existing facility when there is another feasible way of providing access to programs and activities.

If a building is constructed or altered by, on behalf of, or for the use of the FCA, the design, construction, or alteration is subject to applicable provisions of the UFAS. A different set of accessibility standards, the ADAAG, applies to the design, construction, and alteration of places of public accommodation and commercial facilities owned, operated, or leased by private entities. The Access Board has issued a consolidated set of guidelines, ''ADA and ABA Accessibility Guidelines for Buildings and Facilities,'' which merges the provisions of UFAS and ADAAG.

Until FCA regulations are amended to incorporate the new accessibility standards, the FCA Board has decided that the construction or alteration of a facility by, on behalf of, or for the use of the FCA shall comply with the Access Board accessibility guidelines.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

FCS Building Association Management Operations Policies and Practices

FCA–PS–68

Effective Date: 26–APR–05.
Effect on Previous Action: Amends NV–95–40, FCA–PS–68–7–JUL–95.
Source of Authority: Farm Credit Act of 1971, as amended (Act), and the FCS Building Association (FCSBA) Articles of Association and Bylaws.

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

The FCSBA was established to provide the facilities and related services for the FCA and its field offices. The FCSBA is owned by the banks of the Farm Credit System (banks) and is funded by assessments, rental income from commercial tenants, and other income. The original ownership interest of each bank was based on the bank's assets as a percentage of total Farm Credit System (FCS) assets on June 30, 1981. The FCSBA owns and operates the FCA headquarters in McLean, Virginia, and holds the leases and provides certain services and

furnishings for FCA field offices. The FCA Board has sole discretionary authority under section 5.16 of the Act to approve the plans and decisions for such building and facilities. In order to carry out this authority and to preserve the FCA's arms-length relationship with the banks, the Articles of Association and Bylaws of the FCSBA grant the FCA Board the responsibility to oversee the affairs of the FCSBA.

The purpose of this policy statement is to outline general parameters and policies for various operational practices of the FCSBA that are supplementary to the FCSBA Bylaws.

A. FCA Board Responsibilities

Board Responsibilities. As outlined further in this policy statement, the FCA Board is responsible for items including, but not limited to, approval of all budgets and subsequent changes in object class limitations, signature authorities for financial expenditures, and long-term investment decisions. The FCA Board concurs in the development of performance standards, goals and pay scales for the FCSBA President as provided by the FCA Chairman and Chief Executive Officer (Chairman). Additionally, all contracts in excess of $150,000 per year, or those that cover the selection of outside auditors, property management services or the commission of special studies *with a cost in excess of $5,000* that were not approved during the annual budget process require *the approval of the FCA Board.*

Chairman's Responsibilities. The Chairman shall be responsible for coordinating the FCA Board's involvement in, and responsibilities for, the operation of the FCSBA, including: (1) Developing performance standards and pay scales for the President of the FCSBA and appraising the President's performance with the concurrence of other FCA Board Members, (2) reviewing periodic financial and operating reports, (3) providing procedures as necessary concerning the FCA staff's relationship with the FCSBA, and (4) reviewing such other matters as the Chairman may deem advisable for the purpose of bringing such matters to the attention of the FCA Board. The Chairman may delegate these responsibilities to one or more FCA staff, as he or she deems advisable, except those responsibilities related to pay and performance.

B. FCSBA President

General Signature Authority. As required by Article V, Section 2 of the FCSBA Bylaws, in addition to member certificates, the FCA Board authorizes the FCSBA President to sign general correspondence and contracts deemed necessary for the administration of FCSBA activities. The FCSBA President must get Board approval before changing the signatory authority for checks and before changing any banks with which the FCSBA does business.

Duties. The FCSBA President reports to the FCA Board and is generally responsible within the context of governing policies for all activities necessary to: (1) Manage FCSBA support to FCA, (2) manage the assets of the FCSBA, and (3) understand and consider the interests of the banks. Specific responsibilities include budget preparation and execution; planning; financial reporting and control; preparation of quarterly cash flow projections; supervision of inventory and supporting schedules for all fixed assets (furniture, fixtures and equipment); maintenance of management objectives schedules; supervision of the telecommunications system; the purchase and contracting for all supplies and services; records management; necessary correspondence; public relations activities in consultation with the FCA Office of Congressional and Public Affairs; personnel supervision and evaluation; the leasing and management of all space in the Farm Credit Building; site selection and lease negotiation for all FCA Field Offices; investment management; preparation and administration of all policies and operating procedures; engineering oversight; construction management; and preparation of all monthly, quarterly and annual reports required by the FCA Board. The FCSBA President shall coordinate these activities with the FCA Liaison as appropriate or required.

Standard Operating Procedures. In addition to those duties outlined under Article V, Section 2, of the FCSBA Bylaws and this Policy Statement, the FCSBA President is authorized to issue Standard Operating Procedures (SOPs), as he or she deems appropriate, in an effort to carry out the mission of the FCSBA provided that each SOP is reviewed by the FCA Board in advance. The President shall maintain all SOPs in a manner that reflects current policies and practices. SOPs will be filed with the Secretary to the Board, the FCSBA and others as requested.

Periodic Reports. The FCSBA President shall submit such periodic reports and proposals to the FCA Board and Liaison as may be necessary to facilitate budgets, assessments, audits, finances, plans, investments, reserve policy and accounting procedures that support the needs of the FCA Board and the banks as owners of the FCSBA. The FCSBA President shall normally report to the FCA Board at least quarterly. At a minimum, the report shall include:

1. A cash statement of operations, an explanation of budget variances, and month-to-date cash reconciliation report. This report will include specific notations of any expected reallocations of funds requiring Board approval.

2. A status of all projects/building improvements that are planned, including current accounting of actual costs of each project.

3. A summary of the status of reserve accounts and investments including documentation as available demonstrating compliance with investment policies.

4. A comprehensive Management Objectives tracking report outlining the status of issues and projects resulting from a combination of one or more sources such as audit and examination recommendations, FCA Board directives, as well as management initiatives.

5. Other matters such as insurance, leasing and contract performance issues that may be timely for the particular reporting period.

Annual Report. The FCSBA President shall prepare an annual report on the operations of the FCSBA. The draft of the report shall be provided to the FCA Board for its review within approximately 30 days of receiving the final report from the independent auditors. After FCA Board review, the report shall be provided to the banks and may be provided to others who have an interest in FCSBA affairs. Although other reports to the banks may be warranted from time to time, the Annual Report shall serve as the primary report to the FCS. The report shall include:

1. A discussion of significant issues and accomplishments.

2. Audited financial statements and reportable conditions.

3. A discussion of the previous year's and current year's budget.

4. A discussion of basic and supplemental services provided to FCA by the FCSBA including an estimate of market and actual values of those services.

5. A discussion of non-budgeted expenditures, that have been reimbursed by the FCA.

C. FCA Liaison

Duties. The FCA Chief Executive Officer appoints the Liaison to the FCS Building Association. The FCA Liaison facilitates and coordinates the FCA's needs with the FCSBA in such areas as office renovations, internal moves,

telecommunications services, field office support, and matters concerning building security and Emergency Preparedness. The FCA Liaison provides an internal control function through the countersigning of certain categories of checks as designated by the FCA Board. Additionally, the FCA Liaison reviews FCSBA proposals that come before the FCA Board, and provides counsel regarding issues on which the FCA Board must decide or provide direction. The FCA Liaison is also responsible for assuring that FCA operations, as appropriate, comply with FCSBA policies and practices as well as FCA guidance relating to the FCSBA. Finally, the FCA Liaison shall review monthly cash reconciliation reports as provided by the FCSBA President and report irregularities, as appropriate.

D. Annual Audit and Management Controls

Annual Audit and Management Controls Review. As provided by Article IV, Section 9, of the FCSBA Bylaws, the FCSBA shall produce audited financial statements on an annual basis. A review of material internal control procedures shall be included in the audit process on a periodic basis.

E. Financial Management

Budget Philosophy. It is FCA Board policy to ensure that every effort is made to minimize operating expenses without jeopardizing the banks' investment in the assets that are managed. Approved budgets are planned and implemented in consideration of a series of policy objectives as outlined in this statement and always in an effort to balance income and expenses.

Budget Development Time Frames. FCSBA budgets are prepared on a calendar year basis. Each November 1, the FCSBA President shall provide the proposed budget for the next calendar year to the FCA Board for its review and comment. With FCA Board concurrence, the proposed budget may be made available to the banks for further comment.

Operating Revenues. The FCSBA receives annual operating revenues from (1) Bank assessments, (2) office rental income from private commercial tenants, (3) other income such as fees and vending charges, (4) interest income from operating balances, and (5) reserve account transfers as necessary.

Operating Expenses. Operating expenses are budgeted using the appropriate object classifications as follows, which may be modified with FCA Board approval:

- FCA Field Office Rent.
- Taxes and Contract Services.
- Maintenance and Repair.
- Utilities.
- Salaries and Benefits.
- Professional and Consulting Fees.
- Property Management Fees.
- Other Expenses.

As a part of the draft budget proposal to the FCA Board on or before November 1st every year, the FCSBA President shall provide an individual expense breakdown for each item within the object class. This breakdown shall include the actual expense from the previous year, the estimated expense for the current year, and the projected expense for the proposed year. Unanticipated and emergency expenses during the course of the year as well as expenditures beyond amounts approved for object classes may be funded out of the operating reserve subject to FCA Board approval.

Capital expenditures funded by transfers from the component reserve account should be shown separately with a breakdown of individual expenditures.

Operating Reserves. In consideration of liquidity needs as well as unanticipated expenses, each approved budget shall include the sum equivalent to 15 percent of the annual operating expense as operating reserves.

Component Reserve Account. To reserve for capital replacement items and repairs to the McLean facility, the FCSBA shall maintain a component reserve account which is separate from operating funds and reserves. The funding for this account shall be initially based on the Capital Reserve Study of August 1992, which is to be updated by April 30, 2005 and then updated every 5 years by an independent engineering assessment. The policy objective is to ensure adequate funding, on a net present value basis, to cover up to a 10-year capital repair and replacement program to be updated, as necessary, with each approved budget.

Assessments. To ensure the maintenance of minimum ''cash on hand,'' FCSBA assessments are based on bank assets as of June 30, and issued quarterly consistent with the FCSBA Bylaws. After taking interest, rental, and other revenue into consideration, budgeted annual assessments must be sufficient to fund the operations of the FCSBA, including the ability to hold operating reserves equal to 15 percent of expenses as well as component reserves consistent with FCSBA policy.

Adjustments to assessments can occur subject to FCA Board approval when total yearend ''cash and cash equivalents'' exceed or are below operating and component reserve requirements. Adjustments are normally considered for third quarter assessments and are based upon the previous year's audited financial statements. Earnings, if any, are distributed through this process in lieu of direct payment.

Investments. The FCSBA invests its funds in an effort to achieve maximum yield consistent with liquidity needs and investment safety. For short-term accessibility, operating reserves and other operating ''cash on hand'' may be invested in short-term money market accounts, certificates of deposits of federally insured institutions, and short-term instruments of the U.S. Government or commercial paper rated P–1 or A–1 by Moody's and Standard and Poors, respectively. Operating reserves investment decisions are made by the FCSBA President consistent with this policy.

With the goal of achieving the best long-term returns while minimizing risk, component reserves are invested solely in instruments backed by the U.S. Government and agencies of the U.S. Government. The maturities and amounts of component reserve investments shall be generally consistent with the anticipated liquidity needs of the FCSBA capital replacement and repair program. Component reserve investment decisions require FCA Board approval.

Budgeting for Reimbursable Expenses. The FCA regularly reimburses the FCSBA for telecommunications and other expenditures on a cost recovery basis. Because there is no positive or negative financial impact on the FCSBA, these transactions are handled on a ''net'' basis and thus not included in the budget.

Budget Execution. The FCSBA President shall administer the annual budget as approved by the FCA Board. Expenditures during the course of the year that would exceed the object class budget require prior FCA Board approval. Exceptions to this policy are made in the event of emergency or the funding of accrued employee benefits. Expenditures in these cases will be brought to the FCA Board in the form of an Executive Summary for approval within 10 business days of occurrence. In considering its approval, the FCA Board has the option of either adjusting other object classes, utilizing the operating reserve, or taking other action, as it deems appropriate.

F. Contract Management

General. In accordance with Article IV of the FCSBA Bylaws, it is the policy of the FCA Board that all contracts issued on or on behalf of the FCSBA be:

1. Competitively bid with a minimum of three bids, when in excess of $15,000.

2. Obtained with a minimum of three price quotes, when less than $15,000, and more than $2,500.

3. Generally awarded to the lowest bidder meeting contract specifications except in those instances where the differences in cost are considered negligible relative to a particular benefit offered by a higher bid.

4. Reviewed and approved by the FCA Board when in excess of the amount of $150,000, or for the purpose of outside auditors, property managers, or special studies that were not approved during the budget process.

5. Retained in file a minimum of 3 years.

6. When possible, bid in conjunction with the budget year.

Exceptions. Notwithstanding the above requirements, the FCA Board has the authority to make exceptions, as it deems appropriate to the circumstances. Additionally, competitive bidding is not required if the circumstances warrant immediate resolution or are vendor specific to equipment, in which case the FCSBA President will provide the FCA Board with a detailed report of the surrounding circumstances in 10 business days.

Contract Timeframes. Recurring contracts are normally for annual terms; however, when deemed cost effective, the FCSBA may allow terms up to 3 years. Obtaining best and final offers from bidders is encouraged.

Approval Authorization. The FCSBA President is authorized to approve contracts consistent with these guidelines and the FCSBA SOP. The FCSBA President may re-delegate up to $50,000 of contracting authority to the building property manager.

Contract Performance. The FCSBA President shall insure that adequate systems are in place to measure, administer, and report on the performance of FCSBA contracts.

G. Asset Management

Personal Property. The FCSBA President shall insure that adequate methodologies and systems are in place to ensure that FCSBA property is effectively accounted for on a periodic basis.

H. The FCSBA as a System Institution

Examination. The FCSBA is examined as provided by the Act. The scope of examination shall be generally consistent with the level of risk deemed associated with the operating practices of FCSBA management.

Assessments for Examination. The FCSBA will be charged annually for assessments consistent with FCA regulation found in 12 CFR 607.4, ''Assessment of other entities.''

Liquidation by System Request. Should the Boards of the banks adopt, pursuant to Article IX of the FCSBA Articles of Association, a resolution to dissolve and liquidate the FCSBA, the dissolution and liquidation will be subject to, and conducted in accordance with, the Act and the regulations promulgated thereunder.

I. FCSBA Services to the FCA

Basic Services. The FCSBA provides space to the FCA headquarters in McLean, Virginia, and leases space on behalf of FCA for its field offices. Basic services provided to the FCA are similar to what is typical of rented office space and include, but are not limited to, such items as utilities, janitorial service, repairs for normal wear and tear, parking and appropriate landscaping as well as amenities which are available to all tenants and have the effect of maintaining property values and/or enhancing rental income.

Supplemental Services. In addition to providing basic services, the FCSBA will, on a case-by-case basis, provide certain supplemental support services related to FCA's housing needs under the following kinds of circumstances:

1. The FCSBA can provide the service on better terms than the FCA.

2. The service, if not provided by the FCSBA, could potentially adversely affect the aesthetic or other value of property, systems, building infrastructure, the health and safety of occupants, or the occupancy level of commercial tenants.

3. The capacity exists for the FCSBA to provide the service within the context of its employee expertise and/or its overall responsibilities to all tenants.

4. By providing the service, an advantage inures to the benefit of the FCS that would not otherwise occur.

5. An FCA Board determination that the service will be of particular benefit to the FCA, the FCS or the public.

As deemed necessary, the FCSBA President shall issue SOPs prescribing operational or other details of FCSBA services provided to the FCA.

Non-Reimbursable and Reimbursable Services. Whether or not the FCA will reimburse the FCSBA for a supplemental service will generally be determined as follows:

1. Reimbursement is not required for support provided by the FCSBA when resources are available within FCA Board approved budgets for the FCSBA and one or more of the criteria for supplemental services expenditures outlined above have been met.

2. Unless otherwise determined by an FCA Board action, supplemental support services requiring resources beyond that available within the FCSBA budget will require reimbursement.

Reimbursements in excess of $10,000 that occur on an ongoing basis will require a written Memorandum of Understanding between the FCA and the FCSBA outlining the terms and conditions of the services provided and reimbursement. One time or minor recurring reimbursements may be handled by purchase orders. Reimbursable expenses shall be determined on an actual cost basis or a recognized methodology to achieve the goal of fully reimbursing the FCSBA on the transaction.

Dated this 26th day of April, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Disaster Relief Efforts by Farm Credit Institutions

FCA–PS–71

Effective Date: 13–JUN–96.

Effect on Previous Action: Supersedes FCA Bookletter 368–OE, September 14, 1993. *See* 61 FR 37471, July 18, 1996.

Source of Authority: Section 5.17 of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement:

The FCA recognizes that in the aftermath of hurricanes, floods, droughts, or other natural or man-made disasters, specific sections of the country or segments of the agricultural community are declared to be disaster areas. Such disaster area declarations may be made by the President of the United States, the Governor of a State, or a specific Federal or State government agency. When a disaster area includes a rural community where a Farm Credit institution is located or does business, the institution can be affected in two ways: directly, such as by physical damage to the institution itself or incapacitation of employees; or indirectly, such as by damage suffered by individuals and businesses with loans from the institution. In the interest of providing the highest quality and most efficient service to agricultural borrowers, the FCA encourages Farm Credit institutions operating in disaster-affected areas to work within their communities to help alleviate pressures on borrowers under stress.

When conducted in a reasonable and prudent manner, the efforts of Farm Credit institutions to work in the

public's interest with borrowers in the disaster areas will be considered consistent with safe and sound business practices. It is the FCA's belief that the institutions have considerable flexibility under the existing regulations to provide appropriate disaster relief. Such relief efforts may include, but would not necessarily be limited to, extending the terms of loan repayment or restructuring a borrower's debt obligations. In addition, a Farm Credit institution may consider easing some loan documentation or credit-extension terms for new loans to certain borrowers or requesting the FCA to grant relief from specific regulatory requirements. It is the FCA's belief that the principal objectives of any disaster assistance program developed by a Farm Credit institution and approved by its board should be to:

1. Provide necessary and timely relief to disaster-affected customers of the institution;

2. Minimize the adverse effects of the disaster on the profitability, financial condition, operating efficiency, and morale of customers, as well as on the institution;

3. Review applicable statutory and regulatory requirements and determine whether requesting the FCA to provide exceptions from regulatory requirements would be appropriate; and

4. Promote, through such consideration and actions, the Farm Credit System's mandate to provide American farmers and ranchers with sound, adequate, and constructive credit and closely related services.

The FCA further believes that proper risk controls and management oversight should be exercised to ensure that such efforts serve the interests of the lending institution as well as those of the community. Any institution providing disaster relief should document such relief actions as well as any significant departures from otherwise applicable institution policies and procedures.

The aforementioned objectives and risk controls are conditions and characteristics on which the FCA will evaluate an institution's relief activities. These objectives and risk controls should be set forth in any request to the FCA for specific regulatory relief.

The FCA also recognizes that conditions related to a disaster may impair an institution's ability to comply in a timely way with regulatory reporting and publishing requirements. Farm Credit institutions should contact their FCA field office when relief from specific regulatory or reporting requirements is needed.

Additionally, the Board of Governors of the Federal Reserve System (Federal Reserve Board) has, from time to time, granted relief from certain Regulation Z requirements to consumers located in declared disaster areas. It is likely that the Federal Reserve Board will continue to promulgate similar temporary exceptions in disaster-affected areas. When this occurs, the FCA will, as a matter of convenience, continue to notify the Farm Credit institutions affected by Regulation Z exceptions.

Dated this 13th day of June, 1996.

By Order of the FCA Board.

Floyd Fithian,

Secretary to the Board.

Financial Institution Rating System (FIRS)

FCA–PS–72

Effective Date: 27–JAN–05.

Effect on Previous Action: None.

Source of Authority: Sections 5.9 and 5.17 of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration Board Hereby Adopts the Following Policy Statement:

I. Policy

The Financial Institution Rating System (FIRS) shall be the rating system used by Farm Credit Administration (FCA or Agency) examiners for evaluating and categorizing the safety and soundness of Farm Credit System (System) institutions on an ongoing, uniform, and comprehensive basis.

The FIRS will provide valuable information to the Agency for assessing risk and allocating resources based on the safety and soundness of regulated institutions. Ratings assigned to regulated institutions will be adjusted periodically so that they accurately reflect the condition of institutions.

II. Standards and Implementation

Based on the conclusions reached in the ongoing examination of an institution's financial, managerial, and operational condition, FCA examiners will assign ratings to each of the rating factor components and assign a composite rating that reflects the condition and overall safety and soundness of the System institution. These ratings shall be reported to the institution's Board of Directors and Chief Executive Officer.

Component and composite ratings are assigned on a 1 to 5 numerical scale. A 1-rating indicates the strongest performance and management practices and the least degree of supervisory and regulatory concern, while a 5-rating indicates an extremely high, immediate or near-term probability of failure and unsatisfactory management practices and, therefore, the highest degree of concern.

Although each institution has its own examination and supervisory issues and concerns, the FIRS is structured to evaluate all significant financial, asset quality, and management factors common to all System institutions. Examination criteria for each of the rating components are defined in the FCA Examination Manual, which is available to the public. The FCA Examination Manual also incorporates the evaluative criteria under which component and composite ratings are assigned.

Composite Rating

The FIRS provides a general framework for assimilating and evaluating all significant financial, managerial, and operational factors to assign a composite rating to each System institution. The composite rating is based on a qualitative and quantitative analysis of the factors comprising each of the following components, the interrelationships among components, and the overall level of concern for those risks that affect a System institution.

The composite rating does not assume a predetermined weight for each component nor does it represent an arithmetic average of assigned component ratings. The weight given to any individual component in determining composite ratings varies depending on the degree of concern associated with the component and the threat posed to the overall safety and soundness of the institution.

Component Ratings

Listed below is a brief description of the FIRS components and the more common evaluative criteria and factors considered under each component.

- *Capital*—A System institution is expected to maintain capital commensurate with the nature and extent of risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The capital component is based on an evaluation of an institution's capacity to absorb losses and provide for future growth. An evaluation of capital relies on many factors such as regulatory capital requirements, trends, portfolio and institutional risk, growth, adequacy of risk funds, management capability, and other factors as appropriate.
- *Assets*—This component is based on an assessment of both the quality of the current portfolio and the quality of the associated management processes that substantially impact the quality of

assets. An assessment of assets relies on many factors such as loan portfolio management, investment portfolio management, loan portfolio trends, risk identification processes, credit administration, allowance for loan losses, and other factors that affect the quality, performance, income producing capacity, and stability of assets.

• *Management*—The management component is based on an assessment of board and management performance against all factors considered necessary to operate the institution within accepted banking practices and in a safe and sound manner in accordance with applicable laws, regulations, and guidelines.

• *Earnings*—This component is based on an evaluation of the quantity, quality, and sustainability of the institution's earning performance. An evaluation of earnings considers factors such as the level of earnings, composition and quality of net income, stability of earnings performance, relationship to portfolio risk, quality of earnings management, and other factors as deemed appropriate.

• *Liquidity*—The liquidity component is based on an evaluation of an institution's capacity to promptly meet the demand for payment of its obligations, fund its loan portfolio, and readily meet the reasonable credit needs of the territory served. An evaluation of liquidity also considers continued access to funding, the existence of secondary sources of liquidity, and other factors as deemed appropriate.

• *Sensitivity*—This component reflects the degree to which changes in interest rates may affect earnings or the market value of an institution's equity. An evaluation of this component considers such factors as the size and complexity of the institution's financial activities, the level of interest rate risk exposure relative to capital and earnings, investment and derivatives activities, management's ability to identify, measure, monitor, project, and control interest rate risk, and other factors as deemed appropriate.

III. Responsibility

It is the responsibility of the Chief Examiner to ensure that the components used to support the composite ratings are reviewed periodically to make certain they reflect the material matters that impact the safety and soundness of institutions. In this respect, the Chief Examiner shall make recommendations to the FCA Board to add or delete components as necessary. Specific evaluative criteria and factors for determining component and composite ratings shall be established by the Chief Examiner and incorporated in the FCA Examination Manual or by other means as appropriate. The Chief Examiner is responsible for ensuring that ratings assigned to institutions are commensurate with and accurately reflect the risk in the institutions.

IV. Reporting

At least quarterly, the Chief Examiner will provide the FCA Board a report of the composite rating of all FCS institutions.

V. Implementation

System institutions examined after the date this policy is adopted by the FCA Board will be assigned composite and component ratings in accordance with this Policy Statement.

Dated this 27th day of January, 2005.

By Order of the Board.

Jeanette C. Brinkley,
Secretary to the Board.

Borrower Privacy

FCA–PS–77

Effective Date: 10–NOV–99.
Effect on Previous Action: None.
Source of Authority: Section 5.9 of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

The Farm Credit Administration Board believes that consumer privacy is an important component of individual freedom. The FCA Board also realizes that the free flow of information is necessary for the functioning of our democratic society and market economy. As cooperative institutions organized using the principles of democracy and free markets, these same issues are important to Farm Credit System (System) institutions and their shareholders. Moreover, since Farm Credit institutions are owned and directed by the farmers, ranchers and cooperatives who borrow from them, the privacy and security of customer information is vital to the System's continued dependability and long-term success.

Recently we have witnessed the proliferation of businesses that specialize in the collection and dissemination of personal financial information. These ''information brokers'' market public and nonpublic information to various customers. Advances in computer technology have enabled ''information brokers'' to access and distribute personal financial information easily, cheaply, and without a consumer's knowledge or consent.

Since 1972, FCA regulations have required that borrower information be held in strict confidence by Farm Credit institutions, their directors, officers and employees. Our regulations at 12 CFR Part 618, Subpart G specifically restrict Farm Credit institution directors and employees from disclosing information not normally contained in published reports or press releases about the institution or its borrowers or members. These regulations also provide Farm Credit institutions clear guidelines for protecting their borrowers' nonpublic personal information.

The FCA Board believes that Farm Credit institutions have a responsibility to inform their shareholders of their obligation to protect shareholders' nonpublic personal information. Therefore, Farm Credit institutions should inform new borrowers at loan closing of the FCA regulations on releasing borrower information. Farm Credit institutions should also address this information in the Annual Report to Shareholders. The implementation of these measures will ensure that new and existing borrowers are aware of the privacy protections afforded them through FCA regulations and Farm Credit System institution efforts.

Dated this 10th day of November, 1999.

By Order of the Board.

Vivian L. Portis,
Secretary to the Board.

Official Names of Farm Credit System Institutions

FCA–PS–78

Effective Date: May 3, 2000.
Effect on Previous Action: Supercedes FCA–PS–63 [NV–96–22] 05/30/96.
Source of Authority: Sections 1.3(b), 2.0(b)(8), 2.10(c), 3.0, 5.17(a)(2)(A), 7.0, 7.6(a), 7.8(a) of the Farm Credit Act of 1971, as amended; 12 CFR Part 611.

The Farm Credit Administration (FCA or Agency) Board Hereby Adopts the Following Policy Statement

Objective

Our objective is to ensure that the public can identify a Farm Credit System (System) bank, association, or service corporation as belonging to the Farm Credit System and is not misled by the name the institution uses. We also believe that Farm Credit System institutions should have more flexibility in proposing official names for their institutions. Our prior policy required institutions' official names to include either a statutory or regulatory designation, or its corresponding acronym. The new policy expands the methods by which institutions may identify themselves as members of the

System and adopts a policy for trade names and names of subsidiaries.

Official Names

The FCA Board will approve an official name for a Farm Credit System bank,[1] association, or service corporation that meets the following two requirements:

- The name includes *appropriate identification* of the institution as a System institution; and
- The name is not *misleading* or inappropriate.
- *Appropriate identification* means the name contains either 1) the relevant statutory or regulatory designation, or its corresponding acronym, or 2) other appropriate identification as a System institution. Relevant statutory and regulatory designations, and their corresponding acronyms, are as follows:
- Agricultural Credit Bank or ACB.
- Bank for Cooperatives or BC.
- Farm Credit Bank or FCB.
- Agricultural Credit Association or ACA.
- Production Credit Association or PCA.
- Federal Land Credit Association or FLCA.
- Federal Land Bank Association or FLBA.

Other *appropriate identification* as a System institution includes the following:

- Farm Credit Services.
- Farm Credit.
- FCS.
- A member of the Farm Credit System.

Misleading names are those that a reasonable person might find confusing. For example, we would not issue a charter to an institution requesting a name that is the same as or similar to that of an existing institution because the public might find this confusing. Merely avoiding identical names is not enough; to minimize confusion, a proposed name must sufficiently distinguish an institution from other institutions. If the Agency had approved a charter for an institution using MyTown, ACA, as its official name, it would not issue a charter for an institution proposing ACA of MyTown or MyTown Farm Credit Services, ACA, as its official name. Nor would we issue a charter with the phrase ''farm credit association'' as part of the official name, because the inevitable use of the acronym ''FCA'' would be confused with the name of the Agency. Also, we would not approve a name for an institution that could cause the public to confuse that institution's authorities and services with those of a commercial bank, thrift institution, or credit union. For example, we would not issue a charter to a System institution requesting the term ''national bank'' in its official name because this could cause confusion regarding the services the institution may offer.

Trade Names

A System institution may use a trade name. The trade name may not be misleading. If an institution uses a trade name, it must use both the official and trade names in all written communications.

Related Issues

If an ACA and its subsidiaries operate under substantially different names, they must clearly identify the parent/subsidiary relationship in all written communications. For example, if MyTown, PCA, is a subsidiary of EveryTown, ACA, the PCA must identify itself as a subsidiary of the parent ACA in its written communications.

Please note that while the FCA cannot reserve names, the Patent and Trademark Office will register names under certain conditions. When applying for a name change or new charter, System institutions should submit a statement indicating whether they have applied for a trademark in that name.

This statement addresses only FCA's policy. Other laws, such as Federal or state trademark laws, may apply. Institutions should ensure that their official and trade names do not infringe the trademarks or service marks of other companies. Institutions may wish to consult legal counsel to determine whether their proposed names could be challenged or protected under state or federal law.

Dated this 3rd day of May, 2000.

By Order of the Board.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

Dated: November 17, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–23237 Filed 11–23–05; 8:45 am]

BILLING CODE 6705–01–P

[1] Farm Credit System bank includes Farm Credit Banks, Banks for Cooperatives, and Agricultural Credit Banks.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

November 17, 2005.

TIME AND DATE: 10 a.m., Thursday, December 1, 2005.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Martin County Coal Corporation and Geo/Environmental Associates*, Docket Nos. KENT 2002–42–R, KENT 2002–43–R, KENT 2002–44–R, KENT 2002–45–R, KENT 2002–251, KENT 2002–261, and KENT 2002–262. (Issues include whether the judge properly dismissed citations issued to Martin County Coal Corp. and Geo/Environmental Associates for various violations of 30 CFR 77.216(d), 77.216–3(d), and 77.216–4(a)(2); whether Martin County Coal Corp. violated 30 CFR 77.216(d) as found by the judge; and whether and Geo/Environmental Associates violated 30 CFR 77.216–4(a)(7) as found by the judge).

The Commission will hear oral argument in this matter on November 17, 2005.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 05–23313 Filed 11–21–05; 4:03 pm]

BILLING CODE 6735–01–M

GENERAL SERVICES ADMINISTRATION

[FAI N03]

Federal Acquisition Institute/Defense Acquisition University Vendor Meeting

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of meeting.

SUMMARY: The Federal Acquisition Institute (FAI) and the Defense Acquisition University (DAU) will hold

a vendor meeting to provide information on shared initiatives and activities, as well as recent policy developments in the area of acquisition training. FAI and DAU work together to address many of the acquisition workforce training needs of the Federal Government. Partnering with DAU enables FAI to build upon existing DAU training, develop Governmentwide curriculum, and promote a cohesive and agile workforce.

FAI will describe plans and requirements for training-related services under the Acquisition Workforce Training Fund (AWTF). Of particular interest to vendors is a solicitation for core acquisition training that FAI plans to issue soon.

DAU will discuss plans for the redesign of Contracting (CON) Level 2 courses.

DATES: The meeting will be held December 9, 2005, from 10:00 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at GSA's auditorium located at 1800 F Street, NW., Washington, DC. Register bye-mail at *maria.hernandez@gsa.gov*, or call (703) 558–4795.

WHO SHOULD ATTEND? Training developers, vendors with Commercial-off-the-Shelf (COTS) training products, vendors with capabilities related to the full Instructional System Design (ISD) methodologies, and acquisition training experts.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Hernandez, by phone at 703–558–4795, or by e-mail at *maria.hernandez@gsa.gov.*

Dated: November 18, 2005.

Pat Brooks,

Director,Office of National and RegionalAcquisition Development.

[FR Doc. 05–23240 Filed 11–23–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AS]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4794 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

2005 Lead Disclosure Rule Public Awareness Survey—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The proposed 2005 Lead Disclosure Rule Public Awareness Survey will assess small and medium-sized rental property owners' self-reported awareness of and compliance with the Lead Disclosure Rule. The Lead Disclosure Rule requires property owners to disclose to prospective tenants and buyers the presence of lead paint and lead-based paint hazards in residential properties built before 1978, if known by the owners. The rule was published under the authority of Title X of the Housing and Community Development Act of 1992 by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart A, and by the Environmental Protection Agency (EPA) at 40 CFR part 745, subpart F.

Childhood lead poisoning, while on the decline, remains a threat to the health and well-being of young children across the United States. In accordance with the Healthy People 2010 goal to ''eliminate elevated blood lead levels in children,'' there is a need for primary prevention of childhood lead poisoning. Primary prevention is the removal of lead hazards from a child's environment before the child is exposed. Ensuring compliance with the Lead Disclosure Rule is one component of a primary prevention strategy.

The U.S. Department of Justice, HUD, and EPA, in partnership with local health, housing, and law enforcement agencies have completed more than 34 enforcement settlements under the Lead Disclosure Rule. As a result, they have obtained commitments from property owners to test and abate lead-based paint hazards in their high-risk rental housing units. HUD has requested the assistance of the Lead Poisoning Prevention Branch at CDC to design and implement an evaluation of their enforcement efforts.

As part of this evaluation effort, CDC is interested in the perception of the Lead Disclosure Rule by sectors of the property owner population that have been targeted less often for enforcement of the rule. This survey of rental property owners who own fewer than 50 rental units will be the first effort of its kind to capture this particular population's self-reported awareness of and compliance with the Lead Disclosure Rule.

The survey will be administered in four U.S. cities during 2005 and 2006. Two of the cities will be involved in a compliance assistance and enforcement intervention by HUD. The other two cities will be control cities (without such an intervention). For all four cities, CDC will conduct a cross sectional, ''before and after'' study design. Each respondent will be surveyed only once, and participation is voluntary.

Respondents will be asked to complete a brief written survey and return the survey anonymously via the addressed, stamped envelope that CDC will provide. There is no cost to respondents except the time to complete the survey. The estimated total burden hours are 250.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Targeted Property Owners	1000	1	15/60

Dated: November 17, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–6505 Filed 11–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–06–06AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The 2nd Injury Control and Risk Survey (ICARIS 2)—Phase 2—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities, including those identified as priorities in ''*Healthy People 2010*'' objectives for the nation. Injuries are a major cause of premature death and disability with associated economic costs of over 150 billion dollars in lifetime costs for persons injured each year. ''*Healthy People 2010*'' objectives and the recent report from the Institute of Medicine, ''*Reducing the Burden of Injury*'', call for reducing this toll. In addition to national efforts, NCIPC funds injury control prevention programs at the state and local levels. The use of outcome data (e.g., fatal injuries) for measuring program effectiveness is problematic because cause-specific events are relatively rare and data on critical risk factors (e.g., whether a helmet was worn in a bike crash, whether a smoke detector was present at a fatal fire, etc.) are often missing. Because these risk factors occur early in the causal chain of injury, injury control programs generally target them to prevent injuries. Accordingly, monitoring the level of injury risk factors in a population can help programs set priorities and evaluate interventions.

The first Injury Control and Risk Factor Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (18 years of age or older) in the United States. Proxy data were collected on 3,541 children less than 15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data on related subjects including dog bites, bicycle helmet use, residential smoke detector usage, fire escape practices, attitudes toward violence, suicidal ideation/behavior, and compliance with pediatric injury prevention counseling.

ICARIS–2 is a national telephone survey focusing on injuries. The survey process began in the summer of 2001 and was completed in early 2003. Analyses are currently being conducted on the data collected on nearly 10,000 respondents. The first phase of the survey was initiated as a means for monitoring the injury risk factor status of the nation at the start of the millennium.

The 2nd phase of ICARIS–2 is needed to expand knowledge in areas investigators could not fully explore previously. By using data collected in ICARIS as a baseline, the data collected in Phase-2 will be used to measure changes and gauge the impact of injury prevention policies. This current national telephone survey on injury risk is being implemented to fully monitor injury risk factors and selected year ''*Healthy People 2010*'' injury objectives, as well as evaluate the effectiveness of injury prevention programs. There are no costs to respondents except their time to participate in the survey.

ESTIMATES OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Adult male and female (18 years of age and older)	4,000	1	15/60	1000

Dated: November 17, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–6506 Filed 11–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

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: Working Group of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Audio Conference Call Time and Date: 10 a.m.–4 p.m., EST, Monday, November 28, 2005.

Place: Audio Conference Call via FTS Conferencing. The USA toll free dial in number is 1–888–810–8159 with a pass code of 69883.

Status: Open to the public, but without a public comment period.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary, Department of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for the conference call includes reports from the Working Groups on the Bethlehem Steel Site Profile, Y–12 Site Profile, and a discussion concerning the Board's approach to making an SEC Petition.

The agenda is subject to change as priorities dictate.

In the event a member of the working group cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

For Further Information Contact: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

Due to administrative issues concerning the topics for discussion, which were not confirmed until this week, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E5–6508 Filed 11–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1294–N]

RIN 0938–AN99

Medicare Program; Coverage and Payment of Ambulance Services; Inflation Update for CY 2006

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

ACTION: Notice.

SUMMARY: This notice announces an updated Ambulance Inflation Factor (AIF) for payment of ambulance services during calendar year (CY) 2006. The statute requires that this inflation factor be applied in determining the fee schedule amounts and payment limits for ambulance services. The updated AIF for 2006 applies to ambulance services furnished during the period January 1, 2006, through December 31, 2006.

DATES: *Effective date:* The AIF for 2006 is effective for ambulance services furnished during the period January 1, 2006, through December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Anne E. Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory History

Under section 1861(s)(7) of the Social Security Act (the Act), Medicare Part B (Supplementary Medical Insurance) covers and pays for ambulance services, to the extent prescribed in regulations at 42 CFR Part 410 and Part 414, when the use of other methods of transportation would be contraindicated. The House Ways and Means Committee and Senate Finance Committee Reports that accompanied the 1965 legislation creating the Act suggest that the Congress intended that: the ambulance benefit cover transportation services only if other means of transportation are contraindicated by the beneficiary's medical condition; and only ambulance service to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered (H.R. Rep. No. 213, 89th Cong., 1st Sess. 37 and S. Rep. No. 404, 89th Cong., 1st Sess., Pt I, 43 (1965)). The reports indicate that transportation may also be provided from one hospital to another, to the beneficiary's home, or to an extended care facility.

Our regulations relating to ambulance services are located at 42 CFR Part 410, subpart B and Part 414, subpart H. Section 410.10(i) lists ambulance services as one of the covered medical and other health services under Medicare Part B. Ambulance services are subject to basic conditions and limitations set forth at § 410.12 and to specific conditions and limitations included at § 410.40. Part 414, subpart H describes how payment is made for ambulance services covered by Medicare.

Ambulance services are divided into different levels of services based on the medically necessary treatment provided during transport as well as into ground (including water) and air ambulance services. These services include the following levels of service.

For Ground:

- Basic Life Support (BLS)
- Advanced Life Support, Level 1 (ALS1)
- Advanced Life Support, Level 2 (ALS2)

- Specialty Care Transport (SCT)
- Paramedic ALS Intercept (PI)

For Air:

- Fixed Wing Air Ambulance (FW)
- Rotary Wing Air Ambulance (RW)

Historically, payment levels for ambulance services depended, in part, upon the entity that furnished the services. Prior to implementation of the ambulance fee schedule on April 1, 2002, providers (hospitals, including critical access hospitals, skilled nursing facilities, and home health agencies) were paid on a retrospective reasonable cost basis. Suppliers, which are entities that are independent of any provider, were paid on a reasonable charge basis.

On February 27, 2002, the Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Non-Emergency Ambulance Services final rule was published in the **Federal Register** (67 FR 9100). That final rule implemented section 1834(l) of the Act (which was added by the Balanced Budget Act of 1997) and established a fee schedule for the payment of ambulance services under the Medicare program effective for services furnished on or after April 1, 2002. The fee schedule described in the final rule replaced the retrospective reasonable cost payment system for providers and the reasonable charge system for suppliers of ambulance services. In addition, that final rule: Implemented the requirement in section 1834(l)(6) of the Act that ambulance suppliers accept Medicare assignment; codified the establishment of new Health Care Common Procedure Coding System (HCPCS) codes to be reported on claims for ambulance services; established increased payment under the fee schedule for ambulance services furnished in rural areas based on the location of the beneficiary at the time the beneficiary is placed on board the ambulance; and revised the certification requirements for coverage of non-emergency ambulance services. That final rule also provided for a 5-year transition period during which program payment for Medicare covered ambulance services would be based upon a blended rate comprised of a fee schedule portion and a reasonable cost (providers) or reasonable charge (suppliers) portion. We are now in the fourth year of that transition over to full payment based solely on the fee schedule amount.

B. Ambulance Inflation Factor (AIF) for CY 2006

Section 1834(l)(3)(B) of the Act provides the basis for updating payment amounts for ambulance services. Our implementing regulations at § 414.610(f) provide that the ambulance fee schedule must be updated by the AIF annually, based on the consumer price index for all urban consumers (CPI–U) (U.S. city average) for the 12-month period ending with June of the previous year.

Our regulations at § 414.620 provide that changes in payment rates resulting from incorporation of the AIF will be announced by notice in the **Federal Register** without opportunity for prior comment. We find it unnecessary to undertake notice and comment rulemaking because the statute and regulations specify the methods of computation of annual updates. This notice does not change policy, but merely applies the update methods specified in the statute and regulations.

II. Provisions of the Notice

A. Ambulance Inflation Factor (AIF) for 2006

Section 1834(l)(3)(B) of the Act, as specified in § 414.610(f), provides for an update in payments for CY 2006 that is equal to the percentage increase in the CPI for all urban consumers (CPI–U), for the 12-month period ending with June of the previous year (that is, June 2005). For CY 2006 that percentage is 2.5 percent.

The national fee schedule for ambulance services has been phased in over a five-year transition period beginning April 1, 2002. (*See* § 414.615). According to section 414 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173), CMS established new § 414.617 which specifies that for ambulance services furnished during the period July 1, 2004 through December 31, 2009, the ground ambulance base rate is subject to a floor amount, which is determined by establishing nine fee schedules based on each of the nine census divisions, and using the same methodology as was used to establish the national fee schedule. If the regional fee schedule methodology for a given census division results in an amount that is lower than or equal to the national ground base rate, then it is not used, and the national fee schedule amount applies for all providers and suppliers in the census division. If the regional fee schedule methodology for a given census division results in an amount that is greater than the national ground base rate, then the fee schedule portion of the base rate for that census division is equal to a blend of the national rate and the regional rate. For CY 2006, this blend would be 40 percent regional ground base rate and 60 percent national ground base rate. Prior to January 1, 2006, during the transition period, the AIF was applied to both the fee schedule portion of the blended payment amount (both national and regional (if it applied)) and to the reasonable cost or charge portion of the blended payment amount separately, respectively, for each ambulance provider or supplier. Then, these two amounts were added together to determine the total payment amount for each provider or supplier. As of January 1, 2006, the total payment amount for air ambulance providers and suppliers will be based on 100 percent of the national ambulance fee schedule, while the total payment amount for ground ambulance providers and suppliers will be based on either 100 percent of the national ambulance fee schedule or 60 percent of the national ambulance fee schedule and 40 percent of the regional ambulance fee schedule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and when a collection of information requirement is submitted to the OMB for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we examine 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.

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period of public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of

finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because the statute and regulation specify the methods of computation of annual updates, and we have no discretion in this matter. Further, this notice does not change substantive policy, but merely applies the update methods specified in statute and regulation. Therefore, for good cause, we waive notice and comment procedures.

Under the Congressional Review Act, major rules generally cannot take effect until 60 days after the rule is published in the **Federal Register**. However, section 808(2) of the Congressional Review Act states that agencies may waive this 60-day requirement for ''good cause'' and establish an earlier effective date. As explained above, we believe that there is ''good cause'' for waiver of the APA requirement for notice and comment rulemaking because it would be unnecessary for us to fulfill that requirement. For the same reason, we believe that the ''good cause'' exception applies to the 60-day effective date requirement for major rules in the Congressional Review Act.

V. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As stated above, the AIF (equal to the percentage increase in the CPI–U of June 30, 2005 as compared to June 30, 2004) for 2006 is 2.5 percent. We estimate that the application of the AIF will result in this notice being considered a major rule because it will result in an additional total program expenditure of approximately $112 million in CY 2006.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all ambulance providers or suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

The Department of Health and Human Services (HHS) considers that a substantial number of entities are affected if the rule impacts more than 5 percent of the total number of small entities as it does in this notice. This notice will impact every ambulance provider and supplier in the same way because all ambulance payment rates for all ambulance services furnished by all types of ambulance providers and suppliers are increased by the same ambulance inflation factor. While all ambulance payment rates are increased by the 2.5 percent AIF, the impact of this increase does not meet the threshold established by HHS to be considered a significant impact.

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. 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 have no data to indicate that a substantial number of small rural hospitals will be impacted by this notice.

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 $110 million. This notice does not result in expenditures in any 1 year by State, local, or tribal governments of $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a notice that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

We estimate that the total program expenditure for CY 2006 for ambulance services covered by the Medicare program is approximately $4.5 billion. Application of an AIF of 2.5 percent will result in an additional total program expenditure of approximately $112 million over CY 2005.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 7, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–23163 Filed 11–23–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0443]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on focus groups as used by FDA to gauge public opinion. Policymakers can use focus group results to test and refine their ideas so they can conduct further research, as well as, adopt new policies and to allocate or redirect significant resources to support these policies.

DATES: Submit written or electronic comments on the collection of information by January 24, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets

Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Focus Groups as Used by the Food and Drug Administration—(OMB Control Number 0910–0497)

FDA will collect and use information gathered through the focus group vehicle. This information will be used to develop programmatic proposals, and as such, compliments other important research findings to develop these proposals. Focus groups do provide an important role in gathering information because they allow for a more in-depth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies.

Also, information from these focus groups will be used to develop policy and redirect resources, when necessary, to our constituents. If this information is not collected, a vital link in information gathering by FDA to develop policy and programmatic proposals will be missed causing further delays in policy and program development.

FDA estimates the burden for completing the forms for this collection of information as follows:

The total annual estimated burden imposed by this collection of information is 4,252 hours annually.

TABLE 1.[1]

Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (Includes Screening)	Total Hours
Center for Biologics Evaluation and Research	May Use Focus Groups When Appropriate	1	5	9	1.58	71
Center for Drug Evaluation and Research	Varies (e.g., Direct-to-Consumer Rx Drug Promotion, Physician Labeling of Rx Drugs, Medication Guides, Over-the-Counter Drug Labeling, Risk Communication	10	200	9	1.58	2,844
Center for Devices and Radiological Health	Varies (e.g., FDA Seal of Approval, Patient Labeling, Tampons, Online Sales of Medical Products, Latex Gloves	4	16	9	2.08	300
Center for Food Safety and Applied Nutrition	Varies (e.g., Food Safety, Nutrition, Dietary Supplements, Consumer Education)	8	40	9	1.58	569
Center for Veterinary Medicine	Varies (e.g., Animal Nutrition, Supplements, Labeling of Animal Rx)	5	25	9	2.08	468
Total		28	286		1.78	4,252

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects about 28 focus group studies using 186 focus groups lasting an average of 1.78 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

Dated: November 14, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23248 Filed 11–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension Agency Information Collection Activity Under OMB Review: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 23, 2005, 70 FR 55915.

DATES: Send your comments by December 27, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 (et seq.), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0037.

Forms(s): Not applicable.

Affected Public: Various modal transportation sector owners and operators.

Abstract: This voluntary collection, by way of a web-based vulnerability assessment tool, allows TSA to gather security-related data and provides a cost-free service to the transportation sector. TSA designed this tool to be flexible to support the unique characteristics of each transportation mode, while still providing a common framework from which analysis and trends can be identified. Users may use the results of the assessment to develop a security plan or to identify areas of potential vulnerability. Information regarding how to access the tool is available on TSA' Web site: *http://www.tsa.gov.* Select ''Industry Partners,'' then ''Risk Management,'' then finally select the ''DHS–VISAT'' link.

Number of Respondents: 300,245.

Estimated Annual Burden Hours: An estimated 2,401,960 hours annually.

Issued in Arlington, Virginia, on November 18, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–23243 Filed 11–23–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–60]

Notice of Submission of Proposed Information Collection to OMB; Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Housing industry groups may appeal for increases in FHA's maximum mortgage limits for specific counties or metropolitan statistical areas (MSA's).

DATES: *Comments Due Date:* December 27, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0302) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Housing industry groups may appeal for increases in FHA's maximum mortgage limits for specific counties or metropolitan statistical areas (MSA's).

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	140	1		40		5,600

Total Estimated Burden Hours: 5,600.

Status: Extension of an existing collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 17, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–23238 Filed 11–23–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–47]

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.

EFFECTIVE DATE: November 25, 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: November 17, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–23121 Filed 11–23–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–210–05–1610–DP]

Notice of Availability of a Draft Environmental Impact Statement

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

ACTION: Notice of availability of a Draft Environmental Impact Statement (DEIS) for the Draft Resource Management Plan for the Arizona Strip, the Vermilion Cliffs National Monument, and the Grand Canyon-Parashant National Monument and a Draft General Management Plan for the Grand Canyon-Parashant National Monument (Arizona Strip Draft Plan/DEIS).

DATES: Written comments on the Arizona Strip Draft Plan/DEIS will be accepted for 90 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Arizona Strip District Office, 345 East Riverside Drive, St. George, Utah 84790. You may also comment via e-mail to *Arizona_Strip@blm.gov.* You may hand deliver comments to Arizona Strip District Office, 345 East Riverside Drive, St. George, Utah 87490 or at any one of the public meetings. Our practice is to make comments, including names and home address of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, 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. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives, or officials of organizations or businesses available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Planning Team, Arizona Strip District Office, BLM, 345 East Riverside Drive, St. George, UT 84790.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the DEIS may be obtained from the above contact. Copies are also available for inspection at the following locations.

- Washington County Public Library, St. George, Utah.
- Fredonia Town Library, Fredonia, Arizona.
- Page Public Library, Page, Arizona.
- Kingman Branch Library, Kingman, Arizona.
- Flagstaff Public Library, Flagstaff, Arizona.

Public meetings will be held on the DEIS at Beaver Dam, Kingman, Flagstaff, Marble Canyon, Kaibab Village, Phoenix, and Page, Arizona; St. George, Utah; and Las Vegas, Nevada. Check local newspapers for exact dates, times, and locations.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 05–23315 Filed 11–23–05; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–DB]

Notice of Availability of a Draft Environmental Impact Statement for the Seminoe Road Gas Development Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Seminoe Road Gas Development Project DEIS that analyzes the environmental consequences of a proposed coalbed natural gas development and production operation in south central Wyoming.

DATES: The DEIS will be available for review and comment for 60 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. The BLM can best use comments and resource information if they are submitted by or before close of business the day of the end of the comment and review period. If you are uncertain as to what constitutes acceptable comment format or when comments are due, please contact the Project Leader or the Rawlins Field Office at the address below.

ADDRESSES: A copy of the DEIS was sent to affected Federal, State, and local government agencies and to interested parties. The document may also be available electronically on the following Web site: *http://www.wy.blm.gov/nepa/nepadocs.htm*. Copies of the DEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: David Simons, Project Leader, BLM Rawlins Field Office, 1300 N. Third Street, Rawlins, WY 82301. Requests for information may be sent electronically to: *rawlins_wymail@blm.gov* with ''Attention: Seminoe Road DEIS Information Request'' in the subject line. Mr. Simons may also be reached at (307) 328–4328.

SUPPLEMENTARY INFORMATION: Dudley & Associates, LLC (the Operators) propose to explore and develop natural gas resources from coal beds within their existing leases within the Seminoe Road Project Area. The project is located approximately 20 miles northeast of Rawlins, Wyoming near Seminoe Reservoir, Townships 21–24 North, Ranges 84–86 West, Sixth Principal Meridian, Carbon County.

The Operators will drill up to 1,240 wells on up to 785 well pad sites over the next 30 to 40 years. Depending on geologic conditions, well density would range from two wells per 640 acres to four wells per 640 acres.

Forty-nine percent of the approximately 137,000 surface acre area is public land administered primarily by the BLM. Of the remaining project area surface, 49 percent is privately owned and less than 2 percent is owned and administered by the State of Wyoming. The Federal mineral estate ownership pattern is the same as the surface ownership pattern. Currently, approximately 18 gas wells operate within the Seminoe Road Project Area from a pilot project drilled in 2001. The Operators propose to drill up to 1,240 additional wells over the next 30 to 40 years.

The BLM published its Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Seminoe Road Gas Development Project in the **Federal Register** on March 13, 2003. Based upon issues and concerns identified during scoping and during the development of National Environmental Policy Act (NEPA) analysis, the Seminoe Road DEIS focuses on individual and cumulative impacts to air quality, biological and physical resources, transportation, and socio-economics factors. In compliance with section 7(c) of the Endangered Species Act, as amended, the DEIS includes a biological assessment that identifies endangered or threatened species which may be affected by the Proposed Action.

This DEIS assesses the effects of implementing the proposed action at the scale presented by the project proponent. Subsequent site-specific development proposals would be submitted to the BLM in the form of Applications to Drill (APD). A NEPA analysis of the, APDs would be conducted and analyzed to address site specific effects using best management practices. These site-specific environmental analyses would be tiered to this EIS.

The Seminoe Road DEIS analyzes four alternatives in detail:

1. Alternative A, the No Action alternative. This means the project as proposed would not be approved;

2. Alternative B, the proposed action, with produced water from coalbed natural gas drilling and production discharged into ephemeral stream courses;

3. Alternative C, the proposed action, modified to provide for produced water discharge in the North Platte River system using pipelines, aqueducts, or other water transportation features; and

4. Alternative D, the proposed action, with produced water re-injected into underground aquifers.

Agency Preferred Alternative: BLM's preferred alternative is Alternative C.

The proposed action is to proceed with field development through establishing 785 well pad sites, drilling up to 1,240 natural gas wells, developing access roads and siting pipelines and other ancillary facilities (gas processing plant, compressor stations, water disposal sites, etc.). The proposed action identifies the drilling of multiple wells from a single pad and well completion in multiple coal formations. Produced water would be released into surface drainages running into the North Platte River.

How To Submit Comments

Comments must be submitted using one of the following methods:

1. Comments may be electronically mailed to *rawlins_wymail@blm.gov* with ''Attention: Seminoe Road Project Manager'' in the subject line, and avoiding the use of special characters or any form of encryption. If you do not receive a confirmation from our system that your comment has been received, please contact David Simons, Project Manager, Rawlins Field Office, (307) 328–4328;

2. Written comments may be mailed directly or delivered to the BLM at: Seminoe Road DEIS, Project Manager, Bureau of Land Management Rawlins Field Office, 1300 N. Third Street, P.O. Box 2407, Rawlins, WY 82301; and

3. Comments may be sent via telefax to the BLM, Attn: David Simons, at (307) 328–4224.

To be given consideration by BLM, all DEIS comments must include the commenter's name and street address.

BLM's practice is to make all comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address or both from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments.

Such requests will be honored to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: November 15, 2005.

Martin G. Griffith,

Acting State Director.

[FR Doc. 05–23064 Filed 11–23–05; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–553]

In the Matter of Certain NAND Flash Memory Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 20, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hynix Semiconductor Inc. of Korea; Hynix Semiconductor America Inc. of San Jose, California; and Hynix Semiconductor Manufacturing America Inc. of Eugene, Oregon. A supplement was filed on November 8, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain NAND flash memory devices and products containing same by reason of infringement of claims 1–5 of U.S. Patent No. 5,509,995, and claim 6 of U.S. Patent No. 5,869,404. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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.*

FOR FURTHER INFORMATION CONTACT: Steven R. Pedersen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 17, 2005, *Ordered That:*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain NAND flash memory devices or products containing same by reason of infringement of one or more of claims 1–5 of U.S. Patent No. 5,509,995, or claim 6 of U.S. Patent No. 5,869,404, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Hynix Semiconductor Inc., San 136–1, Ami-Ri Bubal-eub Ichon-Si, Kyoungki-do, Korea 467–860.

Hynix Semiconductor America Inc., 3101 North First Street, San Jose, California 95134.

Hynix Semiconductor Manufacturing America Inc., 1830 Willow Creek, Eugene, Oregon 97402.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Toshiba Corporation, 1–1, Shibaura 1–Chome, Minato-Ku, Tokyo 105–8001, Japan.

Toshiba America Electronic Components, Inc., 19900 MacArthur Blvd., Suite 400, Irvine, California 92612.

Toshiba America Information Systems, Inc., 9740 Irvine Blvd., Irvine, California 92618.

Toshiba America Consumer Products, L.L.C., 82 Totowa Road, Wayne, New Jersey 07470.

(c) Steven R. Pedersen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 18, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–23249 Filed 11–23–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Procedure for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ), CRT has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 24, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert S. Berman, U.S. Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, NW., Voting Section, 1800G, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedure for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: None. Abstract: Jurisdictions specifically covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,727 respondents will complete each form within approximately 10.02 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 47,365 total annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 18, 2005.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–23242 Filed 11–23–05; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America, Certain Klamath Falls Homeowners, and the MBK Partnership and Its Partners and Affiliated Entities Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 28 CFR 50.7, notice is hereby given that on November 18, 2005, a proposed Consent Decree (''Consent Decree'') in the case of *Burns* v. *MBK, et al.* v. *United States,* Civil Action No. 03–3021–HO (D. Or.), was lodged with the United States District Court for the District of Oregon.

The United States claims in this action sought the recovery of costs incurred in connection with response actions taken by the United States Environmental Protection Agency at the North Ridge Estates residential real estate development in Klamath Falls, Oregon (''the Site''). Under the terms of the Consent Decree, the MBK Partnership, and its partners and affiliated entities, will pay $433,333 to EPA for the completion of an RI/FS at the Site. The United States will also pay, on behalf of the United States Department of Health and Human Services, General Services Administration, Department of the Navy and Department of Defense, $400,000 to EPA for the completion of the RI/FS. In addition, pursuant to a separate settlement of their civil litigation against the MBK defendants, the homeowners that are a party to the Consent Decree have agreed to receive compensation for their homes, and to vacate their homes, so that EPA may complete its investigation and response action at the Site, and a receiver appointed by the United States District Court for the District of Oregon may attempt to redevelop and sell the property in return for the implementation of any final cleanup action. Under the Consent Decree, the United States will provide a covenant not to sue and contribution protection to the homeowners, the MBK defendants, and the receiver.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *Burns* v. *MBK et al.* v. *United States,* Civil Action No. 03–3021–HO (D. Ore.), D.J. Ref. 90–11–2–08462.

The Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 1000 SW. Third Ave., Portland, Oregon 97204–2902. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library,

please enclose a check in the amount of $9.50 (25 cents per page reproduction cost, without attachments) payable to the United States Treasury for payment.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–23269 Filed 11–23–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Specialty Vehicle Institute of America

Notice is hereby given that, on October 14, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Specialty Vehicle Institute of America (''SVIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Specialty Vehicle Institute of America, Irvine, CA. The nature and scope of SVIA's standards development activities are: For the development of a proposed voluntary standard (ANSI/SVIA–1–2006) addressing the design, configuration and performance aspects of four wheel all-terrain vehicles (''ATVs''), as a revision to the current voluntary standard (ANSI/SVIA–1–2001).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23257 Filed 11–23–05; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 178, page 54573 on September 15, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 27, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: Form Number: 1121–0142. Office for Victims of Crime, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Government. *Other:* None. The VOCA, Crime Victim Assistance Grant Program, Subgrant Award Report is a required submission by state grantees, within 90 days of their awarding a subgrant for the provision of crime victim services. VOCA and the Program Guidelines require each state victim assistance office to report to OVC on the impact of the Federal funds, to certify compliance with the eligibility requirements of VOCA, and to provide a summary of proposed activities. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 5,900 responses will be received which will take an average of 30 minutes to complete per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 295 (5,900 responses × .05 hour per response = 295 hours). There is no increase in the annual record keeping and reporting burden.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 18, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–23258 Filed 11–23–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0244 (2006)]

OSHA Strategic Partnership Program for Worker Safety and Health (OSPP)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: In accordance with 5 CFR 1320.8(d), the Occupational Safety and Health Administration (OSHA) requests comments concerning its proposed extension of the collection of information requirements specified in the OSHA Strategic Partnership Program for Worker Safety and Health (OSPP).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by January 24, 2006.

Facsimile and electronic transmission: Your comments must be received by January 24, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0244(2006), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Cathy Oliver at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2208.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burdens, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657 *et seq.*).

The OSPP allows OSHA to enter into an extended, voluntary, cooperative relationship with groups of employers, employees, and representatives (sometimes including other stakeholders, and sometimes involving only one employer) to encourage, assist and recognize their efforts to eliminate serious hazards and achieve a high level of worker safety and health that goes beyond what historically has been achieved through traditional enforcement methods. Each OSHA Strategic Partnership (OSP) determines which information will be needed, determining the best collection method, and clarifying how the information will be used. At a minimum, each OSP must identify baseline illness and injury data corresponding to all summary line items on the OSHA 200/300 logs, and must track changes at either the worksite level or participant-aggregate level. An OSP may also include other measures of success, such as training activity, self inspections, and/or workers' compensation data.

In this regard, the information collection requirements for the OSPP is used by the Agency to gauge the effectiveness of its programs, identify needed improvements, and ensure that its resources are being used to good and effective purposes.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's function, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) for the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected;
- Ways to minimize the burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the collection of information (paperwork) requirements outlined by the Strategic Partnership Program. In addition, the Agency proposes to use a blanket approval, eliminating the need for the Agency to submit the collection of information requirements for each individual partnership to OMB for approval. The Agency also proposes to increase the existing burden hours estimates as a result of the increasing the number of partnerships. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the collection of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: OSHA Strategic Partnership Program for Worker Safety and Health (OSPP).

OMB Number: 1218–0244.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal government; State, local or tribal governments.

Frequency: Annually.

Number of Respondents: 5,113.

Estimated Time Per Respondent: 11 hours.

Total Burden Hours: 57,923.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on November 17, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–23291 Filed 11–23–05; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0217(2006)]

Blasting and the Use of Explosives; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in 29 CFR part 1926, subpart U—Blasting and the Use of Explosives as well as several newly-identified information collection requirements contained in this subpart.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by January 24, 2006.

Facsimile and electronic transmission: Your comments must be received by January 24, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0127(2006), by any of the following methods:

Regular method, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Michael Buchet at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Directorate of Construction, OSHA, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The following is a brief description of the requirements in subpart U that pertain to the collection and retention of information:

General Provisions (§ 1926.900)

Section 1926.900(d)—Paragraph (d) states that employers must ensure that explosives not in use are kept in a locked magazine, unavailable to persons not authorized to handle the explosives. The employers must maintain an inventory and use records of all explosives; in use and not in use. In addition, the employer must notify the appropriate authorities in the event of loss, theft, or unauthorized entry into a magazine.

Section 1926.900(k)(3)(i)—Paragraph (k)(3)(i) requires employers to display adequate signs warning against the use of mobile radio transmitters on all roads within 1,000 feet of blasting operations to prevent the accidental discharge of electric blasting caps caused by current induced by radar, radio transmitters, lightning, adjacent powerlines, dust

storms, or other sources of extraneous electricity. The employer must certify and maintain a record of alternative provisions made to adequately prevent any premature firing of electric firing of electric blasting caps.

Section 1926.900(o)—Employers must notify the operators and/or owners of overhead power lines, communication lines, utility lines, or other services and structures when blasting operations will take place in proximity to those lines, services, or structures.

Section 1926.903(d)—The employer must notify the hoist operator prior to transporting explosives or blasting agents in a shaft conveyance.

Section 1926.903(e)—Employers must perform weekly inspections on the electrical system of trucks used for underground transportation of explosives. The weekly inspection is to detect any failure in the system which would constitute an electrical hazard. The most recent certification of inspection must be maintained and must include the date of inspection, a serial number or other identifier of the truck inspected, and the signature of the person performing the inspection.

Section 1926.905(t)—Under § 1926.905(t), the employer blaster must maintain an accurate and up-to-date record of explosives, blasting agents, and blasting supplies used in a blast. In addition, the employer must also maintain a running inventory of all explosives and blasting agent stored on the operation.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting the OMB extend the approval of the information collection requirements necessitated by 29 CFR part 1926, subpart U—Blasting Operations and the Use of Explosives. The Agency will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: 29 CFR part 1926, subpart U—Blasting Operations and the Use of Explosives.

OMB Number: 1218–0217.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, local or tribal government.

Frequency: On occasion.

Average Time Per Response: Time varies from five minutes to notify a hoist operator of blasting agents to eight hours to develop an alternative plan if an employer is unable to display adequate warning signs against the use of mobile transmitters during blasting operations.

Estimated Total Burden Hours: 322,523.

Estimated Cost (Operation and Maintenance): $800,000.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) Fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions, and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on November 21, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–23292 Filed 11–23–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–154]

NASA Advisory Committee; Renewal of NASA's Aerospace Safety Advisory Panel Charter

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Renewal and amendment of the Charter of the Aerospace Safety Advisory Panel.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Aerospace Safety Advisory Panel is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of this panel is unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4510.

SUPPLEMENTARY INFORMATION: Information regarding the Aerospace Safety Advisory Panel is available on the world wide web at: *http://www.hq.nasa.gov/office/codeq/asap/index.htm.*

Dated: November 17, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–23232 Filed 11–23–05; 8:45 am]

BILLING CODE 7510–13–U

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Tuesday, November 29, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. NCUA's Operating Budget for 2006/2007.
3. NCUA's Overhead Transfer Rate.
4. NCUA's Operating Fee Scale for 2006.
5. Interim Final Rule and Request for Comments: Part 707 of NCUA's Rules and Regulations, Truth in Savings.
6. Final Rule: Part 796 of NCUA's Rules and Regulations, Post-Employment Restrictions for Certain NCUA Examiners.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Tuesday, November 29, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Part 703 of NCUA's Rules and Regulations, Pilot Program Request. Closed pursuant to Exemption (4).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–23375 Filed 11–22–05; 3:20 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and approval of this data collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this information collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by January 24, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m, eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2007 and 2009 Survey of Science and Engineering Research Facilities.

Expiration Date of Approval: April 31, 2006.

Type of Request: Intent to seek approval to renew an information collection for three years.

Proposed Project: The National Science Foundation Survey of Science and Engineering Research Facilities is a Congressionally mandated (Pub. L. 99–159), biennial survey that has been conducted since 1986. The survey collects data on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. It was expected by Congress that this survey would provide the data necessary to describe the status and needs of science and engineering research facilities and to formulate appropriate solutions to documented needs. During the 2003 and 2005 survey cycles, data were collected from a population of approximately 465 research-performing colleges and universities. This survey population was supplemented with approximately 190 nonprofit biomedical research institutions receiving research support from the National Institutes of Health. Beginning with the FY 2003 cycle, a new section was added to the survey requesting information on the computing and networking capacity at the surveyed institutions, an increasingly important part of the infrastructure for science and engineering research. Other important changes include updating the networking and computing section, based on technological changes and issues that may occur.

Use of the Information: Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities and capabilities. The information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by institutional academic officials, the scientific/engineering establishment, and state agencies and legislatures that fund universities.

Burden on the Public: The Facilities Survey will be sent by mail to approximately 465 academic institutions and 190 nonprofit research organizations and hospitals. The completion time per academic institution is expected to average 41 hours and the completion time per research organization/hospitals is expected to average 7 hours. Assuming a 90% response rate, this would result in an estimated burden of 17,159 hours for academic institutions and 1,197 hours for nonprofit research organizations/hospitals.

Dated: November 21, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–23290 Filed 11–23–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Construction of Northern Arizona University's Merriam-Powell Research Station at The Arboretum at Flagstaff, Flagstaff, Arizona.

DATES: November 25, 2005.

FOR FURTHER INFORMATION OR COMMENTS: Electronic copies of the Final EA and FONSI of the National Science Foundation (NSF) are available for review at *http://www.nsf.gov/bio/pubs/reports/ea_mprs.doc.* Please direct any requests for paper copies of the Final EA and FONSI to Amy V. Whipple, Merriam-Powell Center for Environmental Research, PO Box 5640,

Northern Arizona University, Flagstaff, AZ 86011 or *Amy.Whipple@NAU.EDU.* The NSF Program contact for this project is 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 an on property leased from The Arboretum at Flagstaff. This project is funded by the NSF, which is the Federal agency responsible for the environmental review process. The environmental review process was conducted in accordance with the National Environmental Policy Act (NEPA) and other applicable Federal laws and regulations. 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 alternative 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 July of 2006.

A Draft Environmental Assessment (EA) was prepared and made available for a period of public comment that ended November 7, 2005. A Final EA was prepared after NSF considered all comments received on the Draft EA. From the information contained in the Final EA, NSF determined that no significant environmental impacts would result from construction of the Merriam-Powell Research Station on the preferred site at the Arboretum at Flagstaff. Therefore, NSF has issued a Finding of No significant Impact (FONSI) in conformance with Federal regulations at 45 Code of Federal Regulations 640.4(e).

Gerald B. Selzer,

Program Director for Field Stations and Marine Laboratories, Division of Biological Infrastructure, National Science Foundation.

[FR Doc. 05–23298 Filed 11–23–05; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10606]

Issuer Delisting; Notice of Application of Cadence Design Systems, Inc. To Withdraw Its Common Stock, $.01 Par Value, and the Preferred Share Purchase Rights From Listing and Registration on the New York Stock Exchange, Inc.

November 18, 2005.

On October 27, 2005, Cadence Design Systems, Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, and the preferred share purchase rights (collectively ''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on October 24, 2005, to withdraw the Securities from listing and registration on NYSE and to list the Securities on the Nasdaq National Market (''Nasdaq''). The Issuer stated that the Board determined that it is in the best interests of the Issuer to withdraw the Securities from NYSE and list the Securities on Nasdaq. In addition, the Issuer stated that as a result of the Issuer's participation in Nasdaq's dual-listing program, pursuant to which the Issuer's common stock was listed on both NYSE and Nasdaq, the Board has determined that Nasdaq is the preferred marketplace for many of the Issuer's institutional investors and that listing solely on Nasdaq would be cost-effective for the Issuer without adversely affecting the market for the Issuer's common stock.

The Issuer stated in its application that it has complied with NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration by providing NYSE with the required documents governing the removal of securities from listing and registration on NYSE.

The Issuer's application relates solely to the withdrawal of the Security from listing on NYSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 14, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of NYSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–10606 or;

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 1–10606. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6512 Filed 11–23–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Exchange, Inc. File No. 1–14465]

Issuer Delisting; Notice of Application of IDACORP, Inc. To Withdraw Its Common Stock, No Par Value, and Preferred Share Purchase Rights From Listing and Registration on the Pacific

November 18, 2005.

On October 27, 2005, IDACORP, Inc., an Idaho corporation, (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value, and preferred share purchase rights (collectively ''Securities''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

On October 14, 2005, the Board of Directors (''Board'') of the Issuer adopted resolutions to withdraw the Securities from listing and registration on PCX. The Issuer stated that the Board and management of the Issuer determined to withdraw the Securities from PCX because: (i) The Issuer maintains the principal listing for the Securities on the New York Stock Exchange, Inc. (''NYSE''); (ii) there is limited trading activity of the Securities on PCX; and (iii) the Board and management of the Issuer have determined that the administrative burden on the Issuer to maintain the listing of the Securities on PCX exceeds the benefits of such listing. The Issuer stated that the Securities will remain listed and registered on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX, and shall not affect their continued listing on NYSE or their obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before December 14, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–14465 or;

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 1–14465. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6514 Filed 11–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14091]

Issuer Delisting; Notice of Application of Sherwood Brands, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

November 18, 2005.

On June 20, 2005, Sherwood Brands, Inc., a North Carolina corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Board of Directors (''Board'') of the Issuer unanimously approved resolutions on March 2, 2005, to withdraw the Security from listing and registration on Amex. The Issuer stated the Board considered several factors relevant to its decision to withdraw the Security from Amex, including, but not limited to the following: (i) The limited number of holders of the Security; (ii) the Security is very thinly traded; (iii) the nature and extent of trading in the Security; (iv) the lack of analyst coverage and minimal liquidity of the Security; and (v) the costs, both direct and indirect, associated with the preparation and filing of the Issuer's periodic reports with the Commission and Amex. The Board noted that the Issuer had anticipated its legal, accounting, and insurance costs would increase substantially as a result of recently enacted legislation affecting all public companies (*e.g.*, Sarbanes-Oxley Act of 2002). The Board believed that in addition to the significant time and cost savings which would result from deregistration, withdrawing the Security from listing and registration on Amex would allow management to focus its attention and resources on implementing the Issuer's business plan and exploring financing and strategic alternatives for the business.

The Issuer stated that it has met the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in the state of North Carolina, in which it is incorporated, and by providing Amex with the required documents for withdrawal from Amex.

The Issuer's application relates solely to the withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 14, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(l).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form(*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–14091 or;

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 1–14091. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6513 Filed 11–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14783]

Issuer Delisting; Notice of Application of State Bancorp, Inc. To Withdraw Its Common Stock, $5.00 Par Value, From Listing and Registration on the American Stock Exchange LLC

November 18, 2005.

On October 31, 2005, State Bancorp, Inc., a New York corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $5.00 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On May 24, 2005, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex and to list the Security on the Nasdaq National Market (''Nasdaq''). The Issuer stated that the Board determined it is in the best interests of the Issuer and its stockholders to withdraw the Security from Amex and list the Security on Nasdaq in an effort to improve liquidity and market visibility on Nasdaq.

The Issuer stated that it has complied with the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in the State of New York, the state in which it is incorporated.

The Issuer's application relates solely to the withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 14, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–14783 or;

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 1–14783. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6515 Filed 11–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8635; 34–52800, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public meeting on Wednesday, December 14, 2005, in Multi-Purpose Room L006 of the Commission's headquarters, 100 F Street, NE., Washington, DC 20549, beginning at 9 a.m. The meeting is expected to last until approximately 4 p.m. with a lunch break from approximately noon to 1 p.m. The meeting will be audio webcast on the Commission's Web site at *http://www.sec.gov*.

The agenda for the meeting includes consideration of proposals of the Advisory Committee's four subcommittees on possible recommendations for changes to the current securities regulatory system for smaller companies. The public is invited to submit written statements for the meeting.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[5] 17 CFR 200.30–3(a)(1).

Due Date: Written statements should be received on or before December 7, 2005.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

• Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or

• Send an e-mail message to *rule-comments@sec.gov*. Please include File Number 265–23 on the subject line; or

Paper Statements

• Send paper statements in triplicate to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, Section 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: November 18, 2005.

Jonathan G. Katz,

Committee Management Officer.

[FR Doc. E5–6516 Filed 11–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52785; File No. SR-DTC–2005–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Systems Enhancement for the Processing of Information in Its Restricted Deposit Service

November 16, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 11, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and on November 16, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would effect a systems enhancement in DTC's Restricted Deposit Service (''RDS'') to permit users to transmit restricted stock information directly to DTC rather than manually entering the information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

RDS allows DTC participants to use the depository to handle the removal of restrictions on securities. DTC provides negotiability and documentation review of deposited restricted securities, images and delivers them to transfer agents, and arranges for their prompt transfer into unrestricted securities. Restricted securities generally are securities purchased in private placements directly from an issuer before the company is public. They may also be stock acquired through a corporate reorganization or acquisition, in return for services, or from an original shareholder.[3]

Currently, a participant seeking to initiate use of RDS will transmit restricted securities deposit information to DTC through the Restricted Deposit Service by Participant function (''RDSP'') of DTC's Participant Terminal System. Until now the transmission of such information has required the participant to manually input data directly into RDSP; however, participants often have already input such information into other applications and thus transmitting the information to RDSP requires duplication of effort.

With this filing, DTC proposes to enhance this process to permit participants to transfer such information directly from another application containing the information to RDSP. The application used for transmission of information to RDSP would either be one selected by DTC or at the election of the participant another application so long as such application meets technical requirements as determined by DTC.

The proposed change is consistent with section 17A of the Act[4] and the rules and regulations thereunder applicable to DTC because it is designed to remove impediments to and perfect a mechanism for the prompt and accurate clearance ad settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] *See* Securities Exchange Act Release No. 41891 (September 20, 1999), 64 FR 52115 (September 27, 1999) [File No. SR–DTC–99–101].

[4] 15 U.S.C. 78q–1.

19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. 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 interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2005–17 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–2005–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *https://login.dtcc.com/dtcorg/.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2005–17 and should be submitted on or before December 16, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6470 Filed 11–23–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 249.19b–4(f)(4)

[7] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5236]

30-Day Notice of Proposed Information Collection: Form DS-71, Affidavit of Identifying Witness; OMB Number 1405-0088

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Affidavit of Identifying Witness

OMB Control Number: 1405–0088.

Type of Request: Revision of a Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Department of State, Passport Services, Office of Field Operations, Field Coordination Division. CA/PPT/FO/FC.

Form Number: DS–71.

Respondents: Individuals or Households.

Estimated Number of Respondents: 140,000.

Estimated Number of Responses: 140,000.

Average Hours Per Response: ½ (5 min.).

Total Estimated Burden: 11,700.

Frequency: On occasion.

Obligation to Respond: Required To Obtain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 27, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

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 Susan Cowlishaw, U.S. Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW., 3rd Floor/Room 3040 SA–29, Washington, DC 20037, who may be reached on 202–261–8957 or Cowlishawsc@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform 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: The Affidavit of Identifying Witness (Form DS–71) is used by the Department of State in making a determination of the applicant's eligibility to be documented as a citizen or a non-citizen national of the United States. The form is used by Acceptance Agents and Consular Officers to collect information for the

purpose of establishing the identity of a passport applicant who has not submitted adequate evidence with his/her passport application. The primary purpose for soliciting the information is to establish identity and entitlement to issuance of a United States passport, and to properly administer and enforce the laws pertaining to issuance thereof. Lack of identity information may result in the refusal to issue a United States passport. Inaccurate identity evidence could possibly result in issuance of a passport to a non-U.S. citizen or to someone using an assumed identity.

Methodology: The Affidavit of Identifying Witness (Form DS–71) is used in conjunction with the Application for A U.S. Passport (Form DS–11). Along with the DS–71, the customer's insufficient or unacceptable identity documents are recorded. The identifying witness completes the form for a person applying for a passport who is unable to properly identify himself or herself at the acceptance facility/passport agency in the presence of the Acceptance Agent/Consular Officer.

Frank Moss,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. E5–6520 Filed 11–23–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5237]

30-Day Notice of Proposed Information Collection: Form DS–64, Statement Regarding a Lost or Stolen Passport, OMB #1405–0014

ACTION: Notice of Request for public comment and submission to OMB for proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Statement Regarding a Lost or Stolen Passport.
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/PPT/FO/FC.
- *Form Number:* DS–64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 105,000.
- *Estimated Number of Responses:* 105,000.
- *Average Hours Per Response:* 1/12 hour. (five minutes).
- *Total Estimated Burden:* 8,800.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 27, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

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 Susan Cowlishaw, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037, who may be reached on 202–261–8957, or at *Cowlishawsc@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection 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:

The form is used prior to passport issuance and solicits information relating to the loss of a valid U.S. passport. The information is used by the United States Department of State to ensure that no person shall bear more than one valid or potentially valid U.S. passport at any one time, except as authorized by the Department, and is also used to combat passport fraud and misuse.

Methodology: This form is used in conjunction with the Form DS–11 Application for a U.S. passport or submitted separately to report loss or theft of a U.S. passport. Passport Services collects the information when a U.S. citizen or non-citizen national applies for a new U.S. passport and has been issued a previous, still valid U.S. passport that has been lost or stolen, or when a passport holder independently reports it lost or stolen. Passport applicants can either download the form from the internet or pick one up at any Passport Agency or Acceptance Facility.

Frank Moss,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. E5–6521 Filed 11–23–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5235]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Robert Rauschenberg: Combines''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Robert Rauschenberg: Combines,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about December 20, 2005, to on or about April 2, 2006; The Museum of Contemporary Art, Los Angeles, CA, from on or about May 14, 2006, to on or about September 4, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 18, 2005.

C. Miller Crouch,

Principal Deputy Assistant, Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–6519 Filed 11–23–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Monday, December 12, 2005, starting at 10:30 a.m. Eastern Standard Time. Arrange for oral presentations by December 8, 2005.

ADDRESSES: Federal Aviation Administration, 800 Independence Ave, SW., Room 810, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *john.linsenmeyer@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ad hoc ARAC meeting to be held December 12, 2005 at the Federal Aviation Administration, 800 Independence Ave., Room 810, Washington, DC. The meeting/teleconference is being held to consider the report on recommended guidance for Aging Airplane Safety from the Airworthiness Assurance Working Group (AAWG). This ad hoc TAE meeting is necessary because the report from the AAWG is a critical part of FAA's effort to develop new guidance to support the Aging Airplane Safety Rule, issued January 25, 2005.

The agenda will include:

- Opening Remarks.
- AAWG Report.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than December 8, 2005. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating domestically by telephone, the call-in number is (202) 493–4180; the Passcode is ''5513.'' To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent to participate by telephone by December 8. Anyone calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by December 8, 2005, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by providing copies at the meeting. Copies of the document to be presented to ARAC for decision by the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on November 17, 2005.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. E5–6528 Filed 11–23–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2005–22796]

FRA Emergency Order No. 24, Notice No. 2; Emergency Order No. 24: Hand-Operated Main Track Switches; Amendment

SUMMARY: The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) issues this notice to amend Emergency Order No. 24 (EO 24) in response to informal comments received from railroads and labor organizations. This amendment provides additional guidance, clarifying amendments and expanded relief from the EO.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Alan H. Nagler, Senior Trail Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

Background

EO 24 was issued on October 19, 2005, published in the **Federal Register** on October 24, 2005 (70 FR 61496) and required that railroads modify their operating rules and take certain other actions necessary to ensure that railroad employees who dispatch trains in non-signaled territory or who operate hand-operated main track switches (switches) in non-signaled territory, ensure the switches are restored to their proper (normal) position after use.

EO 24 required that railroads ''immediately initiate steps to implement this EO * * * [and] complete implementation no later than November 22, 2005.'' 70 FR 61496, 61500. As the resulted community began implementation, practical concerns were raised with FRA regarding some aspects of the EO. In response to these informal comments, FRA has decided to provide the railroads and employees additional flexibility in complying with the EO. Because FRA is granting additional flexibility to the railroads and the employees, the November 22, 2005 effective date of the EO is not changing.

On November 4, 2005, FRA posted on its Web site at *http://www.fra.dot.gov/* an additional document, in a question and answer format, that provided timely guidance to the informal comments offered by the regulated community.

This Notice No. 2 reflects the guidance provided in that question and answer document. In addition, this Notice No. 2 specifies additional relief granted by amending the ''Relief'' section in its entirety and issues clarifying amendments to the ''Finding and Order'' section of EO 24, Notice No. 1.

I. Discussion of Comments

The comments received by FRA were informally provided by a diverse number of railroads and the following associations and labor organizations. The American Short Line & Regional Railroads Association (ASLRRA), the Association of American Railroads (AAR), the Brotherhood of Locomotive Engineers and Trainmen (BLET), the Brotherhood of Maintenance of Way Employees Division (BMWED), the Brotherhood of Railroad Signalmen (BRS) and the United Transportation Union (UTU). By discussing the comments and our responses in this notice, FRA is providing consistent information to the entire regulated community.

Jurisdiction

Some railroads, especially tourist railroads, contacted FRA regarding whether the EO applied to them. FRA responded that the EO applies to all railroads that have employees or contractor employees who operate hand-operated main track switches in non-signaled territory or dispatch trains in that type of territory unless specific relief has been granted. 70 FR 61500. Tourist railroads, or other railroads, that are unsure as to whether FRA exercises jurisdiction over them should refer to FRA's published statement on the extent and exercise of FRA's safety jurisdiction. 49 CFR Part 209, App. A. If a railroad is still unsure on this issue, please contact FRA's Office of Chief Counsel at (202) 493–6038.

Initial and Periodic Instruction

Railroads and labor organizations alike were concerned that FRA did not adequately describe the method for initial and periodic instruction. Meanwhile, FRA believes the current instruction requirement is adequate and provides the following further guidance.

Given that this is an emergency situation requiring railroads to quickly and effectively instruct employees, FRA's expectation is that the minimum initial instruction and distribution of the EO would include a face-to-face on-the-job briefing covering the requirements of this EO and the operating rules to which they relate. In order to be effective, this job briefing must include examples or real time applications of the EO, as well as a reasonable opportunity for employees to ask questions. Regarding periodic instruction, railroads will include this instruction as part of their program of instruction pursuant to 49 CFR 217.11.

Some railroads indicated that they already had operating rules that complied with this EO and had recently instructed their employees on those rules; thus, these railroads asked whether the prior training could count as the required initial training. FRA decided that any training prior to issuance of the EO was insufficient. FRA has identified an emergency situation and wants to raise the level of awareness for all employees who operate hand-operated switches in non-signaled territory or who dispatch trains in that type of territory. In addition, it is significant for affected employees to understand that the Federal government will be able to assess civil penalties of up to $27,000 for a violation of the EO by any person. That said, FRA does not expect railroads to entirely discount prior instruction. This new instruction can build upon the prior instruction—prior instruction on an unchanged operating rule does not need to be as in-depth as it would be if the employees were being instructed on the relevant operating rules for the first time.

Receipt or Acknowledgment of the EO by Employees

Some railroads, and the associations that represent them, questioned the necessity for providing a copy of the EO to each employee and the method for keeping a receipt or acknowledgment. FRA explained that because of the critical importance of this EO and the importance of individual railroad employees' compliance and accountability, FRA must be assured that employees have received their own paper copy of the EO. However, FRA did not intend to preclude the creation or retention of the receipt or keeping of the acknowledgment electronically. As long as the receipt or acknowledgment is a permanent record that is kept for each affected employee and can be searched and printed for FRA upon request, electronic recordkeeping is acceptable. The electronic recordkeeping system should have system integrity to prevent fraudulent entries, and may be added onto existing systems, e.g., those systems that already track attendance at railroad operating rules classes. If those systems do not allow employees to enter an acknowledgment, the attendance sheet at the face-to-face job briefing on the EO should indicate that the attendee's signature reflects both attendance and receipt of a copy of the EO.

A related concern is whether railroads also need to provide a copy of this Notice No. 2, to all affected employees. This Notice No. 2 provides guidance, relief and clarifying amendments from the earlier notice, but does not create additional burdens, and thus it is possible for compliance to be achieved by following Notice No. 1 only. FRA therefore is not requiring railroads to provide a copy of this Notice No. 2 to all affected employees. Certainly, any railroad amending its operating rules with regard to this Notice No. 2 will need to instruct its employees accordingly and may choose to post or distribute it.

Hand-Operated Main Track Switches—Operational Concerns

FRA received a number of inquiries requesting more information on the safety basis for certain operational requirements.

Some railroads requested eliminating the requirement that the dispatcher confirm that both the conductor and engineer have initialed the switch position awareness form (SPAF). FRA has denied this request because of the strong safety reasons for its retention. While other requirements involve intra-crew communication, the dispatcher's confirmation provides an additional level of communication so that the crewmember releasing the train's authority ensures that both the engineer and conductor have properly recorded on the SPAF the position of all switches operated and that there is no confusion among crewmembers as to the alignment of those switches.

At least one railroad wanted to do away with the requirements that the engineer initial each entry, as opposed to only the final entry; however, FRA is denying this request because the engineer's action of initialing each entry encourages intra-crew communication while employees are still at each switch.

BLET asked that FRA clarify that entry of the engineer's initials is an affirmation that the communication (representation) has been received and not that the engineer can personally vouch for the actions taken on the ground. FRA affirms that the engineer's responsibility is to acknowledge the information provided by the conductor or brakeman, not to act as a guarantor with respect to the actual position in which the switch was left.

Several concerns were raised regarding what FRA meant by the term ''releasing the limits of a main track authority.'' The term means releasing all or a portion of the limits (i.e., rolling up

the limits) of an existing main track authority.

Railroads and labor organizations alike raised concerns regarding whether a train crew that is relieved on line-of-road must take the SPAF with them or whether the SPAF could be left for the subsequent train crew. The purpose of EO 24 was to establish responsibility, shared among the crew and the dispatcher, for confirmation of switch position for all switches operated before the authority is released. A subsequent crew will not have actual knowledge of the position of switches in the track segment(s) utilized by the relieved crew. Further, the declarations made on the SPAF are personal to each employee participating, and it is not possible for subsequent crew members to verify information about which they did not have contemporaneous knowledge. Accordingly, to accomplish the purpose of EO 24, the crew being relieved should contact the dispatcher and confirm the position of switches operated, at the same time releasing (rolling up) any portion of the authority not required by the relieving crew. The crew going off duty would finalize their SPAF at that time. The relieving crew would then initiate a new SPAF. The order has been amended to so provide.

At least one request was received for clarification regarding the requirements of the EO if the limits of a main rack authority are rolled up behind a train or on-track equipment (OTE) by the dispatcher without the train crew's or OTE operator's knowledge. FRA's position is that, in addition to determining the train's or OTE's location, the dispatcher must confirm the position of all switches operated by the employees within the limits being rolled up.

There have been several concerns expressed regarding whether the EO applied in certain specific situations. For instance, FRA wants to make clear that the EO does not apply in Rule 251 or GCOR Rule 9.14 territory, i.e., current of traffic, signaled in one direction only. However, the EO is applicable if the signal system for a track segment is suspended. Furthermore, the EO is applicable if a track, or portion thereof, is out-of-service, unless the operating rules or special instructions require all trains to approach all facing point hand-operated switches prepared to stop during the entire period the track is out-of-service.

Finally, at least one comment was received regarding the requirement that before releasing the limits of a main track authority, the employee releasing the limits must report to the train dispatcher that all hand-operated main track switches operated have been restored to their normal position, unless the train dispatcher directs otherwise. The commenter noted that another sentence in this section regarding ''hand-operated main track switches'' permitted the normal position of a main track switch to be designated by the railroad and the switch to be lined and locked in that position when not in use, except ''when the switch is left in the charge of a crewmember of another train'' or the train dispatcher directs otherwise. Accordingly, the commenter requested a clarifying amendment so that in addition to the train dispatcher exception, the switch may be left in the charge of a crewmember of another train before releasing the limits. FRA agrees with the commenter that this exception provides at least an equivalent level of safety and a clarifying amendment has been made in this notice.

BLET asked that language in item (2) of the order be amended to delete ''except when the switch is left in the charge of a crewmember of another train or the train dispatcher directs otherwise,'' following the requirement that switches be left in normal position when not in use. BELT suggested that this would heighten the sense of individual responsibility that the order seeks to promote. FRA appreciates the suggestion and recognizes that it is thematically consistent with the general thrust of the order. However, FRA is unable to act upon it for three reasons. First, this change does not appear to be necessary to abate the emergency. Recent accidents caused by misaligned switches have generally involved error on the part of the crew initially reversing the switch, rather than than miscommunication or lapses associated with handing off responsibility for the switch. Second, such a change could expose employees to hazards unnecessarily, as when it might be necessary to cross live tracks, walk on uneven ballast, or traverse areas covered with snow or ice. Third, imposing this requirement would cause significant delay and inefficiency in railroad operation.

Line Segment Relief Versus System Basis Relief Previously Granted

Several railroads requested that the automatic relief granted to a railroad, where operating rules require trains to approach all facing point hand-operated switches prepared to stop on a system basis, be extended to a line segment basis. The request also covered the two other situations articulated in the EO; i.e., where hand-operated main track switches in non-signaled territory (unless out of service) are protected by either distant switch indicators or by switch point indicators. FRA is granting this relief although, in our opinion, this relief is a logical extrapolation from the relief previously provided. FRA will grant automatic relief on a line segment basis when the relief is predicated on a permanent application of the relevant operating rules and special instructions for the territory involved. Employees or dispatchers involved with more than one line segment may require instruction if one of the other line segments does not meet any of the conditions for relief. Distant switch indicators are arrangements that provide crews with advance indication of switch position in a manner similar to an approach signal. These arrangements are typically designed and maintained in a manner similar to technology employed under 49 CFR Part 236, the Rules, Standards and Instructions for signal and train control systems and have a well-established history of performance in the industry.

In this Notice, FRA has required specific acceptance of ''switch point indicators'' as alternative to the rule because the term does not apply to a closed set of technologies and in order to provide FRA an opportunity to evaluate whether the technology provides safety equivalently to that provided by compliance with this order by properly qualified employees. In part because of the risk to trains associated with unauthorized operation of switches by vandals, FRA is encouraging exploration and implementation of appropriate technology that can detect misaligned main track switches and provide a means of safeguarding train operations.

On-Track Safety

Many comments were received expressing concern that the EO was largely silent regarding employees involved with on-track safety such as signalmen, maintenance-of-way employees, bridge workers, and others. Some commenters were unsure of whether the EO applied to employees involved with on-track safety. When FRA explained that the EO applied to these workers, more comments were received questioning the logistics of how the EO would apply in practice. In consideration of these comments, FRA has decided to issue clarifying amendments (discussed below) that should allow for smoother operations—although the EO 24, Notice No. 1 requirement of having each employee fill out a SPAF is a feasible option as well.

FRA is issuing a clarifying amendment to allow an employee

responsible for on-track safety, such as an employee in charge (EIC), to complete the SPAF for all employees working under the EIC's jurisdiction. The employee responsible for on-track safety pursuant to 49 CFR 214, Subpart C, may maintain the SPAF in lieu of the individual worker(s) operating switches. Likewise, FRA is amenable to issuing a clarifying amendment so that each railroad could choose whether to create a SPAF specifically tailored to the communications among employees involved with on-track safety. Of course, if a worker operates a switch, that worker must still be qualified, i.e., instructed on, the relevant operating rules for operating a switch, even if they are not the employee completing a SPAF.

Additionally, FRA is clarifying that if an EIC of on-track safety permits a train into the EIC's authority limits and there are switches operated by that train crew, both the EIC and the train crew must complete a SPAF. This clarification does not require an amendment to the EO.

Some commenters did not understand whether the EO required the EIC to complete the SPAF in a situation when trains are operating through the limits of an EIC's authority and the EIC instructs all trains to operate at restricted speed. FRA explained that the EO does not need amending as this is a temporary application of the relevant operating rules for the territory involved and thus the EIC in that situation must complete a SPAF.

Another concern regarding OTE was a request for clarification on the SPAF requirements when an OTE is moving to a work location. FRA's expectation is that the employee that receives the authority will complete the SPAF for all switches operated while under that authority.

Furthermore, a SPAF is still required if an employee operates a switch when it is not necessary to receive permission from a dispatcher.

Switch Position Awareness Form (SPAF)

Some commenters were confused as to how the EO applied to an employee, other than a crewmember, who lines a switch for a train. FRA believes the EO clearly conveys that each employee, other than a crewmember, operating a switch for a train must complete a SPAF for all switches operated.

The SPAF's content was also criticized as being too specific to train crews, rather than more general in nature so as to apply to any employee handling a switch. By requiring both the engineer's and conductor's names, the engineer's initials for each entry, and the conductor's signature when the form is completed, FRA addressed the common situation of a two-person crew in which the conductor is operating the switches. The commenters explained that there may be regular circumstances in which someone other than the conductor is operating a switch and therefore that person's initials must appear on the SPAF instead of the conductor's. One commenter asked whether a SPAF can provide spaces for the engineer and the person handling the switch to initial, and a space for the conductor to sign when the form is completed. FRA finds that such a SPAF would be in compliance with the EO.

A question was raised regarding the requirement that the date be entered on the SPAF when an employee's tour of duty spans two calendar days. FRA's requirement is fulfilled as long as the date entered is the date that the tour of duty began. Of course, this is a minimum requirement and railroads are permitted to require multiple dates. For example, a railroad would be in compliance with the EO if it chooses to require the date for each switch entry instead of the date the crew started its tour of duty. Furthermore, FRA would certainly not find fault with an employee who chose to be more exacting than FRA has required—even if not required by railroad operating rules.

Some railroads raised concerns that the SPAF was too specific in requiring employees to identify the track segment by a ''subdivision'' entry in that some railroads do not have subdivisions. FRA understands that some railroads do not have subdivisions and that instead of ''subdividion'' the SPAF may be filled out to include branch, secondary track, or some other appropriate designation. FRA has added a clarifying amendment to address this issue.

Communication

A concern shared by many commenters was that the EO was written in such a way as to indicate that unless radio communication was inoperable, no alternative method of communication among crewmembers would be acceptable to indicate a switch position. Some railroads requested an amendment because they preferred to use a method of communication other than radio as their primary method, such as hand or whistle signals. FRA has issued a clarifying amendment to indicate that it will accept alternate methods of intra-crew communication when they afford an equivalent level of communication integrity relevant to the prevailing operating conditions. FRA agrees with a comment from BLET that there will be situations where hand signals do not provide unambiguous information, as where a ground employee is expected to restore a switch behind a movement that will not be using the switch to exit the area. In those cases, radio communications or face-to-face communication will be required.

An Exception to Initialing the SPAF Prior to Leaving a Switch

Several commenters raised concerns regarding the requirement that before employees leave the location of a switch, they must make the required entries on the SPAF ''as soon as practicable.'' Some commenters did not understand what the phrase ''as soon as practicable'' meant, and asked for clarification. Other commenters requested an amendment because there could be situations in which all involved employees might find it impracticable to initial the SPAF prior to leaving the switch.

Regarding the phrase ''as soon as practicable,'' FRA's expectations are that when employees are in close prosimity, the required SPAF entries will be personally completed by the individual employees before they actually leave the location of the switch. FRA is not concerned if there is some delay in filling out the entries on the SPAF if other duties would normally, logically, or operationally be performed first. Of course, if the SPAF is readily available to the employee, it is a best practice for the employee to fill out the form first lest the employee forget either to fill it out or record exactly how the switch was last positioned.

FRA recognizes that there are operating conditions, such as extreme physical separation, which would make recording the required entries on the SPAF before employees leave a location of a switch impracticable. In circumstances such as this, where it is logistically unfeasible, and in some situations unsafe, to record the required entries on the SPAF before leaving the location of a switch, FRA is issuing a clarifying amendment so that the crewmember completing the SPAF may make an appropriate entry on the SPAF. An appropriate entry would state that the necessary radio job briefing concerning the switch position was accomplished. Furthermore, the crewmember completing the SPAF should then enter the required employee's initials for that employee, clearly reflecting who made the entry (e.g., ''AD for CS''). FRA will consider the entries on teh SPAF for that switch to be complete at that time.

For example, a conductor reverses a main switch for an intended 100-car

shoving movement into a 2-mile industrial lead. After lining the switch, the conductor begins the shoving movement, remaining on the leading end to protect the movement. When the engine clears the switch, the movement stops, and the brakeman lines the main track switch to its normal position, and the shoving movement resumes, with the conductor still protecting the lending end of the movement. In this case, it would be impracticable to require the conductor to talk back 100 car-lengths to the engine in order to obtain the brakeman's initials on the SPAF, and then walk back 100 car-lenghts to the lending end to continue protecting the movement. Thus, the clarifying amendment would allow the conductor to complete the SPAF by (1) noting that the brakeman confirmed that the switch was normalized by radio, or other acceptable communication, and (2) entering the brakeman's name or initials.

Application of the Hours of Service Laws

Some comments regarding the application of the hours of service laws in conjunction with the EO. One question was whether the act of filling out a SPAF is itself covered service. This issue raised the beggest concern for maintenance-of-way employees because they are not otherwise typically performing work that is considered covered service under the hours of service laws. FRA wants to be clear that the act of filling out any portion of a SPAF does not by itself trigger covered service.

Meanwhile, for employees that are covered by the hours of service laws, the act of filling out a SPAF is commingled service that should be performed within the statutory period. Railroads and employees are responsible for completing all activities required of them within that period. A railroad that requires an employee to perform a task in the last few minutes of a tour of duty must be mindful of whether it is possible to complete all required tasks within the allotted time. Meanwhile, employees should be mindful that many of the accidents that led to FRA issuing this EO could have been prevented if the employees had been more diligent about complying with railroad operating rules regarding the alignment of hand-operated main track switches in non-signaled territory at the end of their tours of duty. Thus, regardless of the hours of service implications, employees should not hastily fill out a SPAF at the end of a tour of duty, with disregard to its accuracy, or release or roll up their limits without conferring that the entries on the SPAF have been completed, as these actions require the type of communication among employees that can prevent life-threatening accidents.

At least one commenter was concerned about the legistical issue of how the time associated with completion of the SPAF should be recorded on the time return or in the hours of service electronic system. For employees otherwise subject to the hours of service laws, there is no requirement to make a separate entry of the time associated with completion of the form. It is intended that completion of the form be integral to the accomplishment of the work, so it may be considered as part of covered service for hours of service recordkeeping purposes.

II. Amendment to Emergency Order No. 24

The ''Finding and Order'' section of EO 24 is amended by adding the following clarifying amendments.

Clarifying Amendments

Instruction

• Given that this is an emergency situation requiring railroads to quickly and effectively instruct employees, the minimum initial instruction and distribution of the EO would include a face-to-face on-the-job briefing covering the requirements of this EO and the operating rules to which they relate. In order to be effective, this job briefing must include examples or real time applications of the EO, as well as a reasonable opportunity for employees to ask questions. Regarding periodic instruction, railroads will include this instruction as part of their program of instruction pursuant to 49 CFR 217.11.

• Any instruction completed prior to issuance of the EO is sufficient to meet the instruction requirements. However, FRA does not expect railroads to entirely discount prior to instruction as this new instruction can build upon the prior instruction. Thus, prior instruction on an unchanged operating rule does not need to be as in-depth as it would be if the employees were being instructed on the relevant operating rules for the first time.

Hand-Operating Main Track Switches

• EO 24 contains a requirement that before releasing the limits of a main track authority, the employee releasing the limits must report to the train dispatcher that all hand-operated main track switches operated have been restored to their normal position, unless the train dispatcher directs otherwise. This requirements remains in effect except that FRA will also permit the employee releasing the limits to report to the train dispatcher the switches that were left in the charge of a crewmember of another train before releasing the limits, if left in other than normal position.

• The EO does not apply in Rule 251 or GCOR Rule 9.14 territory, i.e., current traffic, signaled in one direction only. However, the EO is applicable if the signal system for a track segment is suspended or a track is out-of-service, unless the operating rules or special instructions require trains to approach all facing point hand-operated switches prepared to stop during the entire period the signal system is suspended or the track is out of service.

Switch Position Awareness Form (SPAF)

• FRA specifically amending the requirement that an employee operating a hand-operated main track switch in non-signaled territory shall be the employee to complete a SPAF. As an alternative, FRA will allow an employee responsible for on-track safety, such as an employee in charge (EIC), to complete a SPAF for all employees working under the EIC's jurisdiction. An employee responsible for on-track safety pursuant to 49 CFR Part 214, Subpart C, may maintain a SPAF in lieu of the individual worker(s) operating switches.

• In conjunction with the above clarifying amendment for on-track safety, FRA is clarifying the requirement in EO 24 that the SPAF must contain the engineer's initials for each entry and the conductor's signature when the form is completed because those SPAF requirements would not be applicable to an on-track safety situation. Each railroad may continue to use the train crew oriented SPAF, as described in EO 24, Notice 1, for its on-track safety situations. Similarly, a railroad may permit its employees involved in on-track safety the discretion to make notes or modify the SPAF so that it both contains the mandatory information and is understandable in the context of an on-track safety situation. Alternatively, FRA has no objection to railroads exceeding the EO's requirements by creating a SPAF that is tailored to communications among employees involved with on-track safety.

• FRA is amending the requirement that each SPAF must identify the track segment by a ''subdivision'' entry as not every railroad has subdivisions. Employees cannot be expected to provide a subdivision designation when no such designation exists. However, a railroad that does not have subdivisions should instruct its employees to provide

some other appropriate designation, such as branch or secondary track, for the ''subdivision'' entry. To facilitate the appropriate designation entry, a railroad that does not have subdivisions is encouraged to amend its SPAF by replacing the ''subdivision'' entry with a more suitable entry. If the exact name and location of a main track switch to be operated by an employee is identified, but there is no suitable entry for subdivision, branch, secondary track, etc., an employee may leave that entry blank or identify that entry as not applicable.

• EO 24 requires that entries made with respect to a specific hand-operated main track switch is non-signaled territory must be recorded as soon as practicable after the switch is reversed, and as soon as practicable after the switch is returned to its normal position before leaving the location. FRA recognizes that there are operating conditions which would make recording the required entries on the SPAF before employees leave a location of a switch impracticable due to extreme physical separation. Thus, in circumstances in which it is logistically unfeasible or unsafe to record the required entries on the SPAF before leaving the location of a switch, FRA will allow the crewmember completing the SPAF to make an appropriate entry on the SPAF. Such entry would stat that the necessary radio job briefing concerning the switch position was accomplished. Furthermore, the crewmember completing the SPAF should then enter the required employee's initials for that employee. FRA will consider the entries on the SPAF for that switch complete at that time.

• When a train crew is relieved on line-of-road, a member of the train crew, typically the conductor, shall either retain the SPAF for the required five days or turn it in to the designated railroad official who shall retain it for the required period. A SPAF should not be left for the subsequent train crew unless the relieved crew purposely makes an extra copy for the benefit of the relieving crew. The purpose of EO 24 was to establish responsibility, shared among the crew and the dispatcher, for confirmation of switch position for all switches operated before the authority is released. A subsequent crew will not have actual knowledge of the position of switches in the track segment(s) utilized by the relieved crew. Further, the declarations made on the SPAF are personal to each employee participating, and it is not possible for subsequent crew members to verify information about which they did not have contemporaneous knowledge. Accordingly, to accomplish the purpose of EO 24, the crew being relieved must contact the dispatcher and confirm the position of switches operated, at the same time releasing (rolling up) any portion of the authority not required by the relieving crew and closing out the SPAF. The crew going off duty would finalize its SPAF at that time. The relieving crew would then initiate a new SPAF.

Radio Communication

• EO 24 requires that train crewmembers shall communicate by radio unless the radio is inoperable. FRA amends the EO so that alternate methods of intra-crew communication will be acceptable, regardless of whether the radios are operable, when they afford an equivalent level of communication integrity relevant to the prevailing operating conditions. Hand or whistle signals are examples of acceptable methods of alternate intra-crew communications.

Distribution of Emergency Order

• A railroad may retain an electronic receipt or acknowledgment, as an alternative to a written receipt or acknowledgment, for each employee affected by the EO that indicates that the employee was provided with a copy of EO 24, Notice No. 1. As long as the receipt or acknowledgment is a permanent record that is kept for each affected employee and can be searched and printed for FRA upon request, electronic recordkeeping is acceptable. The electronic recordkeeping system should have system integrity, to prevent fraudulent entries, and may be added onto existing systems, e.g., those systems that already track attendance at railroad operating rules classes. If those systems do not allow employees to enter an acknowledgment, the attendance sheet at the face-to-face job briefing on the EO should reflect that the attendee's signature reflects both attendance and receipt of a copy of the EO.

• FRA is not requiring railroads to provide a copy of this Notice No. 2 to all affected employees. Certainly, any railroad that amends its operating rules with regard to Notice No. 2 will need to instruct its employees accordingly and may choose to post or distribute this notice.

The ''Relief'' section of Emergency Order No. 24 is amended in its entirety to read as follows:

Relief

Petitions for special approval to take action not in accordance with EO 24 may be submitted to the Associate Administrator for Safety, who shall be authorized to dispose of those requests without the necessity of amending this EO. In reviewing any petition for special review, the Associate Administrator for Safety shall only grant petitions in which a petitioner has clearly articulated an alternative action that will provide, in the Associate Administrator for Safety's judgment, at least an equivalent level of safety as this EO provides. A copy of this petition should be submitted to the Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its Web site at *http://dms.dot.gov.*

FRA recognizes that certain railroad operating rules or equipment used by some railroads already provide a level of safety equivalent to this EO. If all of a railroad's hand-operated main track switches in non-signaled territory are covered by one or more of the protective measures identified below, a railroad need not apply for relief from this EO as relief shall be deemed automatically granted. FRA also grants automatic relief on a line segment basis when the relief is predicated on a permanent application of the relevant operating rules and special instructions for the territory involved. Relief from this EO is automatically granted when:

• Operating rules require trains to approach all facing point hand-operated switches in non-signaled territory prepared to stop;

• Hand-operated main track switches in non-signaled territory (unless out of service) are protected by distant switch indicators; or

• Hand-operated main track switches in non-signaled territory are protected by switch point indicators accepted by the Associate Administrator as providing safety equivalent to that provided by positioning and securing of switches in compliance with this order.

This amendment is effective from the date of issue of this notice.

Issued in Washington, DC, on November 18, 2005.

Joseph H. Boardman,

Administrator.

[FR Doc. 05–23303 Filed 11–21–05; 4:31 pm]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Office of the Treasury Inspector General for Tax Administration, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Office of the Treasury Inspector General for Tax Administration (TIGTA), gives notice of a proposed alteration to the system of records entitled ''Treasury/DO .311–TIGTA Office of Investigations Files,'' which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the **Federal Register** on May 22, 2003, at 68 FR 28046.

DATES: Comments must be received no later than December 27, 2005. The proposed routine use will be effective January 4, 2006, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Elissa Sissman, Assistant Chief Counsel, Office of the Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005, 202–622–4068. Comments will be made available for inspection upon written request.

FOR FURTHER INFORMATION CONTACT: Elissa Sissman, Assistant Chief Counsel, Office of the Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005, 202–622–4068.

SUPPLEMENTARY INFORMATION: The Treasury Inspector General for Tax Administration (TIGTA) was established pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. TIGTA's duties and operating authority are set forth in the Inspector General Act of 1978, 5 U.S.C app. 3. TIGTA exercises all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). TIGTA conducts, supervises, and coordinates audits and investigations relating to the programs and operations of the IRS and related entities.

An integral part of TIGTA's mission is to detect fraud, waste, abuse, and instances of compromised employee integrity, including criminal misconduct. Mission success depends in large part on the willingness of the public and Internal Revenue Service employees to report suspected improper or potentially criminal conduct. New routine use (12) will permit TIGTA officials to apprise complainants and/or victims, or their representatives, of the status or results of the investigation or case arising from the matters of which they complained or were the victim, and, once a subject had exhausted all reasonable appeals, any action taken.

This new routine use is consistent with the purposes for which the information is collected in this system. Like other executive branch components, TIGTA has responsibilities to protect individuals' privacy. Providing upon request the limited information proposed here maintains an appropriate balance between the right to privacy of the individual being investigated and the interests of the public and complainant/victim in ensuring that TIGTA appropriately handled the allegations made.

The report of an altered system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

TIGTA proposes to alter system of records Treasury/DO .311–TIGTA Office of Investigations Files, as follows:

Treasury/DO .311

SYSTEM NAME:

TIGTA Office of Investigations Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

Description of change: The period ''.'' at the end of routine use (11) is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(12) Disclose information to complainants, victims, or their representatives (defined for purposes here to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.''

* * * * *

Dated: November 16, 2005.

Sandra L. Pack,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 05–23241 Filed 11–23–05; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Recordkeeping Requirements for Securities Transactions—12 CFR part 12.''

DATES: You should submit comments by January 24, 2006.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0142, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0142, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR part 12.

OMB Number: 1557–0142.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The only revisions to the submission are the revised estimates, which have been updated for accuracy.

The information collection requirements in 12 CFR part 12 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows:

Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

Section 12.4 requires a national bank to give or send to the customer a written notification of transaction or a copy of the registered broker/dealer confirmation relating to the securities transaction.

Sections 12.5(a), (b), (c), and (e) require a national bank, as an alternative to complying with § 12.4, to provide notification to customers of trust transactions, agency transactions, and periodic plan transactions.

Sections 12.7(a)(1) through (a)(3) require a national bank to develop and maintain written securities trading policies and procedures.

Section 12.7(a)(4) requires bank officers and employees to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

Section 12.8 requires a national bank to file a written request with the OCC for a waiver of one or more of the requirements set forth in §§ 12.2 through 12.7.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 585.

Estimated Total Annual Responses: 2,369.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,207 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E5–6509 Filed 11–23–05; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register
Vol. 70, No. 226
Friday, November 25, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

Correction

In notice document 05–23033 beginning on page 70062 in the issue of Monday, November 21, 2005, make the following corrections:

1. On page 70062, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, in paragraph 8, in the first line, ''Jucretia'' should read ''Lucretia.''

2. On page 70064, in the first column, in paragraph 11, in the first line, ''Malinda'' should read ''Melinda.''

[FR Doc. C5–23033 Filed 11–23–05; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[OAR–2002–0030; FRL–7997–3]

RIN 2060–AK01

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

Correction

In rule document 05–22704 beginning on page 69664 in the issue of Thursday, November 17, 2005 make the following corrections:

1. On page 69679, the following text which should have made up footnote 90's second and third paragraphs was mistakenly inserted in the first and second columns:

(The above reference for the fleet fraction is BACK Aviation Solutions, *http://www.backaviation.com/Information_Services/default.htm.* The domestic flight information is based on SAGE, the System for Assessing Aviation Emissions. SAGE is an FAA model that estimates aircraft emissions through the full flight profile using non-proprietary input data, such as BACK, FAA's Enhanced Traffic Management System (ETMS), and the Official Airline Guide (OAG). The year 2000 air traffic movements database portion of SAGE was used to estimate the number of flights using the subject engines.)

2. On page 69680, the following footnotes were omitted from the table:

[a]119 out of 159 (75 percent) of the in-production engines have greater than 10 percent margin to the proposed (or CAEP/4) NO_x standards. 78 (49 percent) of the engines have more than 20 percent margin. 24 (15 percent) of the engines have greater than 30 percent margin. (120 of 159 (75 percent) of the in-production engines have margin to the CAEP/6 NO_x standards, which generally represent about a 12 percent increase in stringency from today's standards.)

[b]Source: International Civil Aviation Organization (ICAO), Aircraft Engine Exhaust Emissions Data Bank, July 26 2004. This data bank is available at *http://www.caa.co.uk/default.aspx?categoryid=702&pagetype=90.* In addition, a copy of tables including data of engine NO_x emissions from the ICAO data bank and their margin to today's NO_x standards and the CAEP/6 NO_x standards can be found in Docket OAR-2002-0030.

[FR Doc. C5–22704 Filed 11–23–05; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
November 25, 2005

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 561 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on December 5, 2003 (68 FR 68180).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

The Delaware Tribe of Indians, Oklahoma, was removed from the list in response to a final judgment and order sought by the Cherokee Nation of Oklahoma in the United States District Court for the Northern District of Oklahoma in *Cherokee Nation of Oklahoma* v. *Norton, et al.*, Case No. 98–CV–903–TCK–FHM on remand from the Tenth Circuit Court of Appeals in *Cherokee Nation of Oklahoma* v. *Norton*, 389 F.3d 1074 (10th Cir. 2004), as amended, 2005 U.S. App. LEXIS 2773 (10th Cir. Feb. 16, 2005).

The list does not include any additional new tribes. The updates are limited to several tribal name changes. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list. We have also made several corrections. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: November 14, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California (previously listed as the Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation)
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma (formerly the Caddo Indian Tribe of Oklahoma)
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon

Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California (formerly the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation)
Federated Indians of Graton Rancheria, California (formerly the Graton Rancheria)
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California (formerly the Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California)
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon (formerly the Klamath Indian Tribe of Oregon)
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California (formerly the Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California

Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California (formerly the Potter Valley Rancheria of Pomo Indians of California)
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
St. Regis Band of Mohawk Indians of New York
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Nation, Nebraska (formerly the Santee Sioux Tribe of the Santee Reservation of Nebraska)
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota (formerly the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation)
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah

Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California)
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma (formerly the Wyandotte Tribe of Oklahoma)
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak (formerly the Village of Afognak)
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe (formerly the Native Village of Mountain Village)
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly the Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake

Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council (formerly the Native Village of Kasigluk)
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council (formerly the Koliganek Village)
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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BILLING CODE 4310–4J–P

Federal Register

Friday,
November 25, 2005

Part III

The President

Executive Order 13391—Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe

Federal Register
Vol. 70, No. 226
Friday, November 25, 2005

Presidential Documents

Title 3—

The President

Executive Order 13391 of November 22, 2005

Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the continued actions and policies of certain persons who undermine Zimbabwe's democratic processes and with respect to the national emergency described and declared in Executive Order 13288 of March 6, 2003,

I, GEORGE W. BUSH, President of the United States of America, hereby order:

Section 1. The Annex to Executive Order 13288 of March 6, 2003, is replaced and superseded in its entirety by the Annex to this order.

Sec. 2. Section 6 of Executive Order 13288 is renumbered as section 8. Sections 1 through 5 of Executive Order 13288 are replaced with new sections 1 through 7 as follows:

''**Section 1.** (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have engaged in actions or policies to undermine Zimbabwe's democratic processes or institutions;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions or policies or any person whose property and interests in property are blocked pursuant to this order;

(C) to be or have been an immediate family member of any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c) The prohibitions in paragraph (a) of this section include but are not limited to (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that, for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

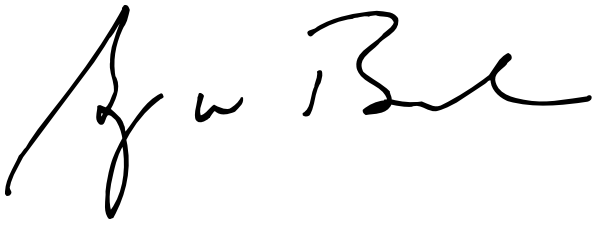
Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1(a) of this order.

Sec. 7. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.''

Sec. 3. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 4. This order shall take effect at 12:01 a.m. eastern standard time, November 23, 2005.

Sec. 5. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
November 22, 2005.

Billing code 3195–01–P

ANNEX

Individuals

1. Robert Gabriel MUGABE [President of the Republic of Zimbabwe, born 21 Feb. 1924]
2. Flora BUKA [Minister of State for Special Affairs, Land and Resettlement Program, born 25 Feb. 1968]
3. Abina CHAPFIKA [Spouse of David Chapfika, born 23 Aug. 1961]
4. David CHAPFIKA [Deputy Minister of Finance, born 7 Apr. 1957]
5. George CHARAMBA [Permanent Secretary, Ministry of Information and Publicity, born 4 Apr. 1963]
6. Rudo Grace CHARAMBA [Spouse of George Charamba, born 20 June 1964]
7. Fortune Zefanaya CHARUMBIRA [Member of Parliament & Central Committee Member, born 10 June 1962]
8. Tinaye Elisha Nzirasha CHIGUDU [Manicaland Provincial Governor, born 13 Aug. 1942]
9. Aeneas Soko CHIGWEDERE [Minister of Education, Sports and Culture, born 25 Nov. 1939]
10. Phineas CHIHOTA [Deputy Minister of Industry and International Trade, born 23 Nov. 1950]
11. Augustine CHIHURI [Police Commissioner, born 10 Mar. 1953]
12. Enos CHIKOWORE [Former Central Committee Member, born 17 July 1942]
13. Chenhamo Chakezha Chen CHIMUTENGWENDE [Minister of State for Public and Interactive Affairs, born 28 Aug. 1943]
14. Gamuchirai CHINAMASA [Child of Patrick Chinamasa, born 11 Nov. 1991]
15. Monica CHINAMASA [Spouse of Patrick Chinamasa, born 1950]
16. Patrick CHINAMASA [Minister of Justice, Legal and Parliamentary Affairs, born 25 Jan. 1947]
17. Edward CHINDORI-CHININGA [Member of Parliament for Guruve South, born 14 Mar. 1955]
18. Victoria CHITEPO [Politburo, born 27 Mar. 1928]
19. Constantine Gureya CHIWENGA [Lt. Gen., Commander of Zimbabwe Defense Forces, born 25 Aug. 1956]
20. Jocelyn Mauchaza CHIWENGA [Spouse of Constantine Chiwenga, born 19 May 1955]
21. George CHIWESHE [Chairman of Zimbabwe Electoral Commission, born 4 June 1953]
22. Willard CHIWEWE [Masvingo Provincial Governor, born 19 Mar. 1949]
23. Ever CHOMBO [Spouse of Ignatius Chombo, born 20 Sept. 1956]
24. Ignatius Morgan CHOMBO [Minister of Local Government, Public Works and National Housing, born 1 Aug. 1952]
25. Marian CHOMBO [Spouse of Ignatius Chombo, born 11 Aug. 1960]
26. Dumiso DABENGWA [Politburo Committee Member, born 6 Dec. 1939]

27. Ijeoma DABENGWA [Child of Dumiso Dabengwa, born 27 Oct. 1971]
28. Abigail DAMASANE [Deputy Minister for Women's Affairs, Gender, and Community Development, born 27 May 1952]
29. Theophilus Pharaoh GAMBE [Chairman, Electoral Supervisory Commission, born 20 June 1959]
30. Nicholas Tasunungurwa GOCHE [Minister of Public Works, Labor and Social Welfare, born 1 Aug. 1946]
31. Gideon GONO [Governor of the Reserve Bank of Zimbabwe, born 29 Nov. 1959]
32. Hellin Mushanyuri GONO [Spouse of Gideon Gono, born 6 May 1962]
33. Aleck Rugare Ngidi GUMBO [Minister for Economic Development, born 8 Mar. 1940]
34. Richard Chemist HOVE [Politburo Secretary for Economic Affairs, born 23 Sept. 1939]
35. Tichaona Joseph Benjamin JOKONYA [Minister of Information and Publicity, born 27 Dec. 1938]
36. Kumbirai KANGAI [Politburo Deputy Secretary for External Relations, born 17 Feb. 1938]
37. David KARIMANZIRA [Harare Provincial Governor & Politburo Secretary for Finance, born 25 May 1947]
38. Savior KASUKUWERE [Deputy Minister for Youth Development and Employment Creation & Deputy Secretary for Youth Affairs, born 23 Oct. 1970]
39. Ray Joseph KAUKONDE [Mashonaland East Provincial Governor, born 4 Mar. 1963]
40. Andrew LANGA [Deputy Minister of Environment and Tourism, born 13 Jan. 1965]
41. Thenjiwe LESABE [Politburo Committee Member, born 5 Jan. 1933]
42. Jaison Max Kokerai MACHAYA [Member of Parliament for Gokwe Kana, born 13 June 1952]
43. Joseph Mtakwese MADE [Minister of Agriculture, born 21 Nov. 1954]
44. Edna MADZONGWE [Deputy Speaker of Parliament, born 11 July 1945]
45. Shuvai Ben MAHOFA [Member of Parliament for Gutu South, born 4 Apr. 1941]
46. Joshua MALINGA [Deputy Secretary for Disabled and Disadvantaged, born 28 Apr. 1944]
47. Barbara MANDIZHA [Deputy Police Commissioner, born 24 Oct. 1959]
48. Munyaradzi Paul MANGWANA [Minister of State for Anti-Corruption and Anti-Monopolies, born 10 Aug. 1961]
49. Witness MANGWENDE [Former Minister of Transport and Communications, born 15 Aug. 1946]
50. Elliot MANYIKA [Minister Without Portfolio, born 30 July 1955]
51. Kenneth MANYONDA [Central Committee Member, born 10 Aug. 1934]
52. Rueben MARUMAHOKO [Deputy Minister for Home Affairs, born 4 Apr. 1948]
53. Angeline MASUKU [Matebeleland South Provincial Governor & Politburo Secretary for Gender and Culture, born 14 Oct. 1936]
54. Godwin MATANGA [Deputy Police Commissioner, born 5 Feb. 1962]
55. Cain MATHEMA [Bulawayo Provincial Governor, born 28 Jan. 1948]
56. Sithokozile MATHUTHU [Matabeleland North Provincial Governor & Deputy Secretary for Transport and Social Welfare]

57. Innocent Tonderai MATIBIRI [Deputy Police Commissioner, born 9 Oct. 1968]
58. Biggie Joel MATIZA [Deputy Minister of Rural Housing and Social Amenities, born 17 Aug. 1960]
59. Bright MATONGA [Deputy Minister of Information and Publicity, born 1969]
60. Obert MATSHALAGA [Deputy Minister of Foreign Affairs, born 21 Apr. 1951]
61. Amos Bernard Muvenga MIDZI [Minister for Mines and Mining Development, born 4 July 1952]
62. Emmerson Dambudzo MNANGAGWA [Minister of Rural Housing and Social Amenities, born 15 Sept. 1946]
63. Kembo Campbell Dugishi MOHADI [Minister of Home Affairs, born 15 Nov. 1949]
64. Swithun MOMBESHORA [Former Minister of Higher Education, born 20 Aug. 1945]
65. Jonathan Nathaniel MOYO [Member of Parliament for Tsholotsho & Former Minister of Information and Publicity, born 12 Jan. 1957]
66. Simon Khaya MOYO [Politburo Member, born 1 Oct. 1945]
67. Obert Moses MPOFU [Deputy Secretary for National Security, born 12 Oct. 1951]
68. Joseph MSIKA [First Vice President, born 6 Dec. 1923]
69. Cephas George MSIPA [Midlands Provincial Governor, born 7 July 1931]
70. Sharlottie MSIPA [Spouse of Cephas Msipa, born 6 May 1936]
71. Olivia Nyembezi MUCHENA [Minister of State for Science and Technology Development, born 18 Aug. 1946]
72. Natasha MUCHINGURI [Child of Oppah Muchinguri, born 1994]
73. Oppah Chamu Zvipange MUCHINGURI [Minister of Women's Affairs, Gender and Community Development, born 14 Dec. 1958]
74. Tanya MUCHINGURI [Child of Oppah Muchinguri, born 1989]
75. Isack Stan Gorerazvo MUDENGE [Minister of Higher and Tertiary Education, born 17 Dec. 1948]
76. Grace MUGABE [Spouse of Robert Mugabe, born 23 July 1965]
77. Sabina MUGABE [Politburo Senior Committee Member, born 14 Oct. 1934]
78. Edwin MUGUTI [Deputy Minister of Health and Child Welfare, born 2 May 1964]
79. Joyce Teurai Ropa MUJURU [Second Vice President, born 15 Apr. 1955]
80. Solomon Tapfumaneyi Ruzambo MUJURU (a.k.a. Rex NANGO)[Politburo Senior Committee Member, born 1 May 1949]
81. Samuel Simbarashe Simbanenduku MUMBENGEGWI [Non-Constituency Member of Parliament, born 20 July 1945]
82. Herbert Muchemwa MURERWA [Minister of Finance, born 31 July 1941]
83. Ruth Chipo MURERWA [Child of Herbert Murerwa, born 27 July 1947]
84. Christopher Chindoti MUSHOHWE [Minister of Transport and Communications, born 6 Feb. 1954]
85. Didymus Noel Edwin MUTASA [Minister of State for National Security, born 27 July 1935]
86. Munacho Thomas Alvar MUTEZO [Minister of Water Resources and Infrastructural Development, born 14 Feb. 1954]

87. Ambrose MUTINHIRI [Minister of Youth Development and Employment Creation, born 22 Feb. 1944]
88. Kenneth Keparadza MUTIWEKUZIVA [Deputy Minister for Small and Medium Enterprise Development, born 27 May 1948]
89. Simon Vengesai MUZENDA [Former Vice President, born 28 Oct. 1922]
90. Tsitsi MUZENDA [Politburo Senior Committee Member, born 22 Aug. 1922]
91. Elisha MUZONZINI [Former Director of the Central Intelligence Organization, born 24 June 1957]
92. Abedinico NCUBE [Deputy Minister of Public Service, Labor and Social Welfare, born 13 March 1954]
93. Naison K. NDLOVU [Politburo Secretary for Production and Labor, born 22 Oct. 1930]
94. Richard NDLOVU [Politburo Deputy Commissariat, born 26 June 1942]
95. Rose Jaele NDLOVU [Spouse of Sikhanyiso Ndlovu, born 27 Sept. 1939]
96. Sikhanyiso Duke NDLOVU [Deputy Minister of Higher and Tertiary Education, born 4 May 1937]
97. Sylvester Robert NGUNI [Deputy Minister of Agriculture, born 4 May 1955]
98. Chenayaimoyo Dunstan Francis NHEMA [Minister of Environment and Tourism, born 17 Apr. 1959]
99. Georgina Ngwenya NKOMO [Spouse of John Nkomo, born 4 Aug. 1966]
100. John Landa NKOMO [Speaker of Parliament & ZANU-PF National Chairman, born 22 Aug. 1934]
101. Louise S. NKOMO (a.k.a. Louise Sehulle NHEMA)[Spouse of Francis Nhema, born 25 Aug. 1964]
102. Stephen NKOMO [Former Politburo Senior Committee Member, born 3 Oct. 1926]
103. Michael Rueben NYAMBUYA [Minister of Energy and Power Development, born 23 July 1955]
104. Peter Baka NYONI [Spouse of Sithembiso Nyoni, born 10 Jan. 1950]
105. Sithembiso NYONI [Minister of Small and Medium Enterprises Development, born 20 Sept. 1949]
106. David Pagwese PARIRENYATWA [Minister of Health and Child Welfare, born 2 Aug. 1950]
107. Khantibhal PATEL [Politburo Deputy Secretary for Finance, born 28 Oct. 1928]
108. Selina POTE [Deputy Secretary for Gender and Culture]
109. Tinos RUSERE [Deputy Minister of Mines and Mining Development, born 10 May 1945]
110. Morris SAKABUYA [Deputy Minister of Local Government, Public Works, and Urban Development]
111. Stanley SAKUPWANYA [Deputy Secretary for Disabled and Disadvantaged, born 1945]
112. Tendai SAVANHU [Politburo Deputy Secretary of Transport and Social Welfare, born 21 March 1968]
113. Lovemore SEKERAMAYI [Chief Elections Officer]
114. Sidney Tigere SEKERAMAYI [Minister of Defense, born 30 Mar. 1944]

115. Tsitsi Chihuri SEKERAMAYI [Spouse of Sydney Sekeramayi, born 1944]
116. Webster Kotiwani SHAMU [Minister of Policy Implementation, born 6 June 1945]
117. Nathan Marwirakuwa SHAMUYARIRA [Politburo Secretary for Information and Publicity, born 29 Sept. 1928]
118. Perence SHIRI [Zimbabwean Air Marshal (Air Force), born 11 Jan. 1955]
119. Isaiah Masvayamwanda SHUMBA [Deputy Minister for Education, Sports and Culture, born 3 Jan. 1949]
120. Levy SIBANDA [Deputy Police Commissioner]
121. Absolom SIKOSANA [Politburo Secretary for Youth Affairs]
122. Solomon TAWENGWA [Former Executive Mayor of Harare, born 15 June 1940]
123. Josiah TUNGAMIRAI [Former Minister of State for Indigenization and Empowerment, born 8 Oct. 1948]
124. Charles Manhamu UTETE [Former Cabinet Secretary, born 30 Oct. 1938]
125. Beauty Lily ZHUWAO [Spouse of Patrick Zhuwao, born 10 Jan. 1965]
126. Patrick ZHUWAO [Deputy Minister of Science and Technology, born 23 May 1967]
127. Paradzai ZIMONDI [Zimbabwe Prisons Chief, born Mar. 1947]
128. Vitalis ZVINAVASHE [Politburo Member & Retired Commander of Zimbabwe Defense Forces, born 27 Sept. 1943]

Entities

1. Allan Grange Farm [Chegutu, Zimbabwe]
2. Auchenburg Farm [Nyamandlovu, Zimbabwe]
3. Bamboo Creek Fram [Shamva, Zimbabwe]
4. Bourne Farm [Chegutu, Zimbabwe]
5. Calgary Farm [Mazowe, Zimbabwe]
6. Cold Comfort Farm Trust Co-Operative [Harare, Zimbwabe]
7. Corburn 13 Farm [Chegutu, Zimbabwe]
8. Duiker Flats Farm [Zimbabwe]
9. Eirin Farm [Marondera, Zimbabwe]
10. Eyrie Farm [Mashvingo, Zimbabwe]
11. Fountain Farm [Insiza, Zimbabwe]
12. Gowrie Farm [Norton, Zimbabwe]
13. Harmony Farm [Mazowe, Zimbabwe]
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15. Lochinvar Farm [Mashvingo, Zimbabwe]
16. Longwood Farm [Zimbabwe]
17. Lot 3A of Dete Valley Farm [Lupane, Zimbabwe]
18. Lothain Farm [Gutu, Zimbabwe]
19. M & S Syndicate (Pvt) Ltd. [Harare, Zimbabwe]
20. Marondera Maple Leaf Farm [Zimbabwe]
21. Ndlovu Motorways [Harare, Zimbabwe]
22. Oldham Farm [Chegutu, Zimbabwe]
23. Patterson Farm [Mazowe, Zimbabwe]
24. Pimento Farm [Mashonaland, Zimbabwe]

25. R/E of Audrey Farm [Zimbabwe]
26. R/E of Mlembwe Farm [Mlembwe, Zimbabwe]
27. Spring SP Farm [Mashvinigo, Zimbabwe]
28. Subdivision 3 of Caledon Farm [Caledon, Zimbabwe]
29. Swift Investments (Pvt) Ltd. [Harare, Zimbwabe]
30. Ulva Farm [Marondera, Zimbabwe]
31. Umguza Block Farm [Umguza, Zimbabwe]
32. Zimbabwe Defence Industries (Pvt) Ltd. [Harare, Zimbabwe]
33. Zvinavashe Investments Ltd. (a.k.a. Lamfontine Farm; a.k.a. Zvinavshe Transport) [Harare, Zimbabwe]

Note: The bracketed identifying information with respect to each individual and entity listed in this Annex reflects information currently available and is provided solely to facilitate compliance with this order. Each individual listed in this Annex remains subject to the prohibitions of this order notwithstanding any change in title, position, or affiliation.

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