Federal Register

1–20–06 Friday
Vol. 71 No. 13 Jan. 20, 2006

Pages 3205–3408

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
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, February 7, 2006
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

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 13

Friday, January 20, 2006

Separate Parts In This Issue

Reader Aids

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

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.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 71, No. 13

Friday, January 20, 2006

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1740

RIN 0572–ACO2

Public Television Station Digital Transition Grant Program

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Utilities Service (the Agency) is issuing a new rule to allow the Agency to make grants to enable Public Television Stations in rural areas to replace current analog television broadcasting equipment with digital television broadcasting equipment as part of the national transition to digital television service.

DATES: This rule is effective January 20, 2006. Written comments must be received by the Agency or bear a postmark of equivalent not later than March 21, 2006.

ADDRESSES: Submit your comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instruction for submitting comments.
- Agency Web site: *http://www.usda.gov/rus/index2.Comments.htm*. Follow the instructions for submitting comments.
- *E-mail: RUSComments@usda.gov*. Include in the subject line of the message ''7 CFR 1740.''
- Mail: Addressed to Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: RUS requests a signed original and three copies of all written comments (7 CFR 1700.4). Comments may also be submitted by e-mail at *RUSComments@usda.gov* and must contain the phrase ''Public Television Station Digital Transition Grant Program'' in the subject line. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without changes to *http://www.usda.gov.rus.index2.Comments.htm*, including any personal information provided. All comments will also be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION, CONTACT: Orren E. Cameron III, Director, Advanced Services Division, Rural Utilities Service, Room 2845-S, 1400 Independence Avenue SW., STOP 1550, Washington, DC, 20250–1550. Telephone: 202–690–4493. FAX: 202–720–1051. E-mail: *ed.cameron@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Agency Response to Comments

RUS intends to address public comments received regarding this interim final rule at a later date in a Confirmation of an Interim Final Rule as a Final Rule which will be published in the **Federal Register**.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the Public Television Station Digital Transition Grant Program is 10.861. The Catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this interim final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132 Federalism

The policies contained in this interim final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 553(a)(2), this interim final rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an opportunity for public comment. Because this interim final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable.

Unfunded Mandates

This interim final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this interim final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This interim final rule has been examined under RUS environmental regulations at 7 CFR part 1794. The RUS Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirements

This interim rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0134 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

As part of the nation's transition to digital television, the Federal Communications Commission (FCC) required all television broadcasters to begin broadcasting using digital signals, and to cease broadcasting in analog by December 31, 2006. Recognizing the need to support the digital transition of public television stations serving rural areas, Congress appropriated $15 million in grant funds through the Distance Learning and Telemedicine Grant Program. *See* Consolidated Appropriations Resolution, 2003, Pub. L. 108–7. On July 18, 2003, RUS published a Notice of Funds Availability (NOFA) in the **Federal Register** (68 FR 42680) to announce the new grant program to finance the conversion of television service from analog to digital broadcasting for public television station serving rural areas. For Fiscal Year (FY) 2003, $15 million in grants were made available through a national competition to enable public television stations which serve substantial rural populations to continue serving their coverage areas. On February 20, 2004, RUS announced the selection of 16 rural public television stations in 13 states which were to receive all $15 million in grant funds to convert to digital broadcasting. For FY 2004, Congress appropriated an additional $14 million in grant funds for this purpose. *See* Consolidated Appropriations Act, 2004, Pub. L. 108–199. On March 11, 2004, the RUS published a Notice in the **Federal Register** (69 FR 11593) stating that the money would be used for unfunded applications received under the prior NOFA, and on April 20, 2004, an additional 18 grants were awarded to recipients in 16 states.

As of August 2005, 40 of the nation's 355 public television transmitters have not launched DTV service. In addition, the vast majority of DTV stations serving rural areas have not yet been able to build out their full digital facilities that would allow them to replicate their analog services in the digital environment. It is important for these stations to be able cover their former analog service areas, and to tailor their programs and services (e.g., education services, public health, homeland security, and local culture) to their rural constituents, and this may require transmitter/translator upgrades and other broadcast and video. If stations cannot continue to meet their analog standards of robust service, some Public Television programming will be lost, and many school systems may be left without the educational programming they count on for curriculum compliance. With the FCC deadline of December 31, 2006, for the end of the digital transition approaching, it is vital that rural stations continue their services to rural America.

Congress has authorized additional purposes which were specifically excluded in the 2003 NOFA. This regulation incorporates those new statutory requirements and updates this competitive grant program for FY 2006 under regulation rather than by NOFA.

The broadcast of digital signals requires the installation of special antennae, transmitters and/or translators, and new digital program management facilities, consisting of processing and storage systems. If public television stations are to perform program origination functions, as most do, digital cameras, editing, and mastering equipment are also required. Moreover, studio-to-tower site communications links may be required to transport the digital broadcast signal to each transmitter and translator. Broadcasting in high definition, multicasting, and datacasting are inherent to digital television, and require additional facilities at the transmitter and studio level. Lastly, in order to comply with the FCC transition deadlines, some rural public television stations initially began digital broadcasting using low-cost, low-power transmitters. However, these transmitters did not replicate the station's analog coverage area (an FCC objective of the transition), and power upgrades are needed to cover the shortfall, which is often in the most rural of rural areas.

In designing a national competition for the distribution of these grant funds, priority has been given to public television stations serving those areas that would most likely be unable to transition without a grant. Because funding for stations generally comes from public and business contributions, rural public television stations unquestionably receive fewer contributions due to smaller populations and fewer businesses. Therefore, rurality becomes a prime indicator of the need for grant funding. In addition, some rural areas have income levels much lower than the national average, and public television stations covering these areas in particular are likely to have difficulty funding the digital transition. As a result, the consideration of the income of a public television station's coverage area is a secondary indicator of the need for grant funding. Lastly, some public television stations may have, or may meet, critical needs in their communities, and a third scoring factor for critical need has been added. This scoring category will also recognize that some transition purchases are more essential than others, so that applications for first transmitter capability and transmitter power upgrades that extend coverage into rural-only areas will both receive scoring advantages. Master control facilities which tailor programming to local needs will also be recognized in this category.

List of Subjects in 7 CFR 1740

Grant programs—Digital television; Communications; Rural areas; Television.

■ For reasons set forth in the preamble, RUS amends Chapter XVII of title 7 of the Code of Regulations by adding part 1740 as follows:

PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM

Subpart A— Public Television Station Digital Transition Grant Program

Sec.

Subpart B—[Reserved]

Authority: Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Public Law 108–447.

Subpart A—Public Television Station Digital Transition Grant Program

§ 1740.1 Purpose.

The purpose of the Rural Utilities Service (RUS) Public Television Station Digital Transition Grant Program (Grant Program) is to enable public television stations serving rural areas to transition from broadcasting in analog to digital, as required under the Federal Communications Commission rules, by awarding grants through a competitive process.

§ 1740.2 Definitions.

Core coverage area is the set of counties fully covered, or at least 75% covered, by a digital television transmitter or translator.

Coverage contour area is the area estimated to receive a digital television signal from a transmitter or translator of 41 dBμ for UHF signals, 36 dBμ for channel 7–13 signals, or 28 dBμ for channel 2–6 signals, as shown on the public television station's map filed with the FCC.

Digital television, or DTV, means the digital television system which will replace the current analog system.

Digital transition means the transition from analog television broadcasting to digital television broadcasting. To transition according to FCC rules, a broadcaster must initiate digital television broadcasting while continuing to operate analog television broadcasting until December 31, 2006, to enable viewers the necessary time to acquire digital television reception capability.

Distance learning means any digital public television broadcast to a school, library, home, or other end-user site located in a rural area, for the purpose of providing educational and cultural programming.

Grant Program means this Public Television Station Digital Transition Grant Program.

High definition television, or HDTV, means an enhanced television service which is authorized by the FCC as part of the digital television standard.

Public television station means a noncommercial educational television broadcast station that serves rural areas and is qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934.

Rural area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Rural population means the number of people within the core coverage area of a transmitter who do not live within the boundaries of an incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants as calculated pursuant to Section 1740.8(c)(1).

Rural Utilities Service, or RUS, is a Rural Development agency of the United States Department of Agriculture, which will administer this Grant Program.

Urban area means any area of the United States which is not a *Rural area*.

§ 1740.3 Applicant eligibility.

Eligibility for grants is limited to public television stations that serve rural areas, regardless of whether urban areas are additionally served.

§ 1740.4 Maximum amounts of grants.

The maximum grant amount shall be announced in each fiscal year's Notice of Funds Availability.

§ 1740.5 Matching funds.

No matching funds are required in this program.

§ 1740.6 Eligible purposes of grants.

Grants shall be made to enable applicants to perform digital transitions of television broadcasting serving rural areas, regardless of the location of their main transmitter. Grant funds may be used to acquire, lease, and/or install facilities and software necessary to the digital transition. Specific purposes include:

(a) Digital transmitters, translators, and repeaters, including all facilities required to initiate DTV broadcasting. All broadcast facilities acquired with grant funds shall be capable of delivering DTV programming and HDTV programming, at both the interim and final channel and power authorizations. There is no limit to the number of transmitters or translators that may be included in an application;

(b) Power upgrades of existing DTV transmitter equipment;

(c) Studio-to-transmitter links;

(d) Equipment to allow local control over digital content and programming, including master control equipment;

(e) Digital program production equipment, including cameras, editing, mixing and storage equipment;

(f) Multicasting and datacasting equipment;

(g) Cost of the lease of facilities, if any, for up to three years; and

(h) Associated engineering and environmental studies necessary to implementation.

§ 1740.7 Ineligible purposes.

(a) Grant funds shall not be used to fund ongoing operations or for facilities that will not be owned by the applicant, except for leased facilities as provided in § 1740.6.

(b) Costs of salaries, wages, and employee benefits of public television station personnel are not eligible for funding under this program unless they are for construction or installation of eligible facilities.

(c) Facilities for which other grant funding from any source has been approved are not eligible for funding under this program.

(d) Expenditures made prior to this deadline are not eligible for funding. To be an eligible grant purpose, an expenditure must be made after the application deadline specified in the Notice of Funds Available.

§ 1740.8 Scoring criteria for the grant competition.

(a) After an application is found to be eligible, it will be scored in three categories: the rurality of the applicant's core coverage area, the average National School Lunch Program eligibility ratio in the applicant's core coverage area, and the critical need for the project.

(b)(1)(i) Scoring in this program is based on a simplified representation of the project's digital coverage area. To find a transmitter's simplified coverage area, go to the FCC TV Query Web site (*http://www.fcc.gov/fcc-bin/audio/tvq.html*) and access the station Service Contour Map. This map shows coverage at the appropriate field strength in dBμ, overlaid on a Census Tiger Map. The map also shows counties covered. The core coverage area is the set of counties that are either entirely within the appropriate coverage contour, or are at least seventy-five percent (75%) within the contour. For contours where counties are very large with respect to coverage, as might be the case for some western states and for most translators, there may be only one county within the coverage contour. In such cases, this county is the station's core coverage area. Every transmitter and translator must have a core coverage area consisting of one or more counties.

(ii) In the case of translators, where a coverage contour area does not exist, the applicant shall define a coverage contour area and explain how coverage was estimated. This estimated coverage contour area is subject to acceptance by RUS.

(2) When an application covers more than one transmitter or translator, the core coverage area of the application is the sum of the core coverage areas of all transmitters and translators included in the application.

(c) Rurality is a measure of the degree to which a project benefits rural areas. Up to fifty (50) points are available in this category. Urban areas bisected by the computed contour line are disregarded, since they represent fringe viewers. The Rurality score is computed as follows:

(1) The rural population of a core coverage area must be calculated. The rural population of a county is calculated by subtracting the county's urban population(s) from the total county population. If the core coverage area consists of multiple counties, the rural population is the sum of all included counties' rural populations. Urban area and county populations may be found at the American Factfinder Web site *http://factfinder.census.gov/home/saff/main.html?_lang=en*).

(2) The Rurality score is computed by multiplying the rural population for the core coverage area by one hundred (100), and subtracting fifty (50) from it. If this calculation results in a negative number, the Rurality score is zero. The formula is:

$100 \times [(\text{total population} - \text{urban population})/\text{total population}] - 50$

(3) If an applicant has no urban communities within the core coverage area, the computation would deliver a score of 50.

(d) Economic Need will be measured by the ability of the public in an area to support Public Television financially. Up to 25 points are available in this category.

(1) The score for Economic Need is computed from the average of the National School Lunch Program (NSLP) eligibility percentages for all school districts within the core coverage area. NSLP eligibility percentage information may be obtained from the state or local agency that administers the program, and the application must include a certification from this organization that the percentages provided are correct. Please note that the score for Economic Need is computed from the eligibility percentage, not the participation percentage. The score is computed by multiplying the average eligibility percentage by 100 (to convert percentage to a whole number), subtracting 25, dividing the quotient by two, and limiting the result to 25 points. A negative result yields a score of zero.

$[(\text{average NSLP eligibility percentage} \times 100) - 25] \div 2$, not to exceed 25 points

(2) [Reserved]

(e) Critical Need will be measured by the urgency and importance of the project to the rural community the applicant serves. Up to 25 points are available in this category. Critical Need evaluates factors not captured in the Rurality and Economic Need scoring categories, such as:

(1) Geographic or coverage characteristics of the public television station's digital television coverage area that make the digital transition unusually expensive;

(2) A severe lack of specialized human resources (such as teachers) for which digital educational television will compensate;

(3) Geographic isolation of communities which will be overcome with public television station services;

(4) Non-traditional community needs (such as adult vocational retraining) that may be met only with digital public television station broadcast capabilities;

(5) Historical events that have placed the public television station in severe financial stress; and

(6) The degree to which the project purposes will specifically benefit the rural public.

§ 1740.9 Grant application.

The grant application must include the following:

(a) An application for federal assistance, Standard Form 424.

(b) An executive summary, not to exceed two pages, describing the public television station, its service area and offerings, its current digital transition status, and the proposed project.

(c) Evidence of the applicant's eligibility to apply under this Notice, proving that the applicant is a Public Television Station as defined in this Part, and that it is required by the FCC to perform the digital transition.

(d) A spreadsheet showing the total project cost, with a breakdown of items sufficient to enable RUS to determine individual item eligibility.

(e) A coverage contour map showing the digital television coverage area of the applicant. This map must show the counties (or county) comprising the core coverage area by shading and by name. Partial counties included in the applicant's core coverage area must be identified as partial and must contain an attachment with the applicant's estimate of the percentage that its coverage contour comprises the total area of the county (total area is available from American Factfinder, referenced in § 1740.8 (c)(1)). If the application is for a translator, the coverage area may be estimated by the applicant through computer modeling or some other reasonable method, and this estimate is subject to acceptance by RUS.

(f) The applicant's own calculation of its Rurality score, supported by a worksheet showing the population of its core coverage area, and the urban and rural populations within the core coverage area. The data source for the urban and rural components of that population must be identified. If the application includes computations made by a consultant or other organization outside the public television station, the application shall state the details of that collaboration.

(g) The applicant's own calculation of its Economic Need score, supported by a worksheet showing the National School Lunch Program eligibility levels for all school districts within the core coverage area and averaging these eligibility percentages. The application must include a statement from the state or local organization that administers the NSLP program certifying the school district scores used in the computations.

(h) If applicable, a presentation not to exceed five pages demonstrating the Critical Need for the project.

(i) Evidence that the FCC has authorized the initiation of digital broadcasting at the project sites. In the event that an FCC construction permit has not been issued for one or more sites, the RUS may include those sites in the grant, and make advance of funds for that site conditional upon the submission of a construction permit.

(j) Compliance with other Federal statutes. The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations, including, but not limited to the following:

(1) Executive Order (E.O.) 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension; and

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

(k) Environmental impact and historic preservation. The applicant must provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1794, which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled ''Environmental Impact of the Digital Transition,'' and must include the Environmental Questionnaire/ Certification, available from RUS, describing the impact of its digital transition. Submission of the Environmental Questionnaire/ Certification alone does not constitute compliance with 7 CFR part 1794.

§ 1740.10 Grant documents.

The terms and conditions of each grant shall be set forth in standard grant documents prepared by RUS. These documents shall require that the applicant own or lease all facilities financed by the grant. In addition, however, RUS may prescribe special conditions to the advance of funds, such as those concerning FCC licensing.

§ 1740.11 Requests for funds.

(a) Once grant documents have been executed, funds may be requested for eligible purposes up to the amounts in the grant. Funds may either be requested in anticipation of known obligations, or may be requested to reimburse disbursements made by the grantee.

(b) Requests for funds shall be submitted on Standard Form 270 (Request for Advancement or Reimbursement).

(c) All requests for funds shall be supported by invoices or receipts.

Dated: January 12, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 06–511 Filed 1–19–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22871; Directorate Identifier 2005–NM–191–AD; Amendment 39–14454; AD 2006–02–02]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This AD requires installing a rivet and washer in the hole of the upper frame of the auxiliary power unit (APU) firewall. This AD results from a report indicating that, during production, a pinhole was left open at the upper frame of the APU firewall. We are issuing this AD to ensure that the APU compartment is isolated from the rest of the airplane in the event of an APU fire.

DATES: This AD becomes effective February 24, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 24, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. That NPRM was published in the **Federal Register** on November 9, 2005 (70 FR 67948). That NPRM proposed to require installing a rivet and washer in the hole of the upper frame of the auxiliary power unit (APU) firewall.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Rivet installation	1	$65	Operator-supplied	$65	108	$7,020

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–02–02 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–14454. Docket No. FAA–2005–22871; Directorate Identifier 2005–NM–191–AD.

Effective Date

(a) This AD becomes effective February 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 120–53–0080, dated November 30, 2004.

Unsafe Condition

(d) This AD results from a report indicating that, during production, a pinhole was left open at the upper frame of the auxiliary power unit (APU) firewall. We are issuing this AD to ensure that the APU compartment is isolated from the rest of the airplane in the event of an APU fire.

Compliance

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

Rivet Installation

(f) Within 4,000 flight hours or 24 months, whichever occurs first after the effective date of this AD: Install a rivet and washer in the hole of the upper frame of the APU firewall, in accordance with EMBRAER Service Bulletin 120–53–0080, dated November 30, 2004.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2005–08–03, effective September 5, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 120–53–0080, dated November 30, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA).

For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 10, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–469 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22873; Directorate Identifier 2005–NM–197–AD; Amendment 39–14457; AD 2006–02–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires replacing the Camloc fasteners on the sidewall of the center pedestal. This AD results from reports of the Camloc fasteners on the sidewall of the center pedestal disengaging and interfering with an inboard rudder pedal. We are issuing this AD to prevent these fasteners from disengaging and interfering with an inboard rudder pedal, which could reduce directional controllability of the airplane.

DATES: This AD becomes effective February 24, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 24, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That NPRM was published in the **Federal Register** on November 15, 2005 (70 FR 69291). That NPRM proposed to require replacing the Camloc fasteners on the sidewall of the center pedestal.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 718 airplanes of U.S. registry. The required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $135 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $143,600, or $200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–02–05 Bombardier, Inc. (Formerly Canadair): Amendment 39–14457. Docket No. FAA–2005–22873; Directorate Identifier 2005–NM–197–AD.

Effective Date

(a) This AD becomes effective February 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7986 inclusive.

Unsafe Condition

(d) This AD results from reports of the Camloc fasteners on the sidewall of the center pedestal disengaging and interfering with an inboard rudder pedal. We are issuing this AD to prevent these fasteners from disengaging and interfering with an inboard rudder pedal, which could reduce directional controllability of the airplane.

Compliance

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

Replacement of Fasteners

(f) Within 5,500 flight hours after the effective date of this AD, replace, with screws and nut plate assemblies, the Camloc fasteners on the left and right sidewalls of the center pedestal, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–31–030, Revision F, dated September 1, 2005.

Actions Accomplished Previously

(g) Replacing fasteners before the effective date of this AD in accordance with the Accomplishment Instructions of one of the issues of Bombardier Service Bulletin 601R–31–030 identified in Table 1 of this AD is acceptable for compliance with the requirements of paragraph (f) of this AD.

TABLE 1.—PREVIOUS SERVICE BULLETIN REVISIONS ACCEPTABLE FOR COMPLIANCE

Issue of Bombardier Service Bulletin 601R–31–030	Date
Original	June 22, 2004.
Revision A	October 6, 2004.
Revision B	November 4, 2004.
Revision C	December 15, 2004.
Revision D	June 16, 2005.
Revision E	July 7, 2005.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the

appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Canadian airworthiness directive CF–2004–23R1, dated July 18, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin 601R–31–030, Revision F, dated September 1, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 10, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–466 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22917; Directorate Identifier 2005–NM–157–AD; Amendment 39–14456; AD 2006–02–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, & CL–604) airplanes. This AD requires modifying the rudder balance spring assembly by installing a new adjustable balance spring, and rigging the assembly to suit the rudder of each airplane. This AD results from production inspections that showed that the spring assembly that controls rudder balance may not have the correct pre-load on some airplanes. We are issuing this AD to prevent uncommanded yaw movements and consequent reduced controllability of the airplane.

DATES: This AD becomes effective February 24, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 24, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes. That NPRM was published in the **Federal Register** on November 10, 2005 (70 FR 68377). That NPRM proposed to require modifying the rudder balance spring assembly by installing a new adjustable balance spring, and rigging the assembly to suit the rudder of each airplane.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Change to Related Information

We have revised paragraph (k) of this AD to include reference to Canadian airworthiness directive CF–2005–21R1, dated November 23, 2005, which was issued to revise the applicability of the affected airplanes. This change was reflected in the applicability of the proposed AD.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 501 airplanes of U.S. registry. The required actions will take about 12 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $1,749 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $1,267,029, or $2,529 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–02–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–14456. Docket No. FAA–2005–22917; Directorate Identifier 2005–NM–157–AD.

Effective Date

(a) This AD becomes effective February 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes, certificated in any category; as identified in Table 1 of this AD.

TABLE 1.—AFFECTED AIRPLANES BY SERIAL NUMBER

Bombardier airplane model	Affected serial numbers
CL–600–1A11 (CL–600)	1004 through 1085 inclusive.
CL–600–2A12 (CL–601)	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and CL–601–3R)	5001 through 5194 inclusive.
CL–600–2B16 (CL–604)	5301 through 5564 inclusive.

Unsafe Condition

(d) This AD results from production inspections that showed that the spring assembly that controls rudder balance may not have the correct pre-load on some airplanes. We are issuing this AD to prevent uncommanded yaw movements and consequent reduced controllability of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD.

TABLE 2.—SERVICE BULLETINS

Bombardier airplane model	Bombardier service bulletin
CL–600–1A11 (CL–600)	600–0714, including Appendix 1 and excluding Appendix 2, dated April 4, 2003.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R).	(601–0549, including Appendix 1 and excluding Appendix 2, dated April 4, 2003.
CL–600–2B16 (CL–604)	604–27–013, including Appendix 1 and excluding Appendix 2, dated April 4, 2003.

Modification and Rigging

(g) Within 12 months after the effective date of this AD: Modify and rig the adjustable rudder balance spring assembly for the rudder control surface, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 2 of this AD. Where the service bulletin specifies contacting Bombardier for instructions on making certain adjustments: Before further flight, adjust according to a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

No Reporting Required

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

Parts Installation

(i) After the effective date of this AD, no person may install on any airplane a rudder balance spring assembly unless it has been modified and rigged in accordance with paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Canadian airworthiness directives CF–2005–21, dated June 23, 2005, and CF–2005–21R1, dated November 23, 2005, also address the subject of this AD.

Material Incorporated by Reference

(1) You must use the service documents identified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Bombardier service bulletin	Date
600–0714, including Appendix 1 and excluding Appendix 2	April 4, 2003.
601–0549, including Appendix 1 and excluding Appendix 2	April 4, 2003.
604–27–013, including Appendix 1 and excluding Appendix 2	April 4, 2003.

Issued in Renton, Washington, on January 10, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–467 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22810; Directorate Identifier 2005–NM–143–AD; Amendment 39–14458; AD 2006–02–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–203, –204, and –222 Airplanes, and Model A310–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A310–203, –204, and –222 airplanes, and Model A310–300 series airplanes. This AD requires a one-time rototest inspection for cracking of the frame foot and adjacent frames and skin in the area surrounding the frame foot run-outs from fuselage frames (FR) 43 through FR 46, and repair if necessary. This AD also requires modification of certain fastener holes. This AD results from a structural evaluation of Model A310 airplanes for widespread fatigue damage of the frame foot run-outs from FR 43 through FR 46. The evaluation revealed that, on in-service airplanes, undetected cracking in this area can lead to the rupture of the frame foot and subsequent cracking of the adjacent frames and fuselage skin. We are issuing this AD to prevent fatigue cracking of the frame foot run-outs, which could lead to rupture of the frame foot and cracking in adjacent frames and skin, and result in reduced structural integrity of the fuselage.

DATES: This AD becomes effective February 24, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 24, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A310–203, –204, and –222 airplanes, and Model A310–300 series airplanes. That NPRM was published in the **Federal Register** on October 27, 2005 (70 FR 61924). That NPRM proposed to require a one-time rototest inspection for cracking of the frame foot and adjacent frames and skin in the area surrounding the frame foot run-outs from fuselage frames (FR) 43 through FR 46, and repair if necessary. The NPRM also proposed to require modification of certain fastener holes.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received.

Request for Clarification of Service Bulletin Reference

The commenter states that a reference to Airbus Service Bulletin A310–53–2124, dated April 4, 2005, was omitted in paragraph (f) of the NPRM. We agree with the commenter. We inadvertently omitted the service bulletin number in paragraph (f); that error has been corrected in this final rule.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 59 airplanes of U.S. registry. The actions will take about 31 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $1,730 per kit (two kits per airplane). Based on these figures, the estimated cost of the AD for U.S. operators is $323,025, or $5,475 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–02–06 Airbus: Amendment 39–14458. Docket No. FAA–2005–22810; Directorate Identifier 2005–NM–143–AD.

Effective Date

(a) This AD becomes effective February 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, and –222 airplanes, and Model A310–304, –322, –324, and –325 airplanes; certificated in any category; except those airplanes on which Airbus Modification 13023 has been accomplished in production.

Unsafe Condition

(d) This AD results from a structural evaluation of Model A310 airplanes for widespread fatigue damage of the frame foot run-outs from frame (FR) 43 through FR 46. We are issuing this AD to prevent fatigue cracking of the frame foot run-outs, which could lead to rupture of the frame foot and cracking in adjacent frames and skin, and result in reduced structural integrity of the fuselage.

Compliance

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

Inspection/Repair/Modification

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, perform a one-time rototest inspection for cracking of the frame foot and adjacent frames and skin in the area surrounding the frame foot run-outs from fuselage frame FR 43 through FR 46 by doing all the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A310–53–2124, dated April 4, 2005. Except as required by paragraph (g) of this AD, repair any cracking before further flight in accordance with the Accomplishment Instructions of the service bulletin. Before further flight after performing the inspection, modify the fastener holes located between FR 43 and FR 46 on the center box and on the upper fuselage bent sections in accordance with the Accomplishment Instructions of the service bulletin.

(1) Before the accumulation of the total flight-cycle or flight-hour threshold, whichever is first, specified in the Accomplishment Timescale table in paragraph 1.E.(2), ''Compliance'' of the service bulletin.

(2) At the earlier of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Before the accumulation of the total flight-cycle or flight-hour threshold, whichever is first, specified in Notes 01, 02, and 03 in paragraph 1.E.(2), ''Compliance'' of the service bulletin, after the effective date of this AD.

(ii) Within 3,000 flight cycles after the effective date of this AD.

Repair Per FAA or Direction Générale de l'Aviation Civile (DGAC)

(g) For any cracking found during any inspection required by this AD for which the service bulletin specifies to contact the manufacturer for an appropriate repair: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2005–078, dated May 11, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A310–53–2124, dated April 4, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 10, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–465 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22749; Directorate Identifier 2005–NM–188–AD; Amendment 39–14455; AD 2006–02–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Model Hawker 800XP airplanes. This AD requires inspecting to determine if the correct fuse is installed on the hydraulic over-temperature switch on panel ZK in the rear equipment bay, and replacing the existing fuse if necessary. This AD results from a report of the installation of an incorrect fuse on the over-temperature switch on panel ZK in the rear equipment bay during airplane maintenance. We are issuing this AD to prevent a short circuit in the fuse and consequent heat damage to associated wiring and surrounding equipment, which could result in smoke or fire on the airplane.

DATES: This AD becomes effective February 24, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 24, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas, 67201–0085, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Raytheon Model Hawker 800XP airplanes. That NPRM was published in the **Federal Register** on October 27, 2005 (70 FR 61914). That NPRM proposed to require inspecting to determine if the correct fuse is installed on the hydraulic over-temperature switch on panel ZK in the rear equipment bay, and replacing the existing fuse if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 138 airplanes of the affected design in the worldwide fleet. This AD will affect about 110 airplanes of U.S. registry. The required actions will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost is negligible. Based on these figures, the estimated cost of the AD for U.S. operators is $14,300, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–02–03 Raytheon Aircraft Company: Amendment 39–14455. Docket No. FAA–2005–22749; Directorate Identifier 2005–NM–188–AD.

Effective Date

(a) This AD becomes effective February 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model Hawker 800XP airplanes, certificated in any category, serial numbers 258541, 258556, and 258567 through 258713 inclusive.

Unsafe Condition

(d) This AD results from a report of the installation of an incorrect fuse on the over-temperature switch on panel ZK in the rear equipment bay during airplane maintenance. We are issuing this AD to prevent a short circuit in the fuse and consequent heat damage to associated wiring and surrounding equipment, which could result in smoke or fire on the airplane.

Compliance

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

Inspect and Replace if Necessary

(f) Within 50 flight hours or 30 days after the effective date of this AD, whichever is first: Do a general visual inspection to determine if a 20-amp fuse is installed on the hydraulic over-temperature switch on panel ZK in the rear equipment bay in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3724, dated May 2005. If a 20-amp fuse is installed, before further flight, replace it with a 3-amp fuse in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 2: A note in the Accomplishment Instructions of the Raytheon service bulletin instructs operators to contact Raytheon if any difficulty is encountered in accomplishing the service bulletin. However, any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance (AMOC) under paragraph (g) of this AD.

Repair Approval

(g) Where the Raytheon Service Bulletin SB 24–3724, dated May 2005, says to contact the manufacturer if any sign of damage is found on associated terminals and wires: Before further flight, contact the Manager, Wichita Aircraft Certification Office, FAA, for applicable repair actions; then, before further flight, accomplish the applicable repair actions specified, according to a method approved by the Manager, Wichita Aircraft Certification Office.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(i) You must use Raytheon Service Bulletin SB 24–3724, dated May 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas, 67201–0085, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 10, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–468 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AG07

Work Activity of Persons Working as Members of Advisory Committees Established Under the Federal Advisory Committee Act (FACA)

AGENCY: Social Security Administration.

ACTION: Final Rule.

SUMMARY: We are revising our disability regulations under titles II and XVI of the Social Security Act to establish a new, special rule that affects individuals who are receiving payments or providing services as members or consultants of a committee, board, commission, council or similar group established under the Federal Advisory Committee Act (FACA). Under this special rule, we will not count any earnings an individual is receiving from serving as a member or consultant of a FACA advisory committee when we determine if the individual is engaging in substantial gainful activity under titles II and XVI of the Social Security Act (the Act). In addition, we will not evaluate any of the services the individual is providing as a member or consultant of the FACA advisory committee when determining if the individual has engaged in substantial gainful activity under titles II and XVI of the Act.

Based on our experience with FACA advisory committees and the frequency and level of activity required by these committees, we believe that performance of activity on these committees does not demonstrate the ability to perform substantial gainful activity. We believe this to be consistent with Congress's view, as it has recognized in creating the Ticket to Work advisory committee, for example, that current disability beneficiaries should be considered for membership. This also will encourage individuals with disabilities to serve on FACA advisory committees, thereby providing the benefit of their unique perspective on policies and programs to the Federal Government.

DATES: This final rule is effective on February 21, 2006.

Electronic Version

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

FOR FURTHER INFORMATION CONTACT: Mary Hoover, Policy Analyst, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–5651 or TTY 1–800–325–0778 for information about these final rules. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Final Rule?

In this final rule, we are establishing a new, special rule that applies to individuals working as members or consultants of a committee, board, commission, council or similar group established under the FACA, 5 U.S.C. App. 2. Under this special rule, earnings received or services provided by the individual as a result of serving on a Federal Advisory Committee, will not be evaluated when deciding if the individual has engaged in substantial gainful activity under titles II and XVI of the Act.

What Is the FACA?

The FACA and its implementing regulations allow the Federal Government to establish or utilize advisory committees consisting of non-Federal employees when they are determined to be essential for furnishing expert advice, ideas, and diverse opinions to the Federal Government. Advisory committees are established solely when it is beneficial to the Federal Government. Such committees serve an advisory role only. Members and consultants of advisory committees established under FACA receive compensation in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors.

What Rules Are We Revising and Why?

The purpose of FACA advisory committees is to provide expert advice, ideas, and diverse opinions to the Federal Government. The individuals who serve on these advisory committees do so for the benefit of the Federal Government. Consistent with Congress's view (as reflected by mandating consideration of currently disabled Social Security beneficiaries for membership on the Ticket to Work advisory committee), we do not believe that performance of activity on these committees demonstrates an ability to perform substantial gainful activity. This special rule will encourage individuals with disabilities to serve on FACA advisory committees, thereby providing the benefit of their unique perspective on policies and programs to the Federal Government. We will not evaluate earnings received or services provided by the individual, as a result of serving on a Federal Advisory Committee, when deciding if the individual has engaged in substantial gainful activity. This special rule will eliminate the fear individuals may have concerning the loss or denial of benefits (including health care), based on earnings received and services provided as a result of serving on a FACA advisory committee.

Explanation of Changes

We are revising §§ 404.1574 and 416.974 to specify that if you are serving as a member or consultant of an advisory committee, board, commission, council or similar group established under FACA, we will not evaluate the earnings you receive or the services provided as a result from serving on such committees when we determine whether you are engaging in substantial gainful activity under title II and title XVI of the Act.

Public Comments

On June 3, 2005, we published proposed rules in the **Federal Register** at 70 FR 32550 and provided a 60-day period for interested parties to comment. We received comments from 6 advocacy organizations and 3 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We have tried to present all views adequately and carefully address all of the issues raised by the commenters that are within the scope of the final rules.

Comment: One individual disagreed with our proposed implementation of this special rule and wanted all income to be treated equally.

Response: One of our highest priorities is to help individuals with disabilities achieve independence by helping them to take advantage of employment opportunities. To this end, we have various employment supports and work incentives in place to disregard some or all of an individual's earnings while he or she attempts to return to work.

This disregard will encourage individuals with disabilities to participate on FACA committees. Furthermore, based on our experience, we do not believe that work performed by individuals with disabilities serving on a FACA committee demonstrates an ability to perform substantial gainful activity. Therefore, we are not adopting this commenter's recommendation.

Comment: Three commenters supported the rule without qualifications. Five commenters supported the rule but wanted it to extend to similar types of advisory panels at the state and local level.

Response: There are numerous committees, boards, and similar groups which have been established to advise the Federal Government; therefore, Congress enacted the Federal Advisory Committee Act (FACA) to regulate these committees and groups. The FACA directs the establishment of these committees, their purpose, functions, organization, record-keeping requirements, and conditions for termination. These directives will assure that committees established under the FACA will operate in a uniform manner.

Other advisory committees are not subject to these exacting regulations. We cannot be assured that their functions and organization meet the same criteria of a FACA committee, on which we base the establishment of this special rule. Therefore, we are not adopting the commenters' recommendation to extend this rule to advisory panels at the state or local level. We will evaluate on a case-by-case basis whether services performed or earnings received for activity on other advisory committees constitute SGA using existing rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13256. Thus, it was reviewed by OMB. We have also determined that this rule meets the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule imposes no reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

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

Dated: October 18, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Section 404.1574 is amended by adding a new paragraph (e) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(e) *Work activity as a member or consultant of an advisory committee established under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.* If you are serving as a member or consultant of an advisory committee, board, commission, council, or similar group established under FACA, we will not count any payments you receive from serving on such committees as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include compensation, travel expenses, and special assistance. We also will exclude the services you perform as a member or consultant of an advisory committee established under FACA in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a member or consultant of an advisory committee specifically authorized by statute, or by the President, or determined as a matter of formal record by the head of a federal government agency. This exclusion from the substantial gainful activity provisions will not apply if your service as a member or consultant of an advisory committee is part of your duties or is required as an employee of any governmental or non-governmental organization, agency, or business.

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

Subpart I—[Amended]

■ 3. The authority citation for subpart I continues to read as follows;

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 4. Section 416.974 is amended by adding a new paragraph (e) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(e) *Work activity as a member or consultant of an advisory committee established under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.* If you are serving as a member or consultant of an advisory committee, board, commission, council, or similar group established under FACA, we will not count any payments you receive from serving on such committees as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include compensation, travel expenses, and special assistance. We also will exclude the services you perform as a member or consultant of an advisory committee established under FACA in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provision will apply only if you are a member or consultant of an advisory committee specifically authorized by statute, or by the President, or determined as a matter of formal record by the head of a federal government agency. This exclusion from the substantial gainful activity provisions will not apply if your service as a member or consultant of an advisory committee is part of your duties or is required as an employee of any governmental or non-governmental organization, agency, or business.

[FR Doc. 06–510 Filed 1–19–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9203]

RIN 1545–BC32

Deemed Election To Be an Association Taxable as a Corporation for a Qualified Electing S Corporation; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document adds the text that was inadvertently removed from the Code of Federal Regulations in TD 9203, which was published in the **Federal Register** on Monday, May 23, 2005 (70 FR 29452).

DATES: This correction is effective on May 23, 2005.

FOR FURTHER INFORMATION CONTACT: Jian H. Grant, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds § 301.7701–3T to the Code of Federal Regulations. The final regulations that are the subject of this correction are under section 7701 of the Internal Revenue Code.

Need for Correction

As published, § 301.7701–3T was inadvertently removed in its entirety from the Code of Federal Regulations in TD 9203.

List of Subjects in 26 CFR Part 301

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

Correction of Publication

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

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1**. The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2**. Section 301.7701–3T is added to read as follows:

§ 301.7701–3T Classification of certain business entities (temporary).

(a) through (c)(1)(i) [Reserved]. For further guidance, see § 301.7701–3(a) through (c)(1)(i).

(ii) *Further notification of elections.* An eligible entity required to file a Federal tax or information return for the taxable year for which an election is made under § 301.7701–3(c)(1)(i) must attach a copy of its Form 8832 to its Federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832, ‘‘Entity Classification Election,’’ must be attached to the Federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under § 301.7701–3(c)(1)(i) will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the Federal tax or information returns are inconsistent with the entity's election under § 301.7701–3(c)(1)(i). In the case of returns for taxable years beginning after December 31, 2002, the copy of Form 8832 attached to a return pursuant to this paragraph (c)(1)(ii) is not required to be a signed copy.

(c)(1)(iii) through (h)(3) [Reserved]. For further guidance, see § 301.7701–3(c)(1)(iii) through (h)(3).

Guy R. Traynor,

Federal Register Liaison, Publications and Regulations Br., Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 06–507 Filed 1–19–06; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2006–0032; FRL–8023–3]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting Ohio Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The agency published a proposed rule on August 11, 2005 at 70 FR 46799 and provided for public comment. The public comment period ended on September 12, 2005. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization.

DATES: The final authorization will be effective on January 20, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA R–05–RCRA–2006–0032. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy as follows. You can view and copy Ohio's application from 9 a.m. to 4 p.m. at the following addresses: Ohio Environmental Protection Agency, Lazarus Government Center, 122 South Front Street, Columbus, Ohio, (mailing address P.O. Box 1049, Columbus, Ohio 43216) contact Kit Arthur (614) 644–2932; and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886–7450, or at *westefer.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 11, 2005, EPA published a proposed rule proposing to grant Ohio authorization for changes to its RCRA program, listed in Section F of that notice, which was subject to public comment. The public comment period ended September 12, 2005, additional comment time was provided through newspaper notices and comments were accepted through October 31, 2005. No comments were received. We hereby determine that Ohio's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Ohio subject to RCRA will now have to comply with the authorized State requirements (listed in section F of this notice) instead of the equivalent Federal requirements in order to comply with RCRA. Ohio has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Ohio is being authorized by today's action are already effective, and are not changed by today's action.

D. Proposed Rule

On August 11, 2005 (70 FR 46799), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Ohio's hazardous waste program and opened our decision to public comment. The agency received no comments on this proposal. EPA found Ohio's RCRA program to be satisfactory.

E. What Has Ohio Previously Been Authorized for?

Ohio initially received final authorization on June 28, 1989, effective

June 30, 1989 (54 FR 27170) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 8, 1991, effective June 7, 1991 (56 FR 14203) as corrected June 19, 1991, effective August 19, 1991 (56 FR 28088); July 27, 1995, effective September 25, 1995 (60 FR 38502); October 23, 1996, effective December 23, 1996 (61 FR 54950); and January 24, 2003, effective January 24, 2003 (68 FR 3429).

F. What Changes Are We Authorizing With Today's Action?

On October 18, 2004, Ohio submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision that Ohio's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant Ohio final authorization for the following program changes:

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous State authority
Listing of Spent Pickle Liquor (K062), Correction 2, Checklist 26.2.	August 3, 1987, 52 FR 28697.	Ohio Administrative Code (OAC) 3745–51–32, Effective December 28, 1987.
Standards For Generators; Waste Minimization Certifications Checklist 32.	October 1, 1986, 51 FR 35190.	OAC 3745–52–20, Effective December 30, 1989.
HSWA Codification Rule 2; Permit Modification Checklist 44D.	December 1, 1987, 52 FR 45788.	OAC 3745–50–51, Effective June 15, 1992.
HSWA Codification Rule 2; Post-Closure Permits Checklist 44G.	December 1, 1987, 52 FR 45788.	OAC 3745–50–45, Effective September 2, 1997.
Land Disposal Restriction Amendments to First Third Scheduled Wastes (Technical Correction to Checklist 50) Checklist 62.	May 2, 1989, 54 FR 18836.	OAC 3745–270–40, Effective February 11, 1992, Renumbered from OAC 3745–59–40 on December 7, 2000.
Wood Preserving Listings Checklist 82	December 6, 1990, 55 FR 50450.	OAC 3745–50–44; 3745–51–04; 3745–51–11; 3745–51–20; 3745–51–30; 3745–51–31; 3745–51–35; 3745–52–34; 3745–55–90; 3745–57–80; 3745–57–81; 3745–57–82; 3745–57–83; 3745–57–84; 3745–57–85; 3745–66–90; 3745–69–40; 3745–69–41; 3745–69–42; 3745–69–43; 3745–69–44; 3745–69–45, Effective September 2, 1997.
Wood Preserving Listing; Technical Correction Checklist 92.	July 1, 1991, 56 FR 30192.	OAC 3745–50–44; 3745–51–04; 3745–51–35; 3745–52–34; 3745–57–80; 3745–57–81; 3745–57–82; 3745–57–83; 3745–57–84; 3745–57–85; 3745–69–40; 3745–69–43, Effective September 2, 1997.
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) Checklist 95.	June 8, 2000, 56 FR 41164.	OAC 3745–51–03; 3745–51–04; 3745–270–40; 3745–270–42, Effective February 14, 1995 and September 2, 1997.
Second Correction to the Third Land Disposal Restrictions Checklist 102.	March 6, 1992, 57 FR 8086.	OAC 3745–54–13; 3745–65–13; 3745–270–03; 3745–270–40; 3745–270–42, Effective December 7, 2000.
Hazardous Debris Case-by-Case Capacity Variance Checklist 103.	May 15, 1992, 57 FR 20766.	OAC 3745–270–35, Effective December 7, 2000.
Lead Bearing Hazardous Materials Case-by-Case Capacity Variance Checklist 106.	June 26, 1992, 57 FR 28628.	OAC 3745–270–35, Effective December 7, 2000.
Toxicity Characteristics Revision; Technical Corrections Checklist 108.	July 10, 1992, 57 FR 30657.	OAC 3745–51–04; 3745–68–011, Effective February 14, 1995 and September 2, 1997.
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris Checklist 109.	August 18, 1992, 57 FR 37194.	OAC 3745–50–10; 3745–50–43; 3745–50–44; 3745–50–51; 3745–51–03; 3745–52–34; 3745–55–10; 3745–55–11; 3745–55–12; 3745–55–40; 3745–55–42; 3745–66–10; 3745–66–11; 3745–66–12; 3745–66–40; 3745–66–42; 3745–67–21; 3745–218–01; 3745–218–011; 3745–218–02; 3745–248–01; 3745–248–011; 3745–248–02; 3745–270–02; 3745–270–05; 3745–270–07; 3745–270–09; 3745–270–40; 3745–270–42; 3745–270–45; 3745–270–50, Effective December 7, 2000.
Recycled Used Oil Management Standards Checklist 112.	September 10, 1992, 57 FR 41566.	OAC 3745–50–10; 3745–51–03; 3745–51–05; 3745–51–06; 3745–279–01; 3745–279–10; 3745–279–11; 3745–279–12; 3745–279–20; 3745–279–21; 3745–279–22; 3745–279–23; 3745–279–24; 3745–279–30; 3745–279–31; 3745–279–32; 3745–279–40; 3745–279–41; 3745–279–42; 3745–279–43; 3745–279–44; 3745–279–45; 3745–279–46; 3745–279–47; 3745–279–50; 3745–279–51; 3745–279–52; 3745–279–53; 3745–279–54; 3745–279–55; 3745–279–56; 3745–279–57; 3745–279–58; 3745–279–59; 3745–279–60; 3745–279–61; 3745–279–62; 3745–279–63; 3745–279–64; 3745–279–65; 3745–279–66; 3745–279–67; 3745–279–70; 3745–279–71; 3745–279–72; 3745–279–73; 3745–279–74; 3745–279–75; 3745–279–80; 3745–279–81; 3745–279–82, Effective October 20, 1998.
Hazardous Soil Case-by-Case Capacity Variance Checklist 116.	October 20, 1992, 57 FR 47772.	OAC 3745–270–35, Effective December 7, 2000.
Mixture and Derived From Rules; Response to Court Remand Checklist 117A.	March 3, 1992, 57 FR 7628.	OAC 3745–51–03, Effective December 7, 2000.

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous State authority
Mixture and Derived From Rules; Technical Correction Checklist 117A.1.	June 1, 1992, 57 FR 23062.	OAC 3745–51–03, Effective December 7, 2000.
Mixture and Derived From Rules; Final Rule Checklist 117A.2.	October 20, 1992, 57 FR 49278.	OAC 3745–51–03, Effective December 7, 2000.
Wood Preserving: Amendments to Listings and Technical Requirements Checklist 120.	December 24, 1992, 57 FR 61492.	OAC 3745–51–31; 3745–57–80; 3745–57–81; 3745–57–82; 3745–57–83; 3745–69–40; 3745–69–41; 3745–69–42; 3745–69–43, Effective September 2, 1997.
Recycled Used Oil Management Standards; Technical Amendments and Corrections Checklist 122 as Amended checklist 122.1.	May 3, 1993, 58 FR 26420. June 17, 1993, 58 FR 33341.	OAC 3745–51–04; 3745–51–05; 3745–54–01; 3745–65–01; 3745–279–01; 3745–279–10; 3745–279–11; 3745–279–12; 3745–279–21; 3745–279–22; 3745–279–23; 3745–279–40; 3745–279–42; 3745–279–43; 3745–279–45; 3745–279–51; 3745–279–52; 3745–279–54; 3745–279–60; 3745–279–62; 3745–279–64; 3745–279–70; 3745–279–72; 3745–279–73; 3745–279–74, Effective October 20, 1998.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance Checklist 123.	May 14, 1993, 58 FR 28506.	OAC 3745–270–35, Effective December 7, 2000.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated Checklist 124.	May 24, 1993, 58 FR 29860.	OAC 3745–50–51; 3745–54–01; 3745–65–01; 3745–270–01; 3745–270–02; 3745–270–07; 3745–270–09; 3745–270–37; 3745–270–40; 3745–270–42, Effective December 7, 2000.
Hazardous Waste Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards Checklist 130.	March 4, 1994, 59 FR 10550.	OAC 3745–279–01; 3745–279–10; 3745–279–20; 3745–279–41; 3745–279–44; 3745–279–46; 3745–279–53; 3745–279–63, Effective October 20, 1998.
Hazardous Waste Management System; Correction of Listing of P015-Berylium Powder Checklist 134.	June 20, 1994, 59 FR 31551.	OAC 3745–51–11; 3745–51–33; 3745–270–42, Effective September 2, 1997.
Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C-Recyclable Materials Used in a Manner Constituting Disposal; Final Rule Checklist 136.	August 24, 1994, 59 FR 43496.	OAC 3745–266–20; 3745–270–40, Effective December 7, 2000.
Land Disposal Restrictions Phase II-Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Waste Checklist 137 as amended Checklist 137.1.	September 19, 1994, 59 FR 47982. January 3, 1995, 60 FR 242.	OAC 3745–50–23; 3745–50–24; 3745–50–26; 3745–51–02; 3745–54–01; 3745–65–01; 3745–266–20; 3745–266–23; 3745–270–01; 3745–270–02; 3745–270–07; 3745–270–09; 3745–270–38; 3745–270–40; 3745–270–42; 3745–270–45; 3745–270–48; 3745–270–49, Effective December 7, 2000.
Universal Waste Rule; Administrative Requirements (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule Checklist 142A.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–51–05; 3745–51–09; 3745–52–10; 3745–52–11; 3745–54–01; 3745–65–01; 3745–270–01; 3745–273–01; 3745–273–03; 3745–273–05; 3745–273–06; 3745–273–10; 3745–273–11; 3745–273–12; 3745–273–14; 3745–273–15; 3745–273–16; 3745–273–17; 3745–273–18; 3745–273–19; 3745–273–20; 3745–273–30; 3745–273–31; 3745–273–32; 3745–273–34; 3745–273–35; 3745–273–36; 3745–273–37; 3745–273–38; 3745–273–39; 3745–273–40; 3745–273–50; 3745–273–51; 3745–273–52; 3745–273–53; 3745–273–54; 3745–273–55; 3745–273–56; 3745–273–60; 3745–273–61; 3745–273–62; 3745–273–70, Effective September 2, 1997 and October 20, 1998.
Universal Waste Rule; Covered Batteries (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule Checklist 142B.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–51–06; 3745–51–09; 3745–54–01; 3745–65–01; 3745–266–80; 3745–270–01; 3745–273–01; 3745–273–02; 3745–273–06; 3745–273–13; 3745–273–14; 3745–273–33; 3745–273–34, Effective September 2, 1997.
Universal Waste Rule; Covered Pesticides (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule Checklist 142C.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–54–01; 3745–65–01; 3745–270–01; 3745–273–01; 3745–273–03; 3745–273–06; 3745–273–13; 3745–273–14; 3745–273–32; 3745–273–33; 3745–273–34, Effective September 2, 1997.
Universal Waste Rule; Covered Thermostats (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule Checklist 142D.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–51–09; 3745–54–01; 3745–65–01; 3745–270–01; 3745–273–01; 3745–273–04; 3745–273–06; 3745–273–13; 3745–273–14; 3745–273–33; 3745–273–34, Effective September 2, 1997.
Universal Waste Rule; Petitions to Include Other Wastes (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule Checklist 142E.	May 11, 1995, 60 FR 25492.	OAC 3745–50–20; 3745–273–80; 3745–273–81, Effective September 2, 1997.

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous State authority
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners Checklist 151 as Amended, Checklist 151.1 as Amended, Checklist 151.2 as Amended, Checklist 151.3 as Amended, Checklist 151.4 as Amended, Checklist 151.5 as Amended, Checklist 151.6.	April 8, 1996; 61 FR 15566; April 8, 1996, 61 FR 15660; April 30, 1996, 61 FR 19117; June 28, 1996, 61 FR 33680; July 10, 1996, 61 FR 36419; August 26, 1996, 61 FR 43924; February 19, 1997, 62 FR 7502.	OAC 3745–270–01; 3745–270–02; 3745–270–03; 3745–270–07; 3745–270–09; 3745–270–39; 3745–270–40; 3745–270–42; 3745–270–44; 3745–270–48, Effective December 7, 2000.
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs Checklist 153.	July 1, 1996, 61 FR 34252.	OAC 3745–51–05, Effective December 7, 2000.
Land Disposal Restrictions Phase III Emergency Extension of the K088 Capacity Variance Checklist 155.	January 14, 1997, 62 FR 1992.	OAC 3745–270–39; Effective December 7, 2000.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions Checklist 157.	May 12, 1997; 62 FR 25998.	OAC 3745–51–01; 3745–51–02; 3745–51–04; 3745–51–06; 3745–270–01; 3745–270–04; 3745–270–07; 3745–270–09; 3745–270–30; 3745– 270–40; 3745–270–42; 3745–270–44; Effective December 7, 2000.
Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions Checklist 159.	June 17, 1997; 62 FR 32974.	OAC 3745–51–11; 3745–51–30; 3745–51–32; 3745–51–33; 3745–270–39; 3745–270–40, Effective December 7, 2000.
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance Checklist 160.	July 14, 1997, 62 FR 37694.	OAC 3745–270–39; Effective December 7, 2000.
Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production Checklist 161.	August 28, 1997, 62 FR 45568.	OAC 3745–270–40; 3745–270–48, Effective December 7, 2000.
Clarification of Standards for Hazardous Waste LDR Treatment and Clarification Checklist 162.	December 5, 1997, 62 FR 64504.	OAC 3745–270–44 Effective December 7, 2000.
Recycled Used Oil Management Standards; Technical Correction and Clarification Checklist 166 as Amended Checklist 166.1.	May 6, 1998, 63 FR 24963. July 14, 1998, 63 FR 37780.	OAC 3745–51–05; 3745–51–06; 3745–270–10; 3745–270–22; 3745–270–45; 3745–270–54; 3745–270–64; 3745–270–74, December 7, 2000.
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes Checklist 167A.	May 26, 1998, 63 FR 28556.	OAC 3745–270–02; 3745–270–03; 3745–270–34; 3745–270–40; 3745–270–48, Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions Checklist 167B.	May 26, 1998, 63 FR 28556.	OAC 3745–270–02; 3745–270–07; 3745–270–44; 3745–270–49, Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Corrections Checklist 167C as amended Checklist 167C.1.	May 26, 1998, 63 FR 28556. June 8, 1998, 63 FR 31266.	OAC 3745–270–04; 3745–270–07; 3745–270–40; 3745–270–42; 3745–270–45; 3745–270–48, Effective December 7, 2000.
Mineral Processing Secondary Materials Exclusion Checklist 167D.	May 26, 1998, 63 FR 28556.	OAC 3745–51–02; 3745–51–04, December 7, 2000.
Bevill Exclusion Revisions and Clarification Checklist 167E.	May 26, 1998, 63 FR 28556.	OAC 3745–51–03; 3745–51–04, Effective December 7, 2000.
Exclusion of Recycle Wood Preserving Wastewaters Checklist 167F.	May 26, 1998, 63 FR 28556.	OAC 3745–51–04, Effective December 7, 2000.
Petroleum Refining Process Wastes Checklist 169.	August 6, 1998, 63 FR 42110.	OAC 3745–51–03; 3745–51–04; 3745–51–06; 3745–51–30; 3745–51–31; 3745–51–32; 3745–270–35; 3745–270–40, Effective December 7, 2000.
Land Disposal Restrictions Phase IV; Zinc Micronutrient Fertilizers, Administrative Stay Checklist 170.	August 31, 1998, 63 FR 46332.	OAC 3745–270–40, Effective December 7, 2000.
Emergency Revisions of LDR Treatment Standards for Listed Hazardous Wastes from Carbamate Production Checklist 171.	September 4, 1998, 63 FR 47409.	OAC 3745–270–40; 3745–270–48, Effective December 7, 2000.

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous State authority
Land Disposal Restrictions Phase IV—Extension of Compliance Date Checklist 172.	September 9, 1998, 63 FR 48124.	OAC 3745–270–34, Effective December 7, 2000.
Land Disposal Restrictions Treatment Standards for Spent Potliners from Primary Aluminum Production (K088) Checklist 173.	September 24, 1998, 63 FR 51254.	OAC 3745–270–39; 3745–270–40, Effective December 7, 2000.
Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills Checklist 178.	February 11, 1999, 64 FR 6806.	OAC 3745–51–04, Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards Checklist 179.	May 11, 1999, 64 FR 25408.	OAC 3745–51–02; 3745–51–04; 3745–52–34; 3745–270–02; 3745–270–07; 3745–270–09; 3745–270–40; 3745–270–48; 3745–270–49, Effective December 7, 2000.
Land Disposal Restrictions; Wood Preserving Wastes, Metal Wastes, Zinc Micronutrients Fertilizer, etc.; Correction Checklist 183.	October 20, 1999, 64 FR 56469.	OAC 3745–51–32; 3745–52–34; 3745–270–07; 3745–270–40; 3745–270–49, Effective December 7, 2000.
Organobromine Production Wastes Checklist 185.	March 17, 2000, 65 FR 14472.	OAC 3745–51–11; 3745–51–30; 3745–51–32; 3745–51–33; 3745–270–40; 3745–270–48, Effective December 7, 2000.
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments Checklist 187.	June 8, 2000, 65 FR 36365.	OAC 3745–51–31, Effective December 7, 2000.
Sharing of Information with the Agency for Toxic Substances and Disease Registry Checklist SI.	July 15, 1985	OAC 3745–49–031; 3745–50–30, Effective February 23, 1989 and December 30, 1989.

TABLE 2.—EQUIVALENT STATE-INITIATED CHANGES

Ohio amendment	Description of change	Sections affected and effective date
HB435	HB435: permitting system, signed May 20, 1996.	OAC 3745–50–21; 3745–50–40; 3745–50–41; 3745–50–43; 3745–50–46; 3745–50–51; 3745–50–52. Effective July 14, 1997.
CL–UW	Housekeeping: universal waste set	OAC 3745–50–10; 3745–50–11; 3745–50–221; 3745–50–33 (broader in scope, see set section G); 3745–50–44; 3745–50–45; 3745–50–62; 3745–51–03; 3745–51–04; 3745–51–06; 3745–51–11; 3745–51–21; 3745–51–22; 3745–51–23; 3745–51–24; 3745–51–30; 3745–51–31; 3745–51–35; 3745–52–11; 3745–52–34; 3745–52–41; 3745–52–54; 3745–54–01; 3745–54–13; 3745–54–73; 3745–54–97; 3745–54–98; 3745–55–41; 3745–55–43; 3745–55–45; 3745–55–47; 3745–55–51; 3745–55–92; 3745–55–97; 3745–55–98; 3745–57–14; 3745–57–16; 3745–58–70; 3745–65–01; 3745–65–73; 3745–65–90; 3745–65–91; 3745–66–14; 3745–66–43; 3745–66–45; 3745–66–47; 3745–66–94; 3745–66–98; 3745–67–73; 3745–68–14; 3745–68–16; 3745–69–06, Effective September 2, 1997.
HB647	HB647: hazardous waste transporter registration change, rule changes.	OAC 3745–53–11, Effective September 2, 1997.
CL–UO	Housekeeping: Used Oil Set	OAC 3745–50–10; 3745–50–34 (broader in scope, see section G); 3745–50–44; 3745–50–45; 3745–50–51; 3745–50–57; 3745–50–58; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–10; 3745–52–10; 3745–52–11; 3745–52–32; 3745–52–34; 3745–52–41; 3745–54–01; 3745–54–13; 3745–54–90; 3745–54–91; 3745–54–99; 3745–55–01; 3745–55–12; 3745–55–42; 3745–55–75; 3745–56–50; 3745–56–80; 3745–59–07; 3745–59–09; 3745–65–01; 3745–65–15; 3745–65–33; 3745–68–83, Effective October 20, 1998.
CT-Batteries	DC Circuit Court of Appeals decision on battery recyclers v. U.S. EPA (April 21, 2000); supercedes part of May 26, 1998 amendments to 40 CFR Part 261.2(c)(3) and Table 1, column 3 heading.	OAC 3745–51–02, Effective December 7, 2000.

TABLE 2.—EQUIVALENT STATE-INITIATED CHANGES—Continued

Ohio amendment	Description of change	Sections affected and effective date
CL–LDR–1	Housekeeping: LDRs plus set	OAC 3745–49–031; 3745–50–10; 3745–50–11; 3745–50–311; 3745–50–40; 3745–50–43; 3745–50–44; 3745–50–45; 3745–50–48; 3745–50–50; 3745–50–51; 3745–50–57; 3745–50–314; 3745–51–01; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–07; 3745–51–08; 3745–51–09; 3745–51–20; 3745–52–10; 3745–52–11; 3745–52–34; 3745–52–41; 3745–52–54; 3745–52–70; 3745–53–12; 3745–54–01; 3745–54–03; 3745–54–11; 3745–54–12; 3745–54–13; 3745–54–14; 3745–54–16; 3745–54–17; 3745–54–18; 3745–54–73; 3745–54–74; 3745–54–77; 3745–55–011; 3745–55–10; 3745–55–11; 3745–55–12; 3745–55–40; 3745–55–42; 3745–55–43; 3745–55–45; 3745–55–51; 3745–55–71; 3745–55–75; 3745–55–93; 3745–55–98; 3745–56–29; 3745–56–30; 3745–56–56; 3745–56–81; 3745–57–12; 3745–57–14; 3745–57–16; 3745–57–83; 3745–58–30; 3745–58–32; 3745–58–33; 3745–58–40; 3745–58–45; 3745–58–46; 3745–58–60; 3745–58–70; 3745–65–01; 3745–65–12; 3745–65–13; 3745–65–14; 3745–65–16; 3745–65–17; 3745–65–52; 3745–65–56; 3745–65–73; 3745–65–74; 3745–65–76; 3745–66–10; 3745–66–11; 3745–66–12; 3745–66–13; 3745–66–18; 3745–66–19; 3745–66–40; 3745–66–41; 3745–66–43; 3745–66–45; 3745–66–71; 3745–66–91; 3745–66–93; 3745–66–98; 3745–66–992; 3745–67–21; 3745–67–29; 3745–67–56; 3745–67–81; 3745–68–12; 3745–68–16; 3745–68–52; 3745–273–01; 3745–273–03; 3745–273–13; 3745–273–17; 3745–273–33; 3745–273–37; 3745–273–54; 3745–273–60; 3745–279–01; 3745–279–10; 3745–279–11; 3745–279–12; 3745–279–22; 3745–279–40; 3745–279–44; 3745–279–45; 3745–279–52; 3745–279–53; 3745–279–54; 3745–279–56; 3745–279–57; 3745–279–59; 3745–279–63; 3745–279–64; 3745–279–65; 3745–279–74; 3745–279–81, Effective December 7, 2000.
J 5	Consolidated rule review per 119.032-review date was October 30, 2001 (Year 5/All).	OAC 3745–50–10; 3745–50–40; 3745–50–43; 3745–50–44; 3745–50–45; 3745–50–46; 3745–50–51; 3745–50–52; 3745–50–57; date 3745–50–58; 3745–50–62; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–52–11; 3745–52–20; 3745–52–34; 3745–52–41; 3745–54–01; 3745–54–10; 3745–54–13; 3745–54–56; 3745–54–70; 3745–54–73; 3745–54–75; 3745–54–76; 3745–54–77; 3745–54–90; 3745–54–91; 3745–54–97; 3745–54–98; 3745–54–99; 3745–55–01; 3745–55–12; 3745–55–17; 3745–55–18; 3745–55–42; 3745–55–44; 3745–55–75; 3745–56–28; 3745–56–50; 3745–56–80; 3745–56–81; 3745–57–02; 3745–58–33; 3745–58–45; 3745–65–01; 3745–65–15; 3745–65–33; 3745–65–54; 3745–65–56; 3745–65–75; 3745–65–92; 3745–65–93; 3745–66–12; 3745–66–20; 3745–66–42; 3745–66–44; 3745–66–74; 3745–67–76; 3745–68–10; 3745–270–04; 3745–270–06; 3745–270–42; 3745–279–01; 3745–279–42; 3745–279–51; 3745–279–62; 3745–279–73, Effective March 13, 2002.
Ohio Checklist 78.1	Housekeeping: LDR Third Third	OAC 3745–57–16; 3745–68–16; 3745–270–07. Effective February 11, 1992 and December 7, 2000.

TABLE 3.—RENUMBERING OF CHAPTER 3745–59

[In CL–LDR–2, a state initiated change, Ohio has renumbered their Land Disposal Restrictions Regulations, effective December 7, 2000. These regulations were moved from OAC 3745–59 to OAC 3745–270 and are equivalent to 40 CFR part 268.]

Former Ohio Rule (rescinded)	Current Ohio Rule	Federal equivalent
OAC 3745–59–01	OAC 3745–270–01	40 CFR 268.1.
OAC 3745–59–02	OAC 3745–270–02	40 CFR 268.2.
OAC 3745–59–03	OAC 3745–270–03	40 CFR 268.3.
OAC–3745–59–04	OAC 3745–270–04	40 CFR 268.4.
OAC–3745–59–05	OAC 3745–270–05	40 CFR 268.5.
OAC–3745–59–06	OAC 3745–270–06	40 CFR 268.6.
OAC–3745–59–07	OAC 3745–270–07	40 CFR 268.7.
OAC–3745–59–09	OAC 3745–270–09	40 CFR 268.9.
OAC–3745–59–30	OAC 3745–270–30	40 CFR 268.30.
OAC–3745–59–31	OAC 3745–270–31	40 CFR 268.31.
OAC–3745–59–32	Rescinded	40 CFR 268.32*.
OAC–3745–59–33	Rescinded	40 CFR 268.33*.
OAC–3745–59–34	OAC 3745–270–34	40 CFR 268.34.
OAC–3745–59–35	OAC 3745–270–35	40 CFR 268.35.
OAC–3745–59–40	OAC 3745–270–40	40 CFR 268.40.
OAC–3745–59–41	Rescinded	None.
OAC–3745–59–42	OAC 3745–270–42	40 CFR 268.42.
OAC–3745–59–43	Rescinded	None.

TABLE 3.—RENUMBERING OF CHAPTER 3745–59—Continued

[In CL–LDR–2, a state initiated change, Ohio has renumbered their Land Disposal Restrictions Regulations, effective December 7, 2000. These regulations were moved from OAC 3745–59 to OAC 3745–270 and are equivalent to 40 CFR part 268.]

Former Ohio Rule (rescinded)	Current Ohio Rule	Federal equivalent
OAC–3745–59–44	OAC 3745–270–44	40 CFR 268.44.
OAC–3745–59–50	OAC 3745–270–50	40 CFR 268.50.

* These U.S. EPA rules have been rescinded and replaced by totally different rules.

U.S. EPA promulgated a new § 268.33 on November 8, 2000, Ohio has an effective rule for this new rule at OAC 3745–270–33 effective December 7, 2004. It will not be authorized in this action.

The tables that were Federal §§ 268.41 and 268.43 were moved into § 268.40. The recission of OAC 3745–59–41 and 3745–59–43 maintains Ohio's consistency with the Federal rule.

G. Where Are the Revised State Rules Different From the Federal Rules?

Ohio has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.

In this package, Ohio has also amended Broader in Scope provisions in State initiated changes HB 147 (OAC 3745–50–34), HB 215 biennium budget bill (OAC 3745–50–33, 3745–50–35), CL–UW (OAC 3745–50–33) and CL–UO (see State initiated changes above) (OAC 3745–50–34).

In Checklists 112, 137 and 169, Ohio is not requesting authorization for that portion covering 266.100 because they are not authorized for Boilers and Industrial Furnaces.

H. Who Handles Permits After the Authorization Takes Effect?

Ohio will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Ohio;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Ohio.

J. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Ohio's rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

K. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA section 3006 and does not impose any requirements other than those imposed by State law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. 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.*).

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. 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).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian Tribes, or 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.)

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. 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 to this rule.

10. Executive Order 12988

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.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

12. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 23, 2005.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 06–530 Filed 1–19–06; 8:45 am]

BILLING CODE 6550–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–8022–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction of direct final partial deletion.

SUMMARY: On September 21, 2005, EPA published a notice of intent to delete (70 FR 55329) and a direct final notice of deletion (70 FR 55296) for a portion of the Tar Lake Superfund Site from the National Priorities List. The EPA is publishing this Technical Correction to the direct final notice of deletion due to errors that were published in Appendix B in direct final Notice of Deletion. After review of the direct final Notice of Deletion, EPA is publishing today this Technical Correction to change the word '' removing'' to the word ''revising'' and the location of the site from the township ''Mancelona, Michigan,'' to the ''Mancelona Township, Michigan.'' EPA will place a copy of the final deletion package in the site repositories.

DATES: This Technical Correction of the direct final action is effective as of January 20, 2006.

ADDRESSES: Comprehensive information on the Site, as well as the comments that were received during the comment period are available at: Stuart Hill, Community Involvement Coordinator, U.S. EPA , P19J, 77 W. Jackson, Chicago, IL, (312) 886–0684 or 1–800–621–8431.

FOR FURTHER INFORMATION CONTACT: Gladys Beard, State NPL Deletion Process Manager, U.S. EPA (SR–6J), 77 W. Jackson, Chicago, IL 60604, (312) 886–7253 or 1–800–621-8431.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Mancelona Public Library, 202 W. State Street, Mancelona, MI 49945, (231) 587–9451, Monday through Friday 8 a.m. to 4 p.m., Tuesday and Thursday 6 p.m. to 8 p.m.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 29, 2005.

Gary V. Gulezian,

Acting Regional Administrator, EPA Region V.

Technical Correction

■ In direct final rule FR Doc. 05–18834, beginning on page 55300, 3rd column, in the issue of September 21, 2005, make the following correction. The correction should read as follows:

Appendix B to Part 300—[Corrected]

■ 2. Table 1 of Appendix B to Part 300 is amended under Michigan ''MI'' by revising the entry for ''Tar Lake'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* * *	* *	* *	*
MI	Tar Lake	Antrim	P
* * *	* *	* *	*

([a]) * * *
P=Sites with partial deletion(s).

* * * * *

[FR Doc. E6–572 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST DOCKET NO. 2005–22114]

RIN 2105–AD53

Standard Time Zone Boundary in the State of Indiana

AGENCY: Office of the Secretary (OST), the Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT is relocating the time zone boundary in Indiana to move Starke, Pulaski, Knox, Daviess, Martin, Pike, Dubois, and Perry Counties from the Eastern Time Zone to the Central Time Zone. DOT is not changing the time zone boundary to move St. Joseph, Marshall, Fulton, Benton, White, Carroll, Cass, Vermillion, Sullivan, and Lawrence Counties from the Eastern Time Zone to the Central Time Zone. This action is taken in response to petitions filed by the County Commissioners and extensive comment provided at public hearings and to the docket.

DATES: The effective date of this rule is 2 a.m. EST Sunday, April 2, 2006, which is the changeover date from standard time to Daylight Saving Time.

FOR FURTHER INFORMATION CONTACT: Judith S. Kaleta, Office of the General Counsel, U.S. Department of Transportation, Room 10428, 400 Seventh Street, Washington, DC 20590, *indianatime@dot.gov;* (202) 366–9283.

SUPPLEMENTARY INFORMATION:

Time Observance in Indiana

General History

The time zone for Indiana has been the subject of much debate since time zones were established, as noted by DOT in a notice proposing to change the time zone in Indiana, 56 FR 13609 (April 3, 1991). In 1918, when the Federal government first established time zones, all of Indiana was in the Central Time Zone. In 1961, the Interstate Commerce Commission, DOT's predecessor in setting time zones, moved the eastern half of Indiana to the Eastern Time Zone, but denied requests to move more of the State.

In 1967, at the request of the Governor of Indiana, in a notice of proposed rulemaking, DOT proposed to restore the entire State to the Central Time Zone. However, in 1968, DOT modified its proposal and proposed instead that the entire State be in the Eastern Time Zone with the exception of six counties in the northwest and seven in the southwest which would remain in the Central Time Zone. That modified proposal was supported by the commenters, with one exception. Commenters did not support moving one of the southwest counties to the Central Time Zone. Subsequently, effective April 27, 1969, time zone boundaries were established to place all of Indiana in the Eastern Time Zone with the exception of six counties in the northwest and six counties in the southwest.

With regard to the counties in southwest Indiana, in 1977, the Pike County Commissioners petitioned DOT to be moved to the Eastern Time Zone. After proposing the change and receiving comments, DOT moved Pike County to the Eastern Time Zone. The Indiana General Assembly requested that DOT move the 5 remaining southwest counties from the Central Time Zone to the Eastern Time Zone, in 1985, but DOT denied the request, finding that the move would not serve the ''convenience of commerce.''

With regard to the counties in northwest Indiana, in 1986, the Jasper County Commissioners and the Starke County Commissioners made separate requests to move each county from the Central Time Zone to the Eastern Time Zone. DOT denied their requests, finding that changing the boundaries would not serve the ''convenience of commerce.'' In 1991, in a subsequent proceeding, based on another request from the Starke County Commissioners, DOT changed the time zone boundary to move Starke County into the Eastern Time Zone.

Current Indiana Time Observance

Under Federal law, 82 Indiana counties are in the Eastern Time Zone and 10 are in the Central Time Zone. The Central Time Zone counties include five in the northwest (Lake, Porter, La Porte, Newton, and Jasper) and five in the southwest (Posey, Vanderburgh, Warrick, Spencer and Gibson). Neighboring States observe both eastern and central time. Illinois and western Kentucky observe central time, while eastern Kentucky, Ohio, and the portion of Michigan adjoining Indiana observe eastern time.

Federal law provides that it is up to an individual State to decide whether or not to observe Daylight Saving Time. Generally, a State must choose to observe, or not observe, Daylight Saving Time across the entire State. The one exception is that, if a State is in more than one time zone, a ''split'' observance is permitted. Under this scenario, all of a State that is in one time zone may observe Daylight Saving Time, while the remainder of the State in the different time zone does not. Under Indiana law, for many years, the Central Time Zone portion of the State has observed Daylight Saving Time, while the Eastern Time Zone portion of the State has not observed Daylight Saving Time.

2005 AND 2006 SUNRISE AND SUNSET TIMES—SELECT INDIANA CITIES

Sunrise/sunset times	Evansville longitude W 87.5 latitude N 38.0	Terre Haute W 87.4 N 39.5	Jasper W 86.9 N 38.4	Jasper If change to central time	La Porte W 86.7 N 41.6	South Bend W 86.2 N 41.7	South Bend If change to central time	Indianap-olis W 86.1 N 39.8	Ft. Wayne W 85.2 N 41.1
1/15/2005	CST	EST	EST		CST	EST		EST	EST
Sunrise	7:05 am	8:08 am	8:04 am		7:11 am	8:10 am		8:04 am	8:03 am
Sunset	4:55 pm	5:51 pm	5:51 pm		4:42 pm	5:40 pm		5:45 pm	5:37 pm
1/15/2006	CST	EST	EST	CST	CST	EST	CST	EST	EST
Sunrise	7:05 am	8:08 am	8:04 am	7:04 am	7:11 am	8:10 am	7:10 am	8:04 am	8:04 am
Sunset	4:55 pm	5:50 pm	5:51 pm	4:41 pm	4:42 pm	5:40 pm	4:40 pm	5:44 pm	5:37 pm
4/15/2005	CDT	EST	EST		CDT	EST		EST	EST
Sunrise	6:15 am	6:12 am	6:12 am		6:07 am	6:05 am		6:07 am	6:01 am
Sunset	7:26 pm	7:28 pm	7:24 pm		7:28 pm	7:26 pm		7:23 pm	7:21 pm
4/15/2006	CDT	EDT	EDT	CDT	CDT	EDT	CDT	EDT	EDT
Sunrise	6:15 am	7:12 am	7:12 am	6:12 am	6:07 am	7:05 am	6:05 am	7:07 am	7:01 am
Sunset	7:26 pm	8:27 pm	8:24 pm	7:24 pm	7:27 pm	8:26 pm	7:26 pm	8:23 pm	8:21 pm
7/4/2005	CDT	EST	EST		CDT	EST		EST	EST
Sunrise	5:33 am	5:28 am	5:29 am		5:18 am	5:16 am		5:22 am	5:14 am
Sunset	8:16 pm	8:20 pm	8:15 pm		8:24 pm	8:23 pm		8:16 pm	8:16 pm
7/4/2006	CDT	EDT	EDT	CDT	CDT	EDT	CDT	EDT	EDT
Sunrise	5:33 am	6:28 am	6:29 am	5:29 am	5:18 am	6:16 am	5:16 am	6:22 am	6:14 am
Sunset	8:16 pm	9:20 pm	9:15 pm	8:15 pm	8:24 pm	9:23 pm	8:23 pm	9:16 pm	9:16 pm
10/31/2005	CST	EST	EST		CST	EST		EST	EST
Sunrise	6:15 am	7:17 am	7:13 am		6:18 am	7:16 am		7:12 am	7:11 am
Sunset	4:52 pm	5:49 pm	5:59 pm		4:43 pm	5:41 pm		5:43 pm	5:37 pm
10/31/2006	CST	EST	EST	CST	CST	EST	CST	EST	EST
Sunrise	6:15 am	7:17 am	7:13 am	6:13 am	6:18 am	7:16 am	6:16 am	7:12 am	7:10 am
Sunset	4:52 pm	5:49 pm	5:49 pm	4:49 pm	4:43 pm	5:41 pm	4:41 pm	5:44 pm	5:38 pm

KEY: CST—Central Standard Time.
CDT—Central Daylight Time.
EST—Eastern Standard Time.
EDT—Eastern Daylight Time.
Source: U.S. Naval Observatory Astronomical Applications Department: *http://aa/usno.navy.mil/data/docs/RS_OneDay.html.*

As noted in a chart of select Indiana cities, the effect of Daylight Saving Time is the equivalent of moving one time zone to the east. This means that, by remaining on Eastern Standard Time year-round, the Eastern Time Zone portion of Indiana has been on the same time as New York in the winter (5 months) and on the same time as Chicago in the summer (7 months), resulting in the entire state being on the same time for 7 months of the year. The impact of State legislation (discussed in more detail below) to observe Daylight Saving Time throughout the State beginning in 2006 is that, in the summer, the time of sunrise and sunset on eastern Daylight Saving Time will be an hour later than it currently is under year-round Eastern Standard Time. There will be no change in the sunrise and sunset times during the winter when Eastern Standard Time will continue to be observed. Central Time Zone counties will continue to observe Daylight Saving Time in summer months as they have done previously.

Indiana's Decision To Observe Daylight Saving Time

In 2005, the Indiana General Assembly adopted legislation (Indiana Senate Enrolled Act 127 or ''the Indiana Act'') providing that the entire State of Indiana will observe Daylight Saving Time beginning in 2006. In addition, the Indiana Act addressed the issue of changing the location of the boundary between the Eastern and Central Time Zones. The Indiana Act stated that, ''[T]he [S]tate supports the county executive of any county that seeks to change the time zone in which the county is located under the procedures established by Federal Law.'' The Indiana Act also provided that, ''The governor and the general assembly hereby petition the United States Department of Transportation to initiate proceedings under the Uniform Time Act of 1966 to hold hearings in the appropriate locations in Indiana on the issue of the location of the boundary between the Central Time Zone and the Eastern Time Zone in Indiana.'' Finally, the Indiana Act requested DOT to refrain from changing the time zone of any county currently located within the Central Time Zone and five counties near Cincinnati and Louisville.

Legal Standards and Procedures Concerning Changes to Time Zone Boundaries

Statutory Requirements

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.'' 15 U.S.C. 261.

DOT Procedures to Change a Time Zone Boundary

The Department has typically used a set of procedures to address time zone issues. Under these DOT procedures, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area provide adequate supporting data for the proposed change. We ask that the petition include, or be accompanied by, detailed information supporting the requesting party's contention that the requested change would serve the convenience of commerce. The principal standard for deciding whether to change a time zone is defined very broadly to include consideration of all the impacts upon a community of a change in its standard of time. DOT has developed a series of questions to assist communities and use in determining the impact of a time zone change on the ''convenience of commerce.'' We ask that petitions for a time change address, at a minimum, each of the following questions in as much detail as possible.

1. From where do businesses in the community get their supplies, and to where do they ship their goods or products?

2. From where does the community receive television and radio broadcasts?

3. Where are the newspapers published that serve the community?

4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community to where must residents go to obtain these services?

5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?

6. What percentage of residents of the community work outside the community; where do these residents work?

7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State, or local plans, if any, are there for economic development in the community?

8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

In addition, we consider any other information that the county or local officials believe to be relevant to the proceeding. We look at the distance each county is from the current time zone boundary, the proximity of each county to important metropolitan areas, and where the major roads and bridges are located. We have been reluctant to create ''islands of time'' by placing one county in a different time zone from all its neighboring counties in the State; we also consider the effect on economic, cultural, social, and civic activities between neighboring counties in making our decisions.

History of This Proceeding

On July 15, 2005, the Department sent a letter to Governor Daniels responding to the Indiana Act and letters from the Governor. Our letter noted that it is our normal practice, in implementing our responsibilities under the Uniform Time Act with respect to the location of time zone boundaries, to take action on specific requests for change in the time zone boundaries for a particular jurisdiction from the elected officials of that jurisdiction. After receiving a request, we review it and the supporting data to then determine whether the issuance of an NPRM is justified. If justified, we issue an NPRM to propose a change. After the close of the comment period on the NPRM, we review all comments and take appropriate final action.

DOT Notice Inviting Petitions

On August 17, 2005, DOT published a notice in the **Federal Register** inviting county and local officials in Indiana that wished to change their current time zone in response to the Indiana Act to notify DOT of their request for a change by September 16, 2005 and to provide data in response to the questions enumerated above. In addition, DOT announced the opening of an internet-accessible docket, OST Docket No. 2005–22114 *(http://dms.dot.gov)* to receive any petitions and other relevant documents concerning the appropriate placement of the time zone boundary in the State of Indiana.

Petitions Received

We received nineteen petitions from counties asking to be changed from the Eastern Time Zone to the Central Time Zone. Two of the counties (Fountain and Benton) subsequently withdrew their request.

In general, the petitions were clustered in the northwest (St. Joseph, Starke, Marshall, Pulaski, Fulton, Benton, White, Carroll and Cass Counties) and the southwest (Sullivan, Knox, Daviess, Martin, Lawrence, Pike, Dubois and Perry Counties). In the central portion of western Indiana, only Vermillion County asked to be changed to central time.

Other Communications From Local Officials

We also received a number of letters from counties and cities advising us that they had considered whether to petition for a change and, at this time at least, were satisfied with their current time zone boundary or wished to stay in the same time zone as Indianapolis, which is located in Marion County and is in the Eastern Time Zone. Those counties included Warren, Monroe, Orange, Steuben, Noble, Hendricks, Jefferson, Crawford and Jay. The cities of Whiting, Hebron, and Munster also filed letters expressing satisfaction with their current time zone.

Notice of Proposed Rulemaking

On October 31, 2005, DOT published a notice of proposed rulemaking (NPRM) in the **Federal Register** tentatively proposing to relocate the time zone boundary in Indiana to move St. Joseph, Starke, Knox, Pike, and Perry Counties from the Eastern Time Zone to the Central Time Zone at the request of their County Commissioners. We tentatively proposed not to change the time zone boundary to move Marshall, Pulaski, Fulton, Benton, White, Carroll, Cass, Vermillion, Sullivan, Daviess, Dubois, Martin, and Lawrence Counties from the Eastern Time Zone to the Central Time Zone based on our evaluation of the petitions from the commissioners in these counties.

Based on the petitions and the supporting data filed by their County Commissioners, we found that St. Joseph, Starke, Knox, Pike, and Perry Counties provided enough information to justify proposing to change those counties from the Eastern to the Central Time Zone. St. Joseph, Starke, Knox, Pike, and Perry County addressed all, or virtually all, of the factors that we consider in these proceedings to indicate a reasonable possibility that changing to the Central Time Zone would serve ''the convenience of commerce.'' In addition, we considered each county's geographic location compared to the current time zone boundary and how closely interrelated neighboring counties appeared to be. The specific reasons for granting the petitions for each of these counties differ based on the facts specific to each case.

We did not include all the counties that petitioned, for a number of reasons. Some presented almost no arguments or supporting data on why it would be appropriate to change the time zone boundary. Others addressed all, or most, factors but acknowledged that they had a significant connection with the Eastern Time Zone. A number of counties focused on the potential change to their neighbors' time zone, and seemed to be more concerned with staying in the same time zone as their neighbors than in changing their time zone. In other cases, the counties seemed to be equally connected to the Eastern and Central Time Zones.

In the NPRM, we noted that the amount of data provided in the petitions varied substantially among counties. Under our normal procedures, we do not take action unless the county makes a clear showing that the proposed change would meet the statutory standard. We recognized, however, that this is an unusual case because of the number of counties involved, their relationship to each other and to other neighboring counties, and the circumstances leading up to the petitions. Although the counties that we proposed to move to a different time zone provided adequate supporting data to justify the issuance of an NPRM, we noted that we would critically review contrary and supporting information that may be provided by others, and any other related comments and data prior to issuing a final rule. We said that if additional information was provided to indicate that the time zone boundary should be drawn differently, either to include counties excluded or to exclude counties that were included in the proposal, we would make the change at the final rule stage of this proceeding. We also announced that we would hold public hearings.

We provided 30 days for public comments in this proceeding and also said we would consider late filed comments to the extent practicable.

Notice of Public Hearings

On November 8, 2005, DOT announced the time and location of four public hearings to gather information concerning the effects of changing time zone boundaries in Indiana. The objective of these hearings was to provide State and local government representatives and the public an opportunity to comment on DOT's proposal concerning the time zone boundary in 18 Indiana counties that petitioned for a time zone change. To aid us in our consideration of whether a time zone change would be ''for the convenience of commerce,'' the statutory standard for changing time zone boundaries, DOT sought comments at the hearings on how the time zone change impacts on such things as economic, cultural, social, and civic activities and how time zone changes affect businesses, communication, transportation, and education.

The Public Hearings

An Overview

DOT held public hearings in Jasper, Logansport, South Bend, and Terre Haute. These hearings were chaired by Judy Kaleta, a career senior official in DOT's Office of the General Counsel. Each of the hearings received extensive media coverage, including live internet broadcast of the Logansport and South Bend hearings, and TV, radio, and newspaper reports on the hearings and the proposed changes in time zone boundaries.

The Department utilized a similar format to receive comments on the time zone issue at each hearing. The DOT representative described the process that DOT uses to set time zone boundaries. There was an opportunity for clarifying questions on her remarks. This was followed by presentations by county government representatives who had requested an opportunity to speak. If the government representative spoke on behalf of a county that petitioned for a change to the county time zone boundary, he or she was asked to explain how the change would be for the convenience of commerce, the statutory standard. After these presentations, other State and local government representatives had an opportunity to comment, followed by the public. Speakers were requested to complete speaker registration cards and include a time zone preference and reasons for the preference. The hearings were recorded and the speaker registration cards, audiotapes, videotapes, and a DVD for the hearings are in the rulemaking docket, OST Docket No. 2005–22114.

Public interest in this issue was illustrated by the many persons who participated in meetings lasting as long as almost 6 hours. The reasons for staying on the Eastern Time Zone or switching to the Central Time Zone were as varied as the individuals making the presentations. Many noted a preference for having all of Indiana in one time zone, wanting to keep things as simple as possible, not wanting a time zone boundary line ''meandering through the State,'' causing confusion. Some of those persons favoring one time zone expressed a time zone preference while others did not, seeking only a single time zone for the entire State. People often stated that they would put their personal preferences aside in the best interest of the communities. Business owners sometimes noted that they would support whatever decision was made and would adjust accordingly.

Some provided the hearing official with anecdotes on how the time zone in the county in which they lived affects their lives, both personal and professional, from their ability to watch their favorite sports teams and television shows to commuting to and from work. Others presented statistics relating to sunrise and sunset times, latitude and longitudes for time zones, worker commuting patterns in the region, and government-established economic development, transportation, school, and commerce regions. The reasons for staying in the current time zone or wanting to change ranged from a short one-issue rationale to multiple rationales, mostly presented in prose. The hearing official noted, however, that one poem and one song were presented at the hearings. Most expressed a strong passion for the issue. Some relied on humor to make their point. For example, one person referred to an episode from the TV show ''The West Wing,'' which did a segment on the time confusion in Southern Indiana.

Some talked about the difficulty of family life when one parent works in a county in the Eastern Time Zone and another works in the Central Time Zone. One mother talked about the problem of arranging child custody with her former husband because they lived in different time zones. Another mother mentioned her concern about leaving her autistic son in the dark to wait for a bus, when she had to leave for work. Parents also talked about the difficulty of finding after-care programs for their children, scheduling appointments, or dealing with after school events in counties on different time zones.

Other persons talked about the effects on their businesses. There were presenters from the Indiana Chamber of Commerce, which appeared at every hearing, and local chambers of commerce as well as business owners. The Indiana Chamber of Commerce ''believes it is paramount to the future growth of our state that the 82 counties currently on Eastern Standard Time stay on Eastern Time'' because ''a preponderance of Hoosier business and normal daily activities (*e.g.* schooling, shopping, recreation, health care and religious worship) are done within areas observing Eastern Daylight Saving Time (EDT).'' The Indiana Chamber of Commerce submitted various data in support of its position, including import-export figures, safety and energy arguments, Indiana media/commerce markets, sunrise-sunset options, and county profiles from the STATS Indiana website. Other business concerns ranged from employee satisfaction and attendance issues to delivery schedules in various time zones, to dealing with home or regional offices in other parts of the county, on Eastern, Central, Mountain, and Pacific time zones.

Several speakers presented information for the record at the hearing. A copy of their remarks, letters, maps, etc. have been submitted to the docket. Other speakers personally submitted comments to the docket and in some instances spoke at more than one hearing or provided comments to the hearing official at the hearing and also took advantage of the opportunity to provide videotaped comments at the South Bend hearing.

Many persons expressed frustration in dealing with living and working in different time zones and missing appointments due to time zone confusion. Some favored changing time zones, but only if other adjoining counties changed. No clear consensus emerged from the comments made at the hearings. Opinions varied widely depending upon interests and perspectives.

The Logansport Hearing

On November 13, 2005, 34 persons provided comments at the McHale Performing Arts Center, Logansport Community High School, at a hearing that lasted more than 4 hours. County commissioners from Carroll, Cass, and Fulton Counties spoke in support of their petitions. Starke County Commissioners, one who voted to support Starke County's request to move to the Central Time Zone and one who was absent on the date the commissioners voted but would have voted to keep Starke County in the Eastern Time Zone (based on health care, work schedules and shopping) also presented their opposing views at the hearing. The President of the Pulaski County Council spoke in favor the Pulaski County petition and also noted the difficulty of being a border county and suggested that the entire state be on the same time. Other elected officials at the hearing included State Representative Steve Heim and State Senator Vic Heinhold , both supporting Starke County's request to be moved to the Central Time Zone.

Business interests favoring the Eastern Time Zone were represented by the Indiana Chamber of Commerce, among others. There were also business interests favoring the Central Time Zone. For example, the Director of the Pulaski Community Development Commission presented information from the two major employers in the County who favored the Central Time Zone as well as from other employers.

Citizens from the following petitioning counties also spoke at the hearing or filled out a speaker's registration card: Cass, Carroll, Pulaski, St. Joseph, Starke, and White. In addition, there were speakers from the following non-petitioning counties: Allen, Bartholomew, Howard, Monroe, and Newton. The majority of the speakers and non-speakers who filled out speaker's registration cards (but left before being called upon) expressed their opinion that Indiana should be on the same time zone, favoring Central time, a result inconsistent with the Indiana Act and DOT's notice of proposed rulemaking.

The Terre Haute Hearing

The second hearing was held on November 14, 2005, in Terre Haute, at the Hulman Center Meeting Room Complex, Indiana State University. Thirty-six persons spoke at the hearing, including several public officials. County Commissioners from Sullivan and Vermillion Counties provided comments in support of their county's petitions. State Representative Clyde Kersey spoke in favor of the Central Time Zone. In addition, the county commissioner of Vigo County commented at the hearing, saying that the entire state should be on the same time zone. Business interests were represented by the Indiana Chamber of Commerce and the Terre Haute Chamber of Commerce as well as individual business persons.

Citizens from the following petitioning counties also spoke at the hearing or filled out a speaker's registration card: Sullivan and Vermillion. In addition, there were speakers from the following non-petitioning counties: Monroe, Parke, and Vigo. There was also one speaker from Edgar County, Illinois, which borders Sullivan County. Most said that they preferred that the entire state be moved to the Central Time Zone, even those citizens from non-petitioning counties, citing a variety of reasons including sunrise/sunset times and shopping convenience. The majority of residents from Vigo County, which did not petition for a time zone change, favored the Central Time Zone. Those who favored the Eastern Time Zone said that the time should be the same as Indianapolis.

The Jasper Hearing

Over 200 people attended the third hearing in Jasper, at the Jasper Arts Center on November 16, 2005, at a hearing that went on for over five hours. Sixty-seven persons presented comments to the presiding official. These included County Commissioners from the petitioning counties of Dubois, Knox, Lawrence, Martin, and Pike, all of them supporting their requests to be moved to the Central Time Zone. An attorney who submitted Perry County's petition spoke at the hearing in support of the County's petition. In addition, several of these county representatives also spoke in support of their neighboring county's petition. For example, the Perry County representative said it was ''very important'' for Perry and Dubois County to be on the same time zone because of the ''significant'' number of Perry County residents who work in Dubois County.

Many other elected officials from both State and local government spoke at the Jasper hearing, including two State Representatives, a county commissioner from a non-petitioning county, and several mayors from cities within the petitioning counties.

Citizens from the following petitioning counties also spoke at the hearing or filled out a speaker's registration card: Daviess, Dubois, Lawrence, Martin, Perry, and Pike. Those favoring the Central Time Zone noted that they received the local news from Evansville in the Central Time Zone. In addition, they referred to safety, economic, medical, and shopping in support of their Central Time Zone position. Those favoring the Eastern Time Zone often referred to business or recreation reasons.

Business interests were represented by the Indiana Chamber of Commerce and several local chambers as well as a development corporation. Many business owners and workers spoke at the Jasper hearing, with mixed positions on the appropriate time zone.

The South Bend Hearing

On November 21, 2005, at the Student Activity Center, Indiana University, South Bend Campus, more than 200 people attended the public hearing. Because of the high volume of interested speakers and to accommodate all interested speakers, each speaker was limited to 3 minutes for comment and given an opportunity to present comments to the presiding official or to have their comments videotaped on site in a separate room, or to file written comments on a form provided by DOT. Ninety-six persons presented comments to the presiding official in a hearing that lasted almost 6 hours. Eighty-seven persons chose to videotape their testimony and their comments were subsequently reviewed by the same presiding official. (Some did both, wanting to have additional time.) Sixty-two persons filed written comments at the hearing on a form that DOT made available at the hearing to ensure that people who did not want to wait to speak would have an additional way to present their views to the Department.

Commissioners from Fulton, Marshall, Starke, and St. Joseph spoke in support of their petitions. Many other elected officials from both State and local government spoke at the South Bend hearing, including three State Senators, two State Representatives, county commissioners from non-petitioning neighboring counties, and several mayors and council members from cities within both the petitioning counties and non-petitioning neighboring counties.

Business interests were represented by groups such as chambers of commerce as well as individual businesses. Education interests were concerned parents as well as an educational institution. Individuals also discussed transportation issues, which were also addressed by a transportation service provider. Media concerns were addressed by a viewers as well as a local television station.

Citizens from the following petitioning counties also spoke at the hearing or filled out a speaker's registration card: Fulton, Marshall and St. Joseph. In addition, there were speakers from the following non-petitioning counties: Elkhart, Howard, Porter, Allen, and Cass County, Michigan.

Comments to the Docket—An Overview

There were over 6000 entries to the docket in this proceeding in addition to the entries resulting from the public hearings. These included county petitions and supplementary information, letters from elected officials including the Governor, several Congressmen, State Senators and Representatives, mayors, city and county council members, businesses and local Chambers of Commerce, community associations, and interest groups. Thousands of comments were filed by individuals expressing their personal interests and preferences as well as their views on how a time zone change would be for the convenience of commerce.

Comments were made by the residents of both petitioning counties and non-petitioning counties. We also received comments from persons in Michigan, Kentucky, Ohio, and Illinois who felt that they may be impacted by any change to time zone boundaries in Indiana. For example, we received comments regarding the potential impacts on Cass County, Michigan, if St. Joseph County were placed in a different time zone from the greater Michiana area. In addition, comments were filed to the docket by citizens from counties that did not petition for a time zone change expressing concern that their county did not petition for a time zone change or that their county did not hold a public hearing on the issue. We have reviewed the petitions from all of the counties, the additional information they provided, and all other comments to the docket.

Out of 6142 comments to the docket that we reviewed as of December 30, 2005, 2057 or 33% favored a change to the Central Time Zone, 3040 or 50% favored remaining in the Eastern Time Zone, and 1045 or 17% fell into the ''other'' category, meaning that they expressed no preference between Eastern or Central Time, only that Indiana be in the same time zone, or that their county be on the same time as surrounding counties, or that they had concerns about the State legislature's adoption of Daylight Saving Time. Detailed breakdowns for each county have been included in charts that are found at the end of this discussion and do not include detailed breakdowns from the hearings. We have included these figures as an indication of the diversity of opinion and lack of consensus on the issue of time zones in Indiana among those who commented. Our decision whether to change the time zone boundary, however, is not based on the number of persons supporting a particular time zone. Rather, as noted above, the statutory standard for decisions to move an area from one time zone to another is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce'' and the information provided by commenters helps us make this decision. This standard is defined very broadly by the Department to include consideration of all the impacts upon a community of a change in its time zone.

The commenters suggested a wide variety of approaches to establishing time zone boundaries in Indiana including moving their county to the Central Time Zone, keeping their county in the Eastern Time Zone, placing all of the State in the Eastern Time Zone, placing all of the State in the Central Time Zone, placing all of the State in the Central Time Zone with the exception of Indianapolis in Marion County and the counties surrounding Marion, and maintaining the current time zone boundaries. The primary reasons given by those in favor of the Central Time Zone include the benefit to commerce and increasing availability for communication with customers on the West coast; astronomical, referring to the time at which the sun is directly overhead as compared to clock time; geographic location of the State, with closer ties to Chicago and the Midwest compared to New York and the East coast; safety of school children waiting for school buses in the morning; and employment-related reasons such as wanting to live in and work in counties on the same time zone. Primary reasons given by those in favor of the Eastern Time Zone include commerce, because Indianapolis, the state capital, and the majority of the State is on the Eastern Time Zone; recreation and quality of life which they say is improved by having more daylight in the evening to spend time with the family or outdoors; and safety of the motoring public, because there are more daylight hours in the evening.

Commenters provided a wide variety of data on sunrise/sunset times, economic development and trends, commuting patterns, school districts and institutions of higher learning, effects upon transportation services, and the location of cultural and recreational activities.

Discussion of Comments Applicable to All Petitioning Counties

A substantial number of the commenters, both in written submissions and at the public hearings, repeatedly raised three issues that they argued should or should not result in a change in the time zone boundary for particular petitioning counties: (1) ''Natural time zone'' or ''simple geography;'' (2) regional connections; and (3) safety of the children. Commenters favoring a move to the Central Time Zone relied upon the ''natural time zone'' or ''simple geography'' position and concerns about the safety of the children. On the other hand, the effects of regional connections were raised by both opponents and proponents of time zone changes.

These three issues were raised with regard to every petition filed. Rather than repeating these matters in the summary of the comments on a county-by-county basis, we have summarized them below and responded to these comments in this section. They have been considered in making our decision for changing the time zone boundary in each county.

''Natural Time Zone'' or ''Simple Geography''

Both at the hearing and in written comments, there were repeated references to astronomical and geographic indicators for time zone to support the position for the Central Time Zone. Leading proponents of this position were Hoosiers for Central Time, started by David Kinney, a drive-in movie theatre owner, and Jeff Sagarin. Commenters noted that time zones are established geographically by the earth's 24 hour rotation and the 360 degrees of the earth's circumference. Based on geography, they explained that the geographic boundary between the Eastern and Central Time Zones is at the 82.5 degree line of longitude which is in Ohio, not Indiana. They also noted that the geographic center of the Central Time Zone is located in Illinois and, therefore, ''the entire state of Indiana is well within the natural boundaries of the central time zone.'' From an astronomical perspective, commenters stated that the sun should be overhead at noon and that, under Eastern Daylight Time, the sun would not reach its highest point until 2 p.m. and set at 9:15 p.m. in the summer in some parts of Indiana. They complained of being ''out of sync'' with the sun. They argued, therefore, that all of Indiana should be moved to the Central Time Zone, as it was from 1918 to 1961.

The Department is mindful of the value and ease of setting time zones based on simple geography. Congress has recognized, however, that natural time and simple geography do not address the complexity of modern life. Accordingly, in addition to establishing time zones based simply on longitudinal lines, Congress adopted a standard for time zone decisions: ''Regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.'' It is DOT's responsibility to consider requests for changes in time zone boundaries in light of the statutory standard, bearing in mind the need to address the effect on economic, cultural, social, and civic activities between neighboring counties in making decisions. Furthermore, DOT does not have a statewide proposal before it nor has the Indiana legislature endorsed such an approach. It is, therefore, beyond the scope of this proceeding to consider such a significant change to the State's time zone boundaries.

Regional Connections

As noted above, DOT has developed a series of questions to assist communities and us in determining the impact of a time zone change on the ''convenience of commerce.'' We asked that petitioning counties and commenters discuss how the time zone change impacts such things as economic, cultural, social, and civic activities and how time zone changes affect businesses, communication, transportation, and education. In responding to these questions at both the public hearings and in written submissions to the docket, many commenters referred to regional connections. As one commenter put it, DOT ''should be recognizing cohesive areas with time zone lines—not creating further divisions.''

Petitioning counties advocating for a move to the Central Time Zone referred to their ties to other Indiana counties currently on the Central Time Zone. Petitioning counties in the northwest answered DOT's questions by referring to their ties to Chicago for media, transportation, and business; the southwest counties referred to their connections to Evansville. Petitioning counties also talked about wanting to be on the same time zone as their neighboring counties, and often mentioned that they were aware that their neighboring counties were also petitioning for change. Several commissioners spoke at the public hearings and submitted letters in support of their neighbor's petitions. Similarly, counties that chose not to seek a time zone change opposed neighboring county's petitions in the interest of keeping the region on the same time zone. For example, Elkhart County, opposing St. Joseph County's petition, referred to the need to keep the Michiana region (neighboring Michigan counties and St. Joseph, Marshall, Elkhart, and Kosciusko Counties) in the same time zone.

Many of the petitioning counties and commenters referred to data from STATS Indiana, an information service of the Indiana Business Research Center at Indiana University's Kelly School of Business. This includes Indiana Annual Commuting Trends Profile, based on Indiana IT 40 returns for tax year 2003. The Commuting Trends Profile shows county-by-county commuting patterns both into and out of the county. Commenters also referred to data from the Indiana Economic Development Corporation (IEDC), the State of Indiana's lead economic development agency, established in February 2005 to replace the former Department of Commerce. IEDC focuses its efforts on growing and retaining businesses in Indiana and attracting new business to the State of Indiana. It has identified 5 geographic areas of commerce for purposes of its programs. Commenters also referred to data from Indiana Department of Workforce Development, which manages and implements employment programs and unemployment insurance systems, and facilitates regional economic growth initiatives for Indiana. The Indiana Department of Workforce Development has identified 11 regions of economic activity. Commenters noted that the Indiana Department of Transportation has established Indiana transportation districts, dividing Indiana into 6 regional transportation networks, and that the Indiana Department of Education has divided the State into 9 education service centers.

With regard to media, the Indiana Chamber of Commerce provided a map identifying Indiana Media/Commerce Markets, listing as its source 2004 Survey of Buying Power, *Sales & Marketing Magazine,* September 2004. In addition, several commenters including television broadcasting stations referred to Designated Media Markets as defined by the Nielsen for use in television ratings. A few commenters referred to the Federal Communication Commission Designated Viewing Areas.

In supporting their claims that a time zone change should or should not be made, commenters relied upon these regional divisions, districts, areas, or markets in order to demonstrate how the change would be consistent or in conflict with a particular regional entity or state designation. For example, a commenter at the Jasper hearing, Greg Wathen, the Executive Director for the Perry County Development Corporation, spoke in favor of Perry County's petition to move to the Central Time Zone and asked ''that the same consideration be given for those other counties within our region.'' In support of his position, he extensively referred to the various Indiana agencies noted above that defined regional areas of economic activity and commerce.

The Department has summarized information concerning regional connectivity in the following charts:

NORTHERN [1] INDIANA REGIONAL CONFIGURATIONS

County	IEDC [2]	Economic growth [3]	Work-force [4]	Com-merce [5]	Transportation [6]	Education [7]	Media and com-merce market [8]
Petitioning Counties							
Carroll	C	4	4	5	La Porte	Wabash Valley	Lafayette.
Cass	NC	4	5	4	La Porte	Wabash Valley	Indianapolis.
Fulton	NC	2	5	2	La Porte	N. Indiana	South Bend.

NORTHERN[1] INDIANA REGIONAL CONFIGURATIONS—Continued

County	IEDC[2]	Economic growth[3]	Work-force[4]	Com-merce[5]	Transportation[6]	Education[7]	Media and com-merce market[8]
Marshall	NC	2	2	2	La Porte	N. Indiana	South Bend.
Pulaski	NW	1	1	2	La Porte	N. Indiana	South Bend.
St. Joseph	NC	2	2	2	La Porte	N. Indiana	South Bend.
Starke	NW	1	1	2	La Porte	N. Indiana	South Bend.
White	C	4	4	5	La Porte	Wabash Valley	Lafayette.
Non-Petitioning Counties							
Elkhart	NC	2	2	2	Fort Wayne	N. Indiana	South Bend.
Kosciusko	NC	2	2	2	Fort Wayne	N. Indiana	South Bend.

CENTRAL INDIANA REGIONAL CONFIGURATIONS

County	IEDC	Economic growth	Workforce	Commerce	Transportation	Education	Media and com-merce market
Petitioning Counties							
Vermillion	C	7	7	6	Crawfordsville	West Central	Terre Haute.
Sullivan	SW	7	7	6	Vincennes	West Central	Terre Haute.
Non-Petitioning Counties							
Vigo	C	7	7	6	Crawfordsville	West Central	Terre Haute.

SOUTHERN INDIANA REGIONAL CONFIGURATIONS

County	IEDC	Economic growth	Workforce	Commerce	Transportation	Education	Media and commerce market
Petitioning Counties							
Daviess	SW	8	11	11	Vincennes	S. Indiana Ed	Terre Haute.
Dubois	SW	11	11	11	Vincennes	S. Indiana Ed	Evansville.
Knox	SW	11	11	11	Vincennes	S. Indiana Ed	Terre Haute.
Lawrence	SW	8	8	10	Vincennes	S. Indiana Ed	Indianapolis.
Martin	SW	8	11	11	Vincennes	S. Indiana Ed	Terre Haute.
Perry	SW	11	11	11	Vincennes	S. Indiana Ed	Evansville.
Pike	SW	11	11	11	Vincennes	S. Indiana Ed	Evansville.
Non-Petitioning Counties							
Orange	SW	8	12	12	Vincennes	S. Indiana Ed	Louisville.
Crawford	SW	10	12	12	Vincennes	S. Indiana Ed	Louisville.

[1] Indiana's Regional Configurations, Stats Indiana from Indiana Business Research Center.
[2] Indiana's Economic Development Corporation recognizes 5 areas of commerce.
[3] Indiana's Department of Workforce Development created 11 regions of economic activity.
[4] *http://www.in.gov/dwd/job_seekers/job_seekers_workforce_centers_regional_map.html.*
[5] Indiana Business Research Center, an outreach service of the Kelley School of Business at Indiana University.
[6] Indiana Department of Transportation has divided the State into 6 regional transportation districts. *http://www.in.gov/dot/div/traffic/districts/index.html.*
[7] Indiana Department of Education has divided the State into 9 education service centers. *http://doe.state.in.us/htmls/esc.html.*
[8] Indiana Chamber of Commerce, Source of Information, Survey of Buying Power, *Sales and Marketing Magazine*, September 2004.

DOT has carefully reviewed this data and utilized it in reaching its decision. DOT recognizes the importance of regional connections and the benefits of similar time zones and regional ties among counties. Remaining in the same time zone and maintaining their regional ties better position counties to realize advantages in economic, cultural, social, and civic activities, thereby serving the convenience of commerce.

Safety of the Children

Many commenters expressed concern about the impact of the time zone boundaries on children. Some concerned parents commented that, for safety reasons, their children should not have to be standing at the bus stop on rural roads when it is still dark outside and, therefore, urged a move to the Central Time Zone. Other concerned parents stated that there was no statistical data concerning early morning incidents involving children waiting for buses and said that they preferred that their children have an extra hour of daylight at the end of the day to allow them to spend more time outdoors to get exercise. A few commenters talked about an obesity problem in children who did not exercise and suggested it was better to have more daylight in the afternoon so that children could play sports or otherwise be active outdoors. They favored, therefore, keeping counties in the Eastern Time Zone. A few other commenters mentioned student drivers. They noted that student drivers ''have very limited driving skills'' and would ''drive to school in the dark and often times in hazardous road conditions.''

One commenter, who spoke at the South Bend hearing and subsequently filed a comment, Mark Catanzarite, who serves on the St. Joseph County Council and is a firefighter/paramedic, referred to Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks. Noting that St. Joseph County is highly populated while its neighboring counties of Marshall, Starke, Fulton, and Pulaski are more rural, he described the harsh Northern Indiana winter weather. He said that the petitioning counties in Northern Indiana are subject to numerous fog and snow delays each school year. ''The difference between a two and three hour delay is the critical factor in determining if school will be cancelled. Anything more than a two-hour delay automatically cancels classes for the day and lost time is costly.'' Several working parents talked about the problems that school delays caused for them in terms of missing work or arranging for child care. John Gaski, a university professor, also referred to Executive Order 13045 in a comment to the docket. He noted a National Bureau of Standards report that, according to Mr. Gaski, found that there were ''more fatalities to children from morning darkness.'' He questioned whether a final rule putting the region in the Eastern Time Zone would violate the Executive Order.

Other commenters said that the argument about school children waiting in the dark should not be used to support a move to the Central Time Zone. For example, the Indiana Chamber of Commerce provided information on the safety case. The Chamber noted ''[d]arkness in the morning at bus stops has not proven to be a safety hazard.'' In support of its position, the Chamber stated that a ''32-year National Study of School Bus Safety done by the Kansas State DOE in 2003 shows that 90% of school bus-stop accidents occur in daylight.'' In responding to the Chamber's position, Thomas Heller wrote that the study only addressed loading and unloading accidents and that there were no studies presented on moving school bus accidents or the performance of schoolchildren and academic achievement based on ''unnaturally-early school hours.'' Although expressing concern about dark mornings, Patty Ann Wright, a school bus driver for 23 years from Sullivan County, stated that school bus drivers attend annual safety meetings and that buses are inspected at least twice a year. She noted that ''[b]ecause of this emphasis on safety, there are very few injuries to Indiana schoolchildren while traveling on school buses.'' On the other hand, another commenter, Gary King, asserted that ''it would be better if the schools would change to later starting times. Educational research supports that.''

The Department received no research or studies supporting this assertion. Later starting times for schools is a local issue beyond the scope of this proceeding.

Executive Order 13045, as amended by Executive Orders 13229 and 13296, defines ''environmental health risks and safety risks'' as ''risks to health or to safety that are attributable to products or substances that the child is likely to come into contact with or ingest (such as the air we breath, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to.'' By its terms, the Executive Order does not apply to this matter. Nevertheless, because we have a continuing concern about children in all our programs, we have reviewed and assessed the comments on the impact of time zone changes on children.

Safety is the number one priority of the Department and we are committed to improving safety of school children. No conclusive evidence was presented, however, to indicate that the Eastern Time Zone and morning darkness will result in increased safety risks to children. While mornings may be dark, no commenters have provided any evidence that school children in neighboring counties to the north in Michigan or to the east and south in Indiana are at increased safety risk. Moreover, no commenter cited any studies or data from the Indiana Department of Education claiming that the time zone causes particular problems for school children. In addition, as for the 1976 National Bureau of Standards study referred to by Mr. Gaski, while there were reports of increased fatalities among school-age children in the mornings during the test period, it was impossible to determine whether this was due to Daylight Saving Time which would have resulted in a later sunrise. See Congressional Research Service Order Code RS22284, Daylight Saving Time, September 27, 2005. Furthermore, in ''The Daylight Saving Time Study,'' a September 1975 report to Congress, the Department discussed the safety of school children going to school in the morning darkness. The report concluded, ''it has been discovered that in the morning school-age children fatal accidents were not significantly different from fatal accidents in the total population.''

Laws exist to protect children getting on and off school buses. If a bus stop is located in a dangerous place, the Department continues to encourage individuals and local communities to talk with the school office or transportation director about changing the location.

County-by-County Discussion of the Comments to the Docket and at the Public Hearings Northwest Counties

St. Joseph

St. Joseph County Commissioners submitted a petition signed by the President of the St. Joseph County Board of Commissioners and a letter signed by 2 of the 3 commissioners requesting that St. Joseph County be moved to the Central Time Zone. As we noted in the NPRM in which we proposed to move St. Joseph County to the Central Time Zone, St. Joseph County filed detailed information with its petition addressing each of the Department's time zone factors, showing how changing to the Central Time Zone would be beneficial for the community. The third St. Joseph County Commissioner Mark Dobson, who dissented from the Commission's vote for the Central Time Zone, submitted a point-by-point refutation of almost all of the data relied upon by the majority of the commissioners. He contended that equally persuasive data supported keeping St. Joseph County in the Eastern Time Zone. Each of the 3 commissioners spoke at the South Bend public hearing expressing their views.

Subsequent to the hearing, St. Joseph County Commissioner Cynthia Bodle sent a letter to the docket enclosing resolutions adopted by La Porte, Porter, and Lake Counties in support of locating St. Joseph County in the Central Time Zone. She noted two common points in her correspondence: ''first, that St. Joseph is an important centrally located regional hub for distribution and transportation, second, that the counties of St. Joseph, La Porte, Porter, and Lake are connected by the unique and vital service of the Northern Indiana Commuter Transportation District.'' Also subsequent to the hearing, St. Joseph County Commissioner Steve Ross submitted his hearing statement and sent a letter highlighting two ''studies.'' The first was a comment by Fort Wayne Attorney Paul O'Malley concerning the effects of area counties and time zone boundaries. The O'Malley comment concluded that St. Joseph County and La Porte County are being economically damaged by the present location of the time zone boundary between them. The second was a ''review, appraisal, and statement'' by University of Notre Dame Associate Professor of Marketing John Gaski rebutting the data provided and assertions made by proponents of the Eastern Time Zone for St. Joseph County, including St. Joseph County Commissioner Mark Dobson and the Michiana Council of Governments.

Another letter reflecting the conflicting opinions from elected officials is from the Michiana Area Council of Government (MACOG), the Metropolitan Planning Organization representing St. Joseph, Elkhart, and Marshall Counties. MACOG is ''funded through the Department of Commerce (EDA) to complete regional Economic Development activities in Northern Indiana representing Elkhart, St. Joseph, Marshall, and Kosciusko Counties.'' In a November 21, 2005 letter, the MACOG Policy Board encouraged us to keep the counties of St. Joseph, Marshall, Elkhart, and Kosciusko in the same time zone. The letter noted that in June 2005, the MACOG Policy Board voted on the issue. According to the minutes of the meeting that were attached to the letter, as a member of MACOG, St. Joseph County Commissioner Cindy Bodle made a motion to ''support the sending of a letter by the policy board to ask that the four county region all remain in the same time zone.'' In addition, the minutes note that John Zentz, Marshall County Commissioner, ''stated his opinion that he felt that the area all being on the same time zone was of utmost importance.'' The MACOG letter also noted that the ''MACOG Policy Board has not endorsed any one time zone for the region.''

Based on comments made at the hearing and to the docket, there was no consensus among elected officials from State and local governments, who expressed conflicting views on the proposed time zone change for St. Joseph County. Some strongly support the change; others vehemently opposed it.

Governor Daniels, in a letter to the Department, recommended that the Department decline to move St. Joseph County to the Central Time Zone. He said, ''The clear preference of neighboring Elkhart County and other nearby counties to remain in the Eastern Zone means that a unified metropolitan region would be divided, an outcome virtually no one advocates.''

Several Indiana State legislators expressed their opinions on the proposed time zone change at the hearing in South Bend and in comments to the docket. State Senator Marvin Reigsecker opposed moving St. Joseph County to the Central Time Zone because of the county's ties to Elkhart County. On the other hand, State Senators Pat Bauer and Vic Heinhold supported the change to the Central Time Zone, with Senator Bauer acknowledging regional ties to Elkhart and encouraging Elkhart to petition for a change. State Representative Steve Heim supported moving St. Joseph County into the Central Time Zone. State Representatives Gerald Torr and William Friend opposed the change based on regional ties to Elkhart, Marshall, and Kosciusko Counties. State Representative Julie Walorski did not express a time zone preference but said that Marshall, St. Joseph, and Elkhart Counties should be in the same time zone.

There were also divergent views expressed by government officials in neighboring counties. From St. Joseph County's neighbor to the east in the Eastern Time Zone, favoring the Eastern Time Zone, were Elkhart County Commissioners Phil Stiver, Terry Rodino, and Mike Yoder; Mayor of Elkhart David Miller; and Jim Pettit and Arvis Dawson from the Elkhart City Council. The principal basis for their opposition to moving St. Joseph County to the Central Time Zone was the need to keep the economic region in the same time zone. Both in a written submission to the docket and at the public hearing, the Elkhart County Commissioners emphasized that ''splitting Elkhart, St. Joseph, Marshall and Kosciusko counties into different time zones is not prudent nor would it have positive long term effect on the economic growth of our region.'' The Elkhart County Commissioners, in a November 2, 2005, statement submitted by St. Joseph County Commissioner Dobson, urged St. Joseph County to withdraw its petition and pledged ''to work with them to further address the time issue on a broader scale'' and to thereby ''stay a part of the Michiana community.'' On the other hand, Marlo Harmom, county commissioner from La Porte County, St. Joseph County's neighboring county to the west and currently located in the Central Time Zone, supported the petition and the proposed move to the Central Time Zone. At the hearing, the Mayor of South Bend, Stephen Luecke, supported a change to the Central Time Zone for St. Joseph County, but also for the entire State, to help grow industries. As Chairman of the MACOG Policy Board, however, Mayor Luecke, in a letter to DOT asserted that St. Joseph, Elkhart, Marshall, and Kosciusko counties should remain in the same time zone. South Bend City Council members Charlotte Pfiffer and Mike Crook supported a move to the Central Time Zone as did Mayor of Mishawaka Jeff Rea.

The divergent views of public officials were also reflected in comments to the docket. Out of 2000 comments submitted to the docket from St. Joseph County, 913 favored the change to the Central Time Zone, 790 favored remaining in the Eastern Time Zone, and 297 expressed interest in keeping Indiana on the same time zone, expressing no preference. Many of those who favored the Central Time Zone did so only if the surrounding counties in the economic region also moved to the Central Time Zone.

Supporters of moving St. Joseph County to the Central Time Zone noted that St. Joseph County has been on the same time as Chicago for much of the year. The reason for this is that while St. Joseph County was on Eastern Standard Time and did not observe Daylight Saving Time, 7 months out of the year, from April to October, it was effectively on the same time as its neighbors to the west who are in the Central Time Zone. Switching to the Central Time Zone would continue any benefits the county enjoyed during these seven months.

With regard to transportation, supporters of moving St. Joseph County to the Central Time Zone noted that the South Shore Line, a commuter railroad, is linked to the Central Time Zone with the South Bend stop as the only one in the Eastern Time Zone. Favoring the Central Time Zone, the Northern Indiana Commuter Transportation District (NICTD) wrote in support of St. Joseph County's petition ''highlighting the fact that NICTD is the only commuter railroad in the country that splits time zones and is the single most confusing factor in accessing and using our service between South Bend and Chicago.'' NICTD's letter addressed ''the convenience of commerce'' and ''the existing junction points and division points of common carriers,'' the statutory standard that DOT considers in setting time zone boundaries. Supporters of the Eastern Time Zone maintained that air travel experience supported no change in time zone for St. Joseph County because more air travel was linked to the east rather than Chicago.

With regard to questions about the sources of media coverage in South Bend, there were comments at the hearing and to the docket that citizens receive their news from Chicago newspapers, television, and radio. However, other commenters claimed that the media coverage was more regional coming from South Bend primarily and covering its neighboring counties to the west and south.

With regard to commercial interests, inconsistent positions and data were also provided. Many businesses favored the Eastern Time Zone. The Chamber of Commerce of St. Joseph County stated that 91% of its survey respondents believed it was essential for Elkhart and St. Joseph County to be in the same time zone ''due to our regional economy.'' The Northern Indiana Workforce Investment Board strongly recommends that St. Joseph, Elkhart, Fulton, Kosciusko, and Marshall Counties be in the same time zone. The MACOG submission also said that businesses supported not changing to the Central Time Zone. Individual businesses also expressed support for the Eastern Time Zone. Finally, Chuck Bueter at the South Bend hearing presented the presiding official with a telephone book, noting that there were approximately 189 businesses listed that started with Michiana. As several commenters noted, it is the Michiana region, not ''Chicagiana.''

Other businesses, including those in the steel industry, expressed strong support for St. Joseph County's petition to be placed in the Central Time Zone. For example, the President of Steel Warehouse Company, Inc. spoke at the public hearing and submitted additional comments to the docket. He noted a number of other businesses, such as USX and IN/Tek-In-Kote, Northwest Indiana steel mills, and trade associations, such as Metal Service Center Institute, support move to the Central Time Zone. He stated that his company would face a problem ''securing trucking services, which primarily emanate from the Central Time Zone.'' Furthermore, in supporting the Central Time Zone, Professor Gaski disputed the MACOG data and its underlying methodology.

With regard to schooling, many proponents of moving St. Joseph County to the Central Time Zone raised the safety of children argument discussed above, based on concerns of late sunrise times. Six school board superintendents from Elkhart County, however, signed a joint letter to the Department saying, ''With split time zones, students who participate in athletics and other academic activities with schools who are on a different time zone will mean getting home later than they already do which is now sometimes after 10:30 p.m.–11 p.m. This could possibly now be closer to midnight and they will be expected to be ready for a full day of school the next day. This is ludicrous.'' In a similar vein, James Kunze, President of Plymouth Broadcasting, Inc. said that the school system ''would be impacted unless both counties were on central time,'' referring to St. Joseph and Marshall Counties.

Referring to its universities, a commenter stated that the county's largest industry is education. Ken Baierle from Indiana University South Bend spoke in favor of St. Joseph County remaining in the Eastern Time Zone for the convenience of the students as well as the University, noting student commuters and offsite campuses in Elkhart and Plymouth.

Starke

Starke County Commissioners submitted a petition to move to the Central Time Zone based on a public hearing during which ''the citizens of Starke County overwhelmingly favored adopting Central Daylight Savings Time.'' In a letter accompanying the petition, the Commissioners enumerated various ways in which changing to the Central Time Zone would be for the ''convenience of commerce,'' including regional ties to Chicago for the majority of their television broadcasts and newspaper deliveries. They noted that the county is essentially a farming community with a small manufacturing base and submitted annual commuting data in support of their position.

As we noted in the NPRM, Starke County had been in the Central Time Zone and it presented evidence of close ties to areas in the Central Time Zone.

Starke County Commissioner Kevin Kroft spoke at the Logansport public hearing and noted that Starke County had previously been located in the Central Time Zone and that county residents support a return to the Central Time Zone. County Commissioner Kroft along with his fellow commissioner Mark Milo also spoke in support of their petition at the South Bend hearing.

State Representative Steve Heim and State Senator Vic Heinhold spoke at both the Logansport and South Bend hearings in support of Starke County's request to be moved to the Central Time Zone and Senator Heinhold submitted a letter to the docket supporting Starke County's petition.

Few commenters expressed opposition to moving Starke County to the Central Time Zone. Out of 281 comments submitted to the docket from Starke County, 244 favored the Central Time Zone, 12 favored the Eastern Time Zone, and 25 either expressed no preference or said that Indiana should be on one time zone.

Marshall

Marshall County Commissioners submitted a petition in which they enumerated reasons for the Central Time Zone. The petition listed Marshall County's various commercial and social relationships with St. Joseph County: Television and radio broadcasts, a newspaper, an airport, commuters and workers, as well as schools and a university. In addition, the County Commissioners submitted annual commuting data in support of their position. After DOT's NPRM was proposed not to move Marshall County to the Central Time Zone, Marshall County submitted a resolution that requested that DOT ''reconsider approval of St. Joseph County's petition to be relocated to Central Time and/or Marshall County's petition.'' The reason given is that ''it is imperative that Marshall County be on the same time zone as St. Joseph County. From an economic standpoint, Marshall County prefers the same time zone as all of its regional economic partners, St. Joseph, Elkhart and Kosciusko County.''

Marshall County Commissioners Kevin Overmeyer and John Lentz spoke in support of their petition at the South Bend hearing and introduced Doug Auspach from the Marshall County Chamber of Commerce as a supporter of their petition.

State Representative Steve Heim supported moving St. Joseph County into the Central Time Zone and said at the South Bend hearing that Marshall County was ''joined at hip'' and should also be moved. The Mayor of Plymouth spoke in favor of moving Marshall County to the Central Time Zone, noting regional ties to St. Joseph County.

Out of 426 comments submitted to the docket from Marshall County, 305 favored the Central Time Zone, 50 favored the Eastern Time Zone, and 71 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Pulaski

Pulaski County Commissioners submitted a petition in which they enumerated reasons for a move to the Central Time Zone based on comments made during an open public meeting. County Commissioners commented that at the open public hearing, ''There were no citizens who were in favor of Eastern. All were in favor of leaving the time alone, by not having to change time during the year. But, if we have to choose one of the two, the choice would be Central Time.'' County Commissioners noted the consideration of school children waiting during a late sunrise, the importance of sunlight to its farming community, television programming from South Bend and Chicago, newspapers from Indianapolis, South Bend, Logansport, and Chicago, and airports in Indianapolis and Chicago. In addition, the County Commissioners submitted annual commuting data in support of their position.

Director Dan Dolezal of the Pulaski Community Development Commission presented information from the two major employers in the County who favored the Central Time Zone as well as from other employers. The President of Pulaski County Council also spoke in favor the Pulaski County petition and also noted the difficulty of being a border county and suggested that the entire state be in the same time zone. In a comment to the docket, Paul O'Malley noted that Pulaski County has regional ties to counties that are currently in the Central Time Zone or would be moved to the Central Time Zone by DOT's decision. He referred to workforce planning, economic growth, and economic development regions. Moving Pulaski to the Central Time Zone would ensure that all counties in these regions were in the same time zone.

Out of 71 comments submitted to the docket from Pulaski County, 41 favored the Central Time Zone, 17 favored the Eastern Time Zone, and 13 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Fulton

The Fulton County Commissioners unanimously petitioned to be changed to the Central Time Zone. They noted economic development is to points North and West, rather than East and South. Fulton County's petition enumerated reasons for a preference to move to the Central Time Zone based on information presented by the Fulton Economic Development Corporation, in response to the questions posed by the Department to determine whether such a change would be ''for the convenience of commerce.'' The petition noted the origin and destination of supplies, the origin of television and radio broadcasts and newspapers, bus, passenger rail, and air transportation options, and work patterns, but did not conclusively favor one time zone or another. The comments of several local business owners, included in the submission by the Fulton County Commissioners, preferred either no time zone change or a change to the Central Time Zone. A letter requesting consideration of the Fulton petition and an extension of time ''to submit additional information before a final decision is made'' was also submitted by an attorney for the Fulton County Board of Commissioners, but no additional data was submitted.

Commissioner Rose spoke at the Logansport hearing, presenting information in further support of the county's original petition to move to the Central Time Zone. The Fulton County Commissioner stressed the close connection of Fulton County to St. Joseph and Marshall Counties, pointing out, for example, that the U.S. 31 corridor was the main road in the county and connected its northern neighboring counties. He stated that Fulton should not be isolated from those counties by being on a different time zone, and would like to include Elkhart and Kosciusko Counties. He stated that the school districts preferred Central time and that they would prefer not to be dealing with two different time zones. Fulton County Commissioners Roger Rose and Richard Powell spoke in support of their petition at the South Bend hearing.

Out of 30 comments submitted to the docket from Fulton County, 12 favored the Central Time Zone, 3 favored the Eastern Time Zone, and 15 expressed interest in keeping Indiana on the same time zone, expressing no preference.

White

With a 2–1 vote, the White County Commissioners petitioned to be moved to the Central Time Zone based on two public hearings and email, telephone, and personal contact. White County residents expressed an interest in ''keeping the time the way it is'' before Daylight Saving Time. They noted that White County is halfway between Chicago and Indianapolis and bordered by 5 Indiana counties, one currently on the Central Time Zone, one choosing to remain in the Eastern Time Zone and 3 counties that petitioned for a change to the Central Time Zone. The Commissioner also said that many residents expressed concern about ''school children boarding buses in the dark all winter when we are on Eastern time.'' They noted that media and transportation were split between the Eastern and Central Time Zones.

Out of 37 comments submitted to the docket from White, 11 favored the Central Time Zone, 21 favored the Eastern Time Zone, and 5 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Carroll

Carroll County Commissioners submitted a petition to move to the Central Time Zone based on 3 public hearings during which ''not one citizen of Carroll County spoke in favor of Eastern Time.'' They stated, ''if Lafayette were on Central Time this would be a very compelling reason for Central Time.'' While they stated the leading industry is meat packing, which ships to the west into the Central Time Zone, they also noted with regard to transportation that the airports in Chicago and Indianapolis are used ''almost in equal numbers'' and that residents ''leave the county for every reason in all directions,'' not favoring any time zone. They also noted no significant time zone impact on media.

Commissioner Hylton spoke at the Logansport hearing, noting that Carroll was a rural agricultural county. He noted that the late sunrise in the winter was a concern because no sunlight and bad winter weather could cause school cancellation, rather than just a late arrival. Delayed school starts would also have a negative impact on working parents. He noted that another factor in the decision to petition to be moved to the Central Time Zone was in anticipation that neighboring counties Tippecanoe and Howard would also request a move to the Central Time Zone, but they did not.

Out of 13 comments submitted to the docket from Carroll County, 5 favored the Central Time Zone, 6 favored the Eastern Time Zone, and 2 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Cass

Cass County Commissioners petitioned for a change to the Central Time Zone and enclosed two exhibits, Work/Residence Patterns—A STATS Indiana Annual Commuting Trends Profile and a letter from the Logansport Economic Development Foundation (LEDF), responding to the questions DOT posed in its notice inviting local officials to request a time zone change. The commuting patterns showed that workers commuting into Cass County came from counties in the Eastern Time Zone. Likewise, 17% of Cass County residents work outside of Cass County and commute to work into counties in the Eastern Time Zone. With regard to how the time zone impacts on such things as economic, cultural, social, and civic activities, the letter from LEDF said that it did not have specific information to address these matters.

At the Logansport hearing, Commissioner Eller spoke in support of the county's petition, emphasizing a poll that showed that residents did not want Daylight Saving Time and wanted to have the same time across the state. He said that after school activities will be problematic with schools in counties in different time zones. On the other hand, noting that he was absent when the County Commissioners voted to petition to request a change to the Central Time Zone, Commissioner Steve Kain favored Eastern Time Zone. He said that residents seek medical attention in Kokomo, Lafayette, and Indianapolis, which are in the Eastern Time Zone.

At the Logansport hearing, the DOT hearing official was presented with a petition signed by 91 citizens of Cass County requesting that the U.S. Department of Transportation ''leave Cass County, Indiana, in the same time zone as the cities of Kokomo, Lafayette and Indianapolis, *i.e.*, Eastern Standard Time.''

Out of 14 comments submitted to the docket from Cass County (excluding those presenting at the Logansport hearing), 6 favored the Central Time Zone, 5 favored the Eastern Time Zone, and 3 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Non-Petitioning Counties

In the Notice of Proposed Rulemaking, we specifically invited comment from neighboring Indiana counties, and counties in Michigan, Kentucky, Ohio, and Illinois that may also be impacted by any change. Out of 611 comments submitted to the docket from Elkhart County, 219 favored the Central Time Zone, 241 favored the Eastern Time Zone, and 151 expressed interest in keeping Indiana on the same time zone, expressing no preference. Out of 48 comments submitted to the docket from Kosciusko County, 15 favored the Central Time Zone, 12 favored the Eastern Time Zone, and 21 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Southwest Counties

Petitioning

Sullivan

Sullivan County Commissioners petitioned to change to the Central Time Zone. Their letter stated, ''The Commissioners' concern is the unusually late sunrise would expose our school children and morning commuters to undue hazards. The extended darkness and winter weather conditions make a very dangerous combination.'' Sullivan County Commissioners Ray McCammon, Carter Phigly, and Chris Atkinson spoke at the Terre Haute public hearing in support of their petition.

Out of 43 comments submitted to the docket from Sullivan County, 7 favored the Central Time Zone, 30 favored the Eastern Time Zone, and 6 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Donny Morin, a Sullivan County resident, was a strong proponent of moving Sullivan County to the Central Time Zone. He listed a number of businesses that shared a ''close economic relationship with Illinois and Southwestern Indiana businesses.'' He also noted that ''[m]any people from the Sullivan County Community attend 1 or 6 nearby post secondary schools * * *. Of those six higher educational institutions, only three are or would be in the Eastern Time Zone.'' He also noted a similar split in health care. Of the four hospitals serving Sullivan County, two hospitals are in a county in the Eastern Time Zone, one is in Sullivan, and the other is in a county proposed to be in the Central Time Zone. He also commented on confusion in television broadcasting tornado warnings and the time zones in the affected areas. On the other hand, many commenters to the docket stated that Sullivan County residents noted that many residents work in Vigo County in the Eastern Time Zone and noted regional ties to Vigo.

Knox

Knox County Commissioners submitted a petition to move to the Central Time Zone based on a public hearing during which ''a majority of the citizens and businesses of Knox County favored adopting Central Daylight Savings Time'' and a unanimous vote by the Commissioners to adopt ''a Resolution calling for institution of Central Daylight Savings Time in Knox County.'' The attorney for the Knox County Board of Commissioners sent a letter with the petition, and the petition's accompanying exhibit enumerated the ways in which the shipment of goods, television broadcasts, newspapers, bus services, airports, and work patterns favor Knox County being located in the Central Time Zone.

The petition noted that Knox is located at the western edge of Indiana, bordering Illinois, which is in the Central Time Zone. To the south, Knox borders Gibson County, Indiana, which is also in the Central Time Zone. The Knox petition noted that Knox County residents were employed at the Toyota plant in Gibson County, ''creating time zone issues.'' As for social and civic activities, it noted that residents ''who leave the county for schooling, recreation, healthcare, or religious worship primarily go into the State of Illinois, or Gibson and Vanderburgh Counties in Indiana.'' These areas are located in the Central Time Zone.

As we noted in the NPRM, Knox provided information on their commuting patterns to the Central Time Zone, and reliance on Evansville for a majority of their communications and transportation services.

At the Jasper public hearing, Knox County Commissioners Beckwith and Bobe spoke in support of their petition.

Out of 27 comments filed by Knox County residents, 6 favored the Central Time Zone, 14 favored the Eastern Time Zone, and 7 either expressed no preference or said that Indiana should be on one time zone.

Daviess

The Daviess County Commissioners unanimously petitioned to move to the Central Time Zone. They stated that Daviess County residents shopped in Evansville in the Central Time Zone, and noted that the closest major airport was also located there. While they received television broadcasts from Evansville, they also received them from Terre Haute. The Commissioners noted that ''numerous citizens of Daviess County'' are employed in Gibson County in the Central Time Zone.

After DOT issued its notice that did not propose to move Daviess County to the Central Time Zone, Commissioner Wichman wrote to express his dismay and provided additional justification. He noted strong employment ties to other counties in the southwest region, including three major factories. He also said that Daviess County had close ties to Knox County because of ''a 4 year college, a large regional hospital and large retail outlets.''

Out of 10 comments submitted to the docket from Daviess County, 5 favored the Central Time Zone, 4 favored the Eastern Time Zone, and 1 expressed interest in keeping Indiana on the same time zone, expressing no preference. Knox County Commissioners spoke in support of moving Daviess County to the Central Time Zone at the Jasper public hearing.

Governor Daniels, addressing Southwest Indiana in his letter to the Department, wrote ''to fully preserve the unity of this natural region it is essential that you grant the petitions of the three remaining counties in this corner of the State'' and specifically noted Daviess County.

Martin

Martin County Commissioners submitted a petition to move to the Central Time Zone after stating that the Commission received ''general input from the citizens of Martin County and have been advised that inclusion in the Central Time Zone was preferred by a majority of those responding.'' The petition enumerated the ways in which the shipment of goods, television and radio broadcasts, local newspapers, airports, work patterns, major elements of the economy, outlets for higher education, and hospital services favor Martin County being located in the Central Time Zone, because the surrounding counties which impacted these matters were also petitioning to be moved into the Central Time Zone.

At the Jasper hearing, Martin County Commissioner Michael Dant emphasized workforce development and the importance of being in the same time zone as Martin County's surrounding counties as a reason to move Martin County to the Central Time Zone.

Out of 9 comments submitted to the docket from Martin County, 4 favored the Central Time Zone, 5 favored the Eastern Time Zone.

Both at the Jasper hearing and in a written submission to the docket, Martin County residents emphasized Martin County's connection to other counties in southwestern Indiana. For example, Justin Byrd emphasized Evansville's sphere of influence into the region by referring to its media range, air transportation, and cellular phone service.

Governor Daniels, addressing Southwest Indiana in his letter to the Department, wrote ''to fully preserve the unity of this natural region it is essential that you grant the petitions of the three remaining counties in this corner of the State'' and specifically noted Martin County.

Lawrence

In a letter to the Department, Lawrence County requested a change to the Central Time Zone. The County Commissioners made a geographic argument and noted ''every square foot of Indiana is located in the Central/ Standard Time Zone * * * '' In addition to their geographic position, the County Commissioners noted that the county receives media from Indianapolis and Louisville, both in the Eastern Time Zone. Transportation (bus and air) was mixed, with bus traffic to Indianapolis in the Eastern Time Zone and air service from airports in both the Eastern and Central Time Zones. As for commuting patterns, the letter stated that the ''majority of the residents who commute to other counties are primarily employed in the cities of Bloomington, Seymour, Indianapolis, Louisville, or Crane.'' These cities are in the Eastern Time Zone.

Two Lawrence County Commissioners spoke at the hearing in Jasper. While Lawrence County Commissioner David Flinn emphasized desire to move to the Central Time Zone to ensure the safe transportation of school children, his colleague on the Commission, Bill Spreen, emphasized that the State should be united.

Out of 8 comments submitted to the docket from Lawrence County, 5 favored the Central Time Zone and 3 favored the Eastern Time Zone.

Pike

The Pike County Commissioners petitioned for a change to the Central Time Zone, voting in favor of the petition by a 2–1 vote, emphasizing changing working patterns to the Central Time Zone and transportation services and television and radio broadcasts from the Central Time Zone. As we noted in the NPRM, based on the evidence presented, Pike County appears to be closely tied to Evansville for many goods, services, and activities.

Pike County Commissioner Dale Nalley expressed appreciation to the Department for proposing to move Pike County to the Central Time Zone and, stressing regional ties, also spoke in support of the Dubois County petition, saying that Pike and Dubois counties should be on the same time zones.

Out of 16 comments submitted to the docket from Pike, 8 favored the Central Time Zone, 5 favored the Eastern Time Zone, and 3 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Dubois

With a 2–1 vote, the Dubois County Commissioners petitioned to be moved to the Central Time Zone based on a public meeting, additional polls, and detailed information responding to DOT's questions. The Commissioners stated that the requested change of time zone ''was supported by 60% to 70% of the general public, by representatives of three local school districts, and by approximately 50% of local business and industry.'' The Commissioners stressed Dubois County's relationship with the Evansville region. In addition, the Commissioners submitted annual commuting data, Indiana Economic Development Corporation Regional Office data, and Indiana Workforce Development data emphasizing regional connections in support of their position.

Commissioner John Burger from Dubois County reported that Dubois submitted additional information to the docket. He provided detailed statistics on the number of newspaper subscribers in the county who preferred to receive their news from Evansville as opposed to Indianapolis. He also emphasized the connection of the counties in the region.

Out of 288 comments submitted to the docket from Dubois, 130 favored the Central Time Zone, 146 favored the Eastern Time Zone, and 12 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Knox County Commissioners Beckwith and Bobe spoke in support moving Dubois County to the Central Time Zone. In addition, Pike County Commissioner Dale Nalley spoke in support of the Dubois County petition, saying that Pike and Dubois counties should be on the same time zones.

Governor Daniels, addressing Southwest Indiana in his letter to the Department, wrote ''to fully preserve the unity of this natural region it is essential that you grant the petitions of the three remaining counties in this corner of the State'' and specifically noted Dubois County.

The President and General Manager of Holiday World & Splashin' Safari in Spencer County wrote in support of moving Dubois County to the Central Time Zone, based on the close economic ties to Perry, Spencer, and Pike Counties. He said that a time zone boundary between Spencer and Dubois counties would have a negative impact on visitors to the park and noted that 26% of seasonal employees commuted from Dubois County.

In a statement in support of the Dubois County petition, Paul O'Malley referred to the county's economic ties to southwest Indiana as ''illustrated by its inclusion in the southwestern regions of several economic and business related regions designated by the Indiana government.'' He noted that Dubois County is in Workforce Investment Region 11 as well as the Southwest Indiana Economic Development Region an Economic Growth Region 11. He also noted that Dubois County is in the Evansville District of the United States District Court for the Southern District of Indiana and that jurisdiction for residents of Dubois County in bankruptcy matters is also in Evansville, in the Central Time Zone. As for education, Mr. O'Malley stated that Dubois County school districts do not cross county lines. Referring to commuting patterns, he stated ''the number would overwhelmingly favor Central Time.''

Perry

Perry County Commissioners submitted a petition to move to the Central Time Zone with detailed information to illustrate how the change would ''serve the convenience commerce. The petition responded to the Department's request for information on how the change in time zone would impact economic, cultural, social, and civic activities and how time zone changes affect businesses, communication, transportation, and education. It discussed how the television broadcasts, newspapers, and work patterns favor Perry County being located in the Central Time Zone.

At the Jasper public hearing, Perry County was represented by attorney Christopher Goffinet who submitted a petition on behalf of the County. Emphasizing regional connections, he said it was ''very important'' for Perry and Dubois County to be on the same time zone because of the ''significant'' number of Perry County residents who work in Dubois County.

Out of 30 comments submitted to the docket from Perry County, 15 favored the Central Time Zone, 30 favored the Eastern Time Zone, and 4 expressed interest in keeping Indiana on the same time zone, expressing no preference.

West Central

Vermillion

Vermillion County Commissioners petitioned for a change from the Eastern Time Zone to the Central Time Zone based on a discussion during a regularly scheduled meeting of the Vermillion County Board of Commissioners where all speakers favored a change to the Central Time Zone. The petition summarized the reasons as follows: many people from Vermillion work in Illinois, travel there for medical treatments or for entertainment, use the airports in Illinois and get their radio and news from Illinois.

DOT preliminarily denied Vermillion County's petition. Vermillion County Commissioner Marrietta spoke at the hearing in favor of one time zone for the entire state and Vermillion County did not submit any additional information.

Of the 25 comments submitted to the docket from Vermillion County residents, 11 favored the Central Time Zone, based on media, transportation, employment and the economy, geography, and social reasons. Commenters noted that Vermillion County borders Illinois in the Central Time Zone. Ten Vermillion County residents favored the Eastern Time Zone, due to social, employment and economic reasons, and wanting to be on the same time zone as Vigo and Marion Counties. One commenter noted that Vigo is home to Indiana State University, Rose Hulman Institute of Technology, Ivy Tech, and St Mary's of the Woods and is ''a known retail hub in the area.'' Another Vermillion County resident, speaking at the Terre Haute public hearing, noted that she favored the Eastern Time Zone because the headquarters of the county's largest employer is in the Eastern Time Zone.

According to Work/Residence Patterns—A STATS Indiana Annual Commuting Trends Profile, the majority of workers commuting into and out of Vermillion County do so from the Eastern Time Zone. Furthermore, Vermillion County is in an economic growth, workforce, and commerce region with other counties in the Eastern Time Zone. As we noted in the NPRM, we have been reluctant to create ''islands of time'' by placing one county in a different time zone from all its neighboring counties in the State; we consider the affect on economic, cultural, social, and civic activities between neighboring counties in making decisions.

DOT Determination

Northwest

Based on the petitions, comments to the docket and at the public hearings, and an analysis of Indiana economic, workforce, transportation, and education regions and media/commerce data, DOT is relocating, for the convenience of commerce, Starke and Pulaski Counties from the Eastern Time Zone to the Central Time Zone. We are not changing the time zone boundaries of St. Joseph, Marshall, Fulton, White, Carroll, and Cass Counties. These 6 counties will remain in the Eastern Time Zone.

Starke addressed all the factors that we consider in these proceedings and made a convincing case that changing to the Central Time Zone would serve ''the convenience of commerce.'' Written comments from Starke County overwhelmingly supported moving the county to the Central Time Zone where it had previously been some years ago. We did not receive any additional information that would persuade us to change our initial determination to move Starke to the Central Time Zone.

In the NPRM, we did not propose to move Pulaski County to the Central Time Zone. Pulaski, however, has regional ties to Starke County, a county we are moving to the Central Time Zone. Although the County Commissioners did not submit additional information or data, the Director of the Pulaski County Community Development Commission presented information in support of the Central Time Zone that had not been previously provided by the County, including information about two major employers. Further, Pulaski has regional economic and workforce ties and business connections to counties already in the Central Time Zone. Those ties are enhanced by moving the time zone boundary for Pulaski County. A clear majority of the comments to the docket also supported a change to the Central Time Zone. For these reasons, we have determined that Pulaski County also be moved to the Central Time Zone.

St. Joseph County addressed all the factors that we consider in its petition and explained why changing to the Central Time Zone could serve ''the convenience of commerce.'' Of all the petitions received by DOT requesting a move from the Eastern Time Zone to the Central Time Zone, however, the petition from St. Joseph County was the most controversial and generated the most comment. One third of the 6000 comments to the docket addressed the St. Joseph County petition and more than 200 people attended the public hearing in South Bend, with over 150 presenting comments.

The written comments to the docket concerning the St. Joseph County petition were almost equally divided between supporting and opposing a change from the Eastern to the Central Time Zone. Those supporting a change cited the close ties of the county to Chicago and the Midwest and the fact that their neighboring counties to the west were all in the Central Time Zone. A representative of the South shore railroad complained that it was the only commuter railroad in the country that deals with two time zones for its schedule.

Significantly, a substantial number of those supporting a move to the Central Time Zone acknowledged that the surrounding counties to the east and south, Elkhart, Kosciusko, and Marshall, should also be moved to the Central Time Zone because of their close ties to St. Joseph County. Even though Elkhart and Kosciusko had not sought a change and DOT did not propose to move Marshall, these commenters urged that St. Joseph County be changed in hopes of ''forcing'' the other counties to move to the Central Time Zone.

On the other hand, a sizable number of commenters (40%) opposed moving St. Joseph County to the Central Time Zone citing the close ties of the Michiana area, including workforce districts and media markets as well as educational, recreational, and health care opportunities. Many of these commenters spoke about their frequent cross-county trips and trips between Indiana and lower Michigan for personal and business reasons, complaining that they would be made more difficult by changing the time zone boundary of only a single county. They feared that this would create problems for businesses and citizens alike. Indeed, one might characterize these commenters' view of moving only St. Joseph County as promoting the ''inconvenience of commerce'' rather than furthering the statutory goal ''for the convenience of commerce.''

We give substantial consideration to the views of local elected officials because the foundation of our time zone boundary proceedings rest upon their requests. We note that although the President of St. Joseph County signed the county petition, spoke in favor of it at the South Bend hearing, and subsequently submitted an additional letter of support to the docket, as a member of the Michiana Council of Governments (MACOG), she also made a motion to ''support the sending of a letter by the policy board to ask that the four county region all remain in the same time zone.'' In addition, a second St. Joseph County Commissioner submitted comments to the docket opposing a move to the Central Time Zone. Based on the conflicting views of the county commissioners in St. Joseph County and 2 local mayors and the information submitted showing St. Joseph's ties to the Michiana area including Elkhart and Kosciusko Counties that did not petition for a change, we believe that a time zone change, at this time, would not be for the convenience of commerce. DOT, therefore, is not changing the time zone boundary for St. Joseph County. St. Joseph County will remain in the Eastern Time Zone.

Fulton County in Northwest Indiana, bordered by 7 other Indiana counties, 5 in the Eastern Time Zone, and two to be moved to the Central Time Zone as a result of this final rule, petitioned for a change to the Central Time Zone. We did not find that the county petition provided sufficient information under the statutory standard to justify proposing the change. The County Commissioners did not provide any additional information in this proceeding. No commenters submitted sufficient evidence to warrant a change in time zones. Furthermore, neither regional ties nor commuting patterns would justify a change in the time zone at this time. Fulton County is located in an economic growth area with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for Fulton County. Fulton County will remain in the Eastern Time Zone.

Marshall County in Northwest Indiana, bordering 6 other Indiana counties, 4 in the Eastern Time Zone and two to be moved to the Central Time Zone as a result of this final rule, petitioned for a change to the Central Time Zone. We did not find that the county petition provided sufficient information under the statutory standard to justify proposing the change. The County Commissioners did not provide sufficient additional information in this proceeding. No commenters submitted sufficient evidence to warrant a change in time zones. Furthermore, neither regional ties nor commuting patterns would justify a change in the time zone, at this time. Marshall County is located in a regional workforce center, a commerce region, and a commerce/media region with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for Marshall County. Marshall County will remain in the Eastern Time Zone.

White County in Northwest Indiana, surrounded by 6 other Indiana counties, 4 in the Eastern Time Zone, one currently in the Central Time Zone, and one to be moved to the Central Time Zone as a result of this final rule, petitioned for a change to the Central Time Zone. We did not find that the county petition provided sufficient information under the statutory standard to justify proposing the change. The County Commissioners did not provide any additional information in this proceeding. No commenters submitted sufficient evidence to warrant a change in time zones. Furthermore, neither regional ties nor commuting patterns would justify a change in the time zone at this time. White County is located in a regional workforce center, a commerce region, and a commerce/media region with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for White County. White County will remain in the Eastern Time Zone.

Carroll County in Northwest Indiana, surrounded by 5 other Indiana counties, all in the Eastern Time Zone, petitioned for a change to the Central Time Zone. We did not find that the county petition provided sufficient information to justify proposing the change. In fact, some of the county's evidence, such as that relating to transportation patterns, pointed equally to Chicago and Indianapolis, and they conceded no significant time zone impact on the media. Neither the County Commissioners nor other commenters subsequently submitted sufficient evidence to warrant a change in time zones and neither regional ties nor commuting patterns would justify a change in the time zone at this time. Carroll County is located in a regional workforce center, a commerce region, and a commerce/media region with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for Carroll County. Carroll County will remain in the Eastern Time Zone.

Cass County in Northwest Indiana, surrounded by 5 other Indiana counties, all in the Eastern Time Zone, petitioned for a change to the Central Time Zone. We did not find that the county petition provided sufficient information to justify proposing the change. For example, the commuting patterns from STATS Indiana submitted by the Commissioners showed workers commuting into and out of Cass County as coming from and going to counties in the Eastern Time Zone. Neither the County Commissioners nor other commenters submitted sufficient evidence to warrant a change in time zones and neither regional ties nor commuting patterns would justify a change in the time zone at this time. Cass County is located in a regional workforce center, a commerce region, and a commerce/media region with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for Cass County. Cass County will remain in the Eastern Time Zone.

Central

Vermillion County in Central Indiana, on the Illinois border and surrounded by 3 other Indiana counties in the Eastern Time Zone, petitioned for a change to the Central Time Zone. We did not find that the county petition provided sufficient information to justify proposing the change. The County did not provide any additional information in the proceeding. No commenters submitted sufficient evidence to warrant a change in time zones and neither regional ties nor commuting patterns would justify a change in the time zone for the convenience of commerce at this time.

Vermillion County is closely aligned regionally with its neighboring counties Vigo and Parke. They share economic growth, workforce, commerce, transportation, and education regions defined by Indiana. As we noted in the NPRM, we have been reluctant to create ''islands of time'' by placing one county in a different time zone from all its neighboring counties in the State; we consider the effect on economic, cultural, social, and civic activities between neighboring counties in making decisions. DOT, therefore, is not changing the time zone boundary for

Vermillion County. Vermillion County will remain in the Eastern Time Zone.

Southwest

The following counties in Southwest Indiana petitioned DOT to be moved to the Central Time Zone: Sullivan, Knox, Pike, Daviess, Dubois, Martin, Lawrence, and Perry. DOT tentatively proposed to relocate the time zone boundary in Indiana to move Knox, Pike, and Perry Counties from the Eastern Time Zone to the Central Time Zone at the request of their County Commissioners. We tentatively proposed not to change the time zone boundary to move Sullivan, Daviess, Dubois, Martin, and Lawrence Counties from the Eastern Time Zone to the Central Time Zone. We noted that if additional information was provided that indicates that the time zone boundary should be drawn differently, either to include counties currently excluded or to exclude counties that are currently included in this proposal, we would make the change at the final rule stage of this proceeding.

Based on the comments submitted to the docket and made at the public hearings and an analysis of Indiana economic, workforce, transportation, education regions and media/commerce data, DOT is relocating, for the convenience of commerce, the time zone boundary to move Knox, Pike, Daviess, Dubois, Martin, and Perry Counties to the Central Time Zone. As described above in the summary of the hearings and comments to the docket, these six counties have strong regional ties to each other and Central Time Zone Counties. While Daviess, Dubois, Knox, Martin, and Perry border other Indiana counties in the Eastern Time Zone, their ties to those counties is not as strong as they are to each other and to other counties to their south, which are currently in the Central Time Zone. Along with Pike, these counties are located in the same workforce, commerce, transportation, and education regions designated by Indiana.

With regard to Sullivan and Lawrence Counties, also in the Southwest, we did not find that either county provided sufficient information to justify proposing the change. County Commissioners from both counties spoke at the public hearings; Sullivan County Commissioners spoke in Terre Haute and Lawrence County Commissioners spoke in Jasper. Neither county, however, provided sufficient additional information to justify a move to the Central Time Zone for the convenience of commerce.

Sullivan County is surrounded by 4 counties in Indiana and borders Illinois to the west. Prior to this proceeding, the four Indiana counties have been located in the Eastern Time Zone; this final rule will change the county to the south of Sullivan to the Central Time Zone. No commenters submitted sufficient evidence to warrant a change in time zones and neither regional ties nor commuting patterns would justify a change in the time zone at this time. Sullivan County is located in a regional workforce center and a commerce region with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for Sullivan County. Sullivan County will remain in the Eastern Time Zone.

Lawrence County is surrounded by 6 counties. Prior to this proceeding, all 6 have been located in the Eastern Time Zone; this final rule will change one of the counties on the western border of Lawrence to the Central Time Zone. No commenters submitted sufficient evidence to warrant a change in time zones and neither regional ties nor commuting patterns would justify a change in the time zone for the convenience of commerce at this time. Lawrence County is located in a regional workforce center, a commerce region, and a commerce/media region with bordering counties that are located in the Eastern Time Zone. DOT, therefore, is not changing the time zone boundary for Lawrence County. Lawrence County will remain in the Eastern Time Zone.

Conclusion

In our experience, time zone boundary changes can be extremely disruptive to a community and, therefore, should not be made without careful consideration. Our decision is based on the statutory standard ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce,'' which we define very broadly to include consideration of all the impacts upon a community of a change in its standard of time. Our decision is intended to minimize disruption and to allow communities to fully assess the impact of potential changes to the time zone boundaries of their neighbors and Daylight Saving Time observance beginning in April 2006. Governmental representatives are free to petition DOT in the future to make further changes to the time zone boundary.

Impact on Observance of Daylight Saving Time

As noted above, this time zone proposal does not affect the observance of Daylight Saving Time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2 a.m. on the first Sunday in April until 2 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance. Under recently enacted federal legislation, beginning in 2007, Daylight Saving Time will begin the second Sunday in March and end the first Sunday in November.

In 2006, Indiana will begin observing Daylight Saving Time throughout the State. Our decision does not change Indiana's decision to observe Daylight Saving Time statewide. However, as noted by many commenters, the effect of the Indiana legislature's action is that the State will no longer have a single statewide time for seven months of the year as it has had previously when the counties in the Eastern Time Zone did not observe Daylight Saving Time.

Regulatory Analysis & Notices

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule primarily affects individuals and their scheduling of activities. Although it would affect some small businesses, not-for-profits and, perhaps, a number of small governmental jurisdictions, we have not received comments asserting that our proposal, if adopted, would have had a significant impact on small entities.

Therefore, I certify under 5 U.S.C. 605(b) that this final rule does not have a significant economic impact on a substantial number of small entities. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better implement it.

Collection of Information

This final rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that impose unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule would not impose an unfunded mandate.

Taking of Private Property

This final rule does not result in a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 71

Time zones.

■ For the reasons discussed above, the Office of the Secretary amends Title 49 Part 71 to read as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

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

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

■ 2. Paragraphs (b) and (c) of § 71.5 are revised to read as follows:

§ 71.5 Boundary line between eastern and central zones.

(a) * * *

(b) *Indiana-Illinois.* From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of LaPorte County; thence southerly along the east line of LaPorte County to the north line of Starke County; thence east along the north line of Starke County to the west line of Mashall County; thence south along the west line of Marshall County and Fulton County to the north line of Cass County; thence west along the south line of Pulaski County to the east line of Jasper County; thence south along the east line of Jasper County to the south line of Jasper County; thence west along the south lines of Jasper and Newton Counties to the western boundary of the State of Indiana; thence south along the western boundary of the State of Indiana to the north line of Knox County; thence easterly along the north line of Knox, Daviess, and Martin Counties to the west line of Lawrence County; thence south along the west line of Lawrence, Orange, and Crawford Counties to the north line of Perry County; thence easterly and southerly along the north and east line of Perry County to the Indiana-Kentucky boundary.

(c) *Kentucky.* From the junction of the east line of Perry County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) lines of Taylor County and northeasterly along the east (southeast) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey and Pulaski Counties to the intersection with the western boundary of Wayne County; and then south along the western boundary of Wayne County to the Kentucky-Tennessee boundary.

* * * * *

Issued in Washington, DC on January 17, 2006.

Norman Y. Mineta,

Secretary.

[FR Doc. 06–563 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 011206I]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit for three previously designated restricted fishing days (RFD) should be adjusted. These General category RFDs are being waived to provide reasonable opportunity for utilization of the coastwide General

category BFT quota. Therefore, NMFS waives three RFDs scheduled for January 2006, and increases the daily retention limit from zero to two large medium or giant BFT on these previously designated RFDs.

DATES: Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the southern Atlantic season. NMFS has determined that the BFT General category daily retention limit for three of the previously designated RFDs should be adjusted as described in Table 1 to provide reasonable opportunity to utilize the coastwide General category BFT quota.

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Area	BFT Size Class Limit
Atlantic tunas General and HMS Charter/ Headboat (while fishing commercially)	January 20, 21, and 22, 2006	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. NMFS has taken multiple actions during the 2005 fishing year in an attempt to allow for maximum utilization of the General category BFT quota. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit (on non-RFDs), in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip, effective through January 31, 2006, inclusive, provided quota remained available and the fishery remained open. On November 9, 2005 (70 FR 67929), NMFS waived the previously designated RFDs for the month of November; on December 16, 2005 (70 FR 74712), NMFS waived previously designated RFDs for December 16–18, inclusive; on January 4, 2006 (71 FR 273), NMFS waived previously designated RFDs for December 31, 2005, and January 1, 2006, inclusive; and on January 9, 2006 (71 FR 1395), NMFS waived previously designated RFDs for January 7, 8, 13, 14, and 15, 2006. The daily retention limit for all the above dates was adjusted to two large medium or giant BFT to provide reasonable opportunity to harvest the coastwide quota.

On December 7, 2005 (70 FR 72724), NMFS adjusted the General category quota by conducting a 200 mt inseason quota transfer to the Reserve category, resulting in an adjusted General category quota of 708.3 mt. This action was taken to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with international and domestic mandates.

Catch rates in the BFT General category fishery have generally been low, the average catch rate for December 2005 and January 2006 is approximately 3.0 mt/day. Based on a review of dealer reports, daily landing trends, available quota, weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving three RFDs established for January 20, 21, and 22, 2006, and increasing the General category daily BFT retention limit on those RFDs is warranted to assist the fishery in accessing the available quota. Therefore, NMFS adjusts the General category daily BFT retention limits for January 20, 21, and 22, 2006, inclusive, to two large medium or giant BFT per vessel.

NMFS recognizes that although catch rates have continued to be low so far this season, they may increase rapidly, and to ensure equitable fishing opportunities in all areas and provide opportunities for a late winter General category BFT fishery, NMFS needs to carefully monitor and manage this fishery. Conversely, if catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

The intent of this current adjustment is to provide reasonable opportunity to utilize landings quota of BFT while maintaining an equitable distribution of fishing opportunities to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Monitoring and Reporting

NMFS selected the RFDs being waived after examining current fishing year catch and effort rates, previous fishing years' catch and effort rates, predicted weather patterns over the next week, and the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the Internet at *www.nmfspermits.com* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for, public comment on this action.

The regulations implementing the 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and

Sharks provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. New information shows that landing rates are low and predicted weather conditions are unfavorable for the upcoming open fishing days. Based on a review of recent information regarding the availability of BFT on the fishing grounds, dealer reports, daily landing trends, available quota, and weather conditions, NMFS has determined that this retention limit adjustment is warranted to increase access to available quota.

Delays in waiving the selected RFDs, and thereby not increasing the General category daily retention limit, would be contrary to the public interest. Such delays would adversely affect those General category vessels that would otherwise have an opportunity to harvest BFT on an RFD and would further exacerbate the problem of low catch rates. Limited opportunities to access the General category quota may have negative social and economic impacts to U.S. fishermen that depend on catching the available quota. For the General category, waiving of the selected RFDs needs to be done as expeditiously as possible for the General category participants to be able to use the waived RFDs to take advantage of the adjusted retention limits and plan accordingly.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., waives a number of RFDs, thus increasing the opportunity to retain more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: January 13, 2006.

John H. Dunnigan,

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

[FR Doc. 06–534 Filed 1–17–06; 2:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 011306A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

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

ACTION: Notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the 2006 A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2006 A season HLA limits established for area 542 and area 543 pursuant to the 2005 and 2006 harvest specifications for groundfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 17, 2006, until 1200 hrs, A.l.t., April 15, 2006.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Six vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels authorized to participate in the first HLA directed fishery in area 542 and/or in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 2443 Alaska Juris, FFP 3400 Alaska Ranger, and FFP 4093 Alaska Victory.

Vessels authorized to participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 3423 Alaska Warrior, FFP 3835 Seafisher, and FFP 3819 Alaska Spirit.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the A season HLA fisheries in area 542 and area 543.

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 679.22 and is exempt from review under Executive Order 12866.

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

Dated: January 13, 2006.

John H. Dunnigan,

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

[FR Doc. 06–533 Filed 1–17–06; 2:01 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 71, No. 13

Friday, January 20, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22697; Directorate Identifier 2004–SW–46–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC155B and B1 Helicopters; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document corrects a docket number in an NPRM that was published in the **Federal Register** on October 17, 2005 (70 FR 60244). The NPRM applies to Eurocopter France Model EC155B and B1 helicopters. The NPRM proposed to require inspecting an electrical cable bundle for wear and, if necessary, installing an airworthy cable bundle and modifying the routing of the electrical cable bundles.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On October 7, 2005, the FAA issued an NPRM to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to Eurocopter France Model EC155B and B1 helicopters. That NPRM proposed to require inspecting the wiring of panel 12 Alpha electrical (wiring) cable bundle for wear, and, if necessary, replacing any worn cable bundle, modifying the routing of the electrical wiring (MOD 0739C28), and replacing spreaders and spacers.

As published, that NPRM contains an incorrect docket number (FAA–2005–22696) throughout the preamble and the regulatory text. The correct docket number is FAA–2005–22697.

No other part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

Correction of Publication

Accordingly, the publication on October 17, 2005 of the proposed regulations, which is the subject of FR Doc. 05–20679, is corrected as follows:

§ 39.13 [Corrected]

(1) On page 60244, in the third column, in the paragraph that has the Agency numbers, change "Docket No. FAA–2005–22696" to read "Docket No. FAA–2005–22697".

(2) On page 60245, in the first column, in the first paragraph under Comments Invited, change "Docket No. FAA–2005–22696" to read "Docket No. FAA–2005–22697".

(3) On page 60246, in the first column, paragraph 2. of Part 39—Airworthiness Directives, change "Docket No. FAA–2005–22696" to read "Docket No. FAA–2005–22697".

Issued in Fort Worth, Texas, on January 12, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E6–623 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–150091–02]

RIN 1545–BB97

Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Prior to Levy; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document cancels a public hearing on proposed regulations relating to a taxpayer's right to a hearing before or after levy under section 6330 of the Internal Revenue Code of 1986.

DATES: The public hearing originally scheduled for January 19, 2006, at 10 a.m., is cancelled.

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

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on September 16, 2005 (70 FR 54687), announced that a public hearing was scheduled for January 19, 2006, at 10 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6330 of the Internal Revenue Code. The public comment period for these regulations expired on December 29, 2005.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, January 17, 2006, no one has requested to speak. Therefore, the public hearing scheduled for January 19, 2006 is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 06–535 Filed 1–17–06; 2:11 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 61

[Docket No. USMS 101]

RIN 1105–AB13

Supplement to Justice Department Procedures and Council on Environmental Quality Regulations To Ensure Compliance With the National Environmental Policy Act

AGENCY: United States Marshals Service, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to add Appendix E to Part 61 of the Department of Justice's regulations to ensure better compliance with the National Environmental Policy Act of 1969. The rule supplements existing Department procedures and regulations

of the Council on Environmental Quality and only pertains to internal procedures of the United States Marshals Service.

DATES: Comments must be submitted on or before March 21, 2006.

ADDRESSES: For matters relating to this proposed rule, written comments may be submitted to Joseph Band, Office of Chief Counsel, United States Marshals Service, Washington, DC 20002. Comments may also be submitted by fax to (202) 307–9456. To ensure proper handling, ''USMS Docket No. 101'' should be referenced on any correspondence. An electronic version of this proposed rule can be viewed at *http://www.regulations.gov.* Comments may also be submitted via e-mail to USMS at *env.regs@usdoj.gov* or by accessing the internet comment form found at *http://www.regulations.gov.* Any electronic comments should include ''USMS Docket No. 101'' in the subject box.

SUPPLEMENTARY INFORMATION:

Need for This Rule

This rule is needed so that the United States Marshals Service (USMS) can more fully comply with the National Environmental Policy Act of 1969 (NEPA). Under NEPA, Federal agencies are required to implement internal procedures to ensure proper environmental consideration of proposed USMS actions. The procedures, proposed by this rule, will promote the protection of the environment by minimizing the use of natural resources and by improving planning and decision-making processes to avoid excess pollution and environmental degradation.

Overview of the Standards That This Rule Proposes

In complying with and implementing NEPA, the USMS shall make efforts to produce clear and concise NEPA documents and increase administrative efficiency.

All NEPA documents, specifically Environmental Assessments (EAs) and Environmental Impact Statements (EISs), shall be analytical, clear, and concise. The documents shall focus on significant issues and shall be presented in plain language and in the standard format outlined in Appendix E. In order to reduce paperwork, EISs shall be limited to approximately 150 pages, or in unusually complex matters, 300 pages. To avoid duplicative work, NEPA documents shall, whenever possible, be prepared jointly with State and local governments and shall adopt, incorporate by reference, or combine existing USMS and other agencies' analyses, documentation, and/or other environmental reports.

The USMS shall make every effort to prevent and reduce delay. The USMS will follow the procedures outlined in the CEQ regulations including: (1) Integrating the NEPA process in the early stages of planning to ensure that decisions reflect environmental values and to head off potential conflicts and/or delays; (2) emphasizing interagency cooperation before the environmental analysis and documentation is prepared; (3) ensuring the swift and fair resolution of any dispute by designating a lead agency for any interagency projects; (4) employing the scoping process to distinguish the significant issues requiring consideration in the NEPA analysis; (5) setting deadlines for the NEPA process as appropriate for individual proposed actions; (6) initiating the NEPA analysis as early as possible to coincide with the agency's presentation of a proposal by another party; and (7) using accelerated procedures as described in the CEQ regulations for legislative proposals.

Proposed Implementation of Charges

Through this proposed rule, the USMS is revising its guidance, establishing policy, and assigning responsibilities for implementing the requirements of Section 102(2) of NEPA (42 U.S.C. 4321, *et seq.*), Executive Order 11514 of March 5, 1970, title ''Protection and Enhancement of Environmental Quality,'' and regulations of the CEQ (40 CFR parts 1500–1508).

This rule is intended to (1) Enhance the USMS' ability to comply with NEPA, related legal authorities, and Executive Orders; (2) allow non-significant program actions to be exempt from the requirement to prepare and EA or EIS; (3) focus NEPA analysis upon major federal actions significantly affecting the quality of the environment; (4) ensure public involvement in decision-making regarding environmental impact on local communities; and (5) reflect changes in the current USMS organizational structure. Development of these revised regulations has been orchestrated by USMS headquarters and district office personnel who represent the USMS' collective technical and managerial expertise in environmental quality and NEPA compliance. In addition to revising Part 61 by adding Appendix E, the USMS will provide guidance materials to district offices.

These proposed changes affect USMS internal procedures only. The USMS consulted with the CEQ during the development of this rule.

Regulatory Certifications

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget. This rule provides environmental benefits by ensuring the USMS' compliance with NEPA, which aims to minimize the use of natural resources and improve planning to avoid excess pollution and environmental degradation. Further, this rule only affects USMS internal procedures. Whatever costs that may result from this rule should be outweighed by the reduction in delay and excessive paperwork by improved procedures.

Executive Order 13132

This regulation only affects the internal procedures of the USMS and, accordingly, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Regulatory Flexibility Act

The Director of the USMS, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because this regulation only affects the internal procedures of the USMS.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure of $100,000,000 or more in any one year by state, local, and tribal governments, in the aggregate, or by the private sector, nor will it significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Environmental Impact

This proposed rule supplements CEQ regulations and provides guidance to USMS employees regarding procedural requirements for NEPA analysis and documentation activities. In accordance with NEPA, the rule implements procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). However, these procedures only provide internal guidance to assist USMS employees and do not serve to make the final determination of what level of NEPA analysis is required for any particular proposed action. The CEQ does not require agencies to prepare a NEPA analysis or document before establishing such procedures. *See Heartwood, Inc.* v. *U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000) (holding that establishing categorical exclusions does not require NEPA analysis and documentation). The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The USMS has consulted with the CEQ during the development of these categorical exclusions and is providing an opportunity for public review.

List of Subjects in 28 CFR Part 61

Environmental protection, Environmental impact statement.

Accordingly, for the reasons set forth in the preamble, part 61 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

1. The authority citation for part 61 continues to read as follows:

Authority: 28 U.S.C. 509; 5 U.S.C. 301; Executive Order 11911.

2. Appendix E to part 61 is added to read as follows:

Appendix E to Part 61—United States Marshals Service Procedures Relating to the Implementation of the National Environmental Policy Act

1. Authority. These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, *et seq.*, regulations of the Department of Justice (DOJ), 28 CFR part 61, *et seq.*, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, ''Protection and Enhancement of Environmental Quality,'' March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. Purpose. These provisions supplement existing DOJ and CEQ regulations and outline internal USMS procedures to ensure compliance with NEPA. The USMS, through these provisions, shall promote the environment by minimizing the use of natural resources and by improving planning and decision-making processes to avoid excess pollution and environmental degradation.

(a) The USMS's Environmental Assessments (EAs) and Environmental Impact Statements (EISs) shall be as concise as possible and EISs should be limited to approximately 150 pages in normal circumstances or 300 pages for proposals of unusual scope or complexity. The USMS shall, whenever possible, jointly prepare documents with state and local governments and, when appropriate, avoid duplicative work by adopting, or incorporating by reference, existing USMS and other agencies' analyses and documentation.

(b) In developing an EA or EIS, the USMS shall comply with CEQ regulations, observing that EAs and EISs should:

(1) Be analytic, rather than encyclopedic;

(2) Be written in plain language;

(3) Follow a clear, standard format in accordance with CEQ regulations;

(4) Follow a scoping process to distinguish the significant issues from the insignificant issues;

(5) Include a brief summary;

(6) Emphasize the more useful sections of the document, such as the discussions of alternatives and their environmental consequences, while minimizing the discussion of less useful background information;

(7) Scrutinize existing NEPA documentation for relevant analyses of programs, policies, or other proposals that guide future action to eliminate repetition;

(8) Where appropriate, incorporate material by reference, with citations and brief descriptions, to avoid excessive length; and

(9) Integrate NEPA requirements with other environmental review and consultation requirements mandated by law, Executive Order, or Department of Justice or USMS policy. When preparing an EA or EIS, the USMS shall require comments to be as specific as possible and when circulating a document where only minor changes have been made, only the changes to the draft should be attached, rather than the entire statement.

(c) To ensure compliance with NEPA, the USMS shall make efforts to prevent and reduce delay. The USMS will follow the procedures outlined in the CEQ regulations including:

(1) Integrating the NEPA process in the early stages of planning to ensure that decisions reflect environmental values and to head off potential conflicts and/or delays;

(2) Emphasizing interagency cooperation before the environmental analysis and documentation is prepared;

(3) Ensuring the swift and fair resolution of any dispute over the designation of lead agency;

(4) Employing the scoping process to distinguish the significant issues requiring consideration in the NEPA analysis;

(5) Setting deadlines NEPA process as appropriate for individual proposed actions;

(6) Initiating the NEPA analysis as early as possible to coincide with the agency's presentation of a proposal by another party; and

(7) Using accelerated procedures, as described in the CEQ regulations for legislative proposals.

3. Agency Description. The USMS is a federal law enforcement agency. The agency performs numerous law enforcement activities including judicial security, warrant investigations, witness protection, custody of individuals arrested by federal agencies, prisoner transportation, management of seized assets, and other law enforcement missions.

4. Typical Classes of USMS Actions.

(a) The general types of proposed actions and projects that the USMS undertakes are as follows:

(1) Operational concepts and programs, including logistics procurement, personnel assignment, real property and facility management, and environmental programs.

(2) Transfers or disposal of equipment or property.

(3) Leases or entitlement for use, to include donation or exchange.

(4) Federal contracts, actions, or agreements for detentions services. A detention facility may be a facility (A) owned and/or operated by a contractor or (B) owned and/or operated by a state or local government.

(5) General law enforcement activities that are exempt from NEPA analysis under CEQ regulation CFR 1508.18, that involve bringing judicial, administrative, civil, or criminal enforcement actions.

(b) Scope of Analysis

(1) Some USMS projects, contracts, and agreements may propose a USMS action that is one component of a larger project involving a private action or an action by a local or state government. The USMS NEPA analysis and document (*e.g.,* the EA or EIS) should address the impacts of the specific USMS activity and those portions of the entire project over which the USMS has sufficient control and responsibility to warrant federal review.

(2) The USMS has control and responsibility for portions of a project beyond the limits of USMS jurisdiction where the environmental consequences of the larger project are essentially products of USMS specific action, turning an otherwise non-federal project into a federal action.

(3) Sufficient control and responsibility for a facility is a site-specific determination based on the extent to which an entire project will be within the agency's jurisdiction and on other factors that determine the extent of Federal control and responsibility. As an example, for construction of a facility, other factors would include, but not be limited to, the length of the contract for construction or use of the facility, the extent of government control and funding in the construction or use of the facility, whether the facility is being built solely for Federal requirements, the extent to which the costs of construction or use will be paid with federal funds, the extent to which the facility will be used for non-federal purposes, and whether the project would proceed without USMS action.

(4) Some USMS projects, contracts, and agreements may propose a USMS action that is one component of a larger project involving actions by other Federal agencies. Federal control and responsibility determines whether the total Federal involvement of the USMS and other Federal agencies is sufficient to grant legal control over additional portions of the project. NEPA review would be extended to an entire project when the environmental consequences of the additional portions of the project are essentially products of Federal financing, assistance, direction, regulation, or approval. The USMS shall contact the other Federal agencies involved in the action to determine their respective roles (*i.e.,* as lead and cooperating agencies).

(5) Once the scope of analysis has been defined, the NEPA analysis for an action should include direct, indirect, and cumulative impacts on all Federal interests within the purview of NEPA. The USMS can, whenever practicable, incorporate by reference and rely upon the environmental analyses and reviews of other Federal, tribal, state, and local agencies.

5. Environmental Impact Statement (EIS).

(a) An EIS is a document required of Federal agencies for proposals significantly affecting the quality of the human environment that describes the positive and negative effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) will be published in the **Federal Register** as soon as practicable after a decision to prepare an EIS is made and before the scoping process is initiated. An EIS shall describe how alternatives considered in it, and the decisions based on it, will or will not achieve the goals of NEPA to prevent damage to the environment and promote human health. Additionally, an EIS shall describe how the USMS will comply with relevant environmental laws and policies. The format and content of an EIS are set out at 40 CFR part 1502. The USMS may prepare an EIS without prior preparation of an EA.

(b) A Record of Decision (ROD) will be prepared at the time a decision is made regarding a proposed that is analyzed and documented in an EIS. The ROD will state the decision, discuss the alternatives considered, and state whether all alternative practicable means to avoid or minimize environmental harms have been adopted, or if not, whey they were not. Where applicable, the ROD will also describe and adopt a monitoring and enforcement program for any mitigation.

(c) Actions that normally require preparing an EIS include:

(1) USMS actions that are likely to have a significant environmental impact on the human environment; or

(2) Construction of a major facility on a previously undisturbed site.

6. Environmental Assessment (EA).

(a) An EA is a concise public document that is prepared for actions that do not normally require preparation of an EIS, but do not meet the requirements of a Categorical Exclusion (CE). An EA serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or Finding of No Significant Impact (FONSI), aid in complying with NEPA when an EIS is not necessary, and facilitate preparation of an EIS when one is required. The EA results in either a determination that a proposed action may have a significant impact on the human environment and, therefore, requires further study in an EIS, or the issuance of a FONSI. The contents of an EA are described at 40 CFR 1508.

(b) A FONSI will include the EA or a summary of the EA. The FONSI will be prepared and made available to the public through means, as described in paragraph 9 of this Appendix, including publication in local newspapers and in the **Federal Register** for matters of national concern. The FONSI will be available for review and comment for 30 days prior to signature and the initiation of the action unless special circumstances warrant reducing the public comment period to 15 days. Implementing the action can proceed after consideration of public comments and the decision-maker signs the FONSI.

(c) Actions that normally require preparation of an EA include:

(1) Proposals to conduct an expansion of an existing facility;

(2) Awarding a contracting or entering into an agreement for new construction at a previously developed site or an expansion of an existing facility; or

(3) Projects or other proposed actions that are activities described in categorical exclusions, but do not qualify for a categorical exclusion because they involve extraordinary circumstances.

7. Categorical Exclusions (CE).

(a) CEs are certain categories of activities determined not to have individual or cumulative significant effects on the human environment and, absent extraordinary circumstances, are excluded from preparation of an EA or EIS under NEPA. Using CEs for such activities reduces unnecessary paperwork and delay. Such activities are not excluded from compliance with other applicable local, state, or federal environmental laws.

(b) Extraordinary circumstances must be considered before relying upon a CE to determine whether the proposed action may have a significant environmental effect. Any of the following circumstances preclude the use of a CE:

(1) The project may have effects on the quality of the environment that are likely to be highly controversial;

(2) The scope or size of the project is greater than normally experienced for a particular action described in subsection (c) below;

(3) There is potential for degradation, even if slight, of already-existing poor environmental conditions;

(4) A degrading influence, activity, or effect is initiated in an area not already significantly modified from its natural condition;

(5) There is a potential for adverse effects on areas of critical environmental concern or other protected resources including, but not limited to, threatened or endangered species or their habitats, significant archaeological materials, prime or unique agricultural lands, wetlands, coastal zones, sole source aquifers, 100-year-old flood plains, places listed, proposed, or eligible for listing on the National Register of Historic Places, natural landmarks listed, proposed, or eligible for listing on the National Registry of Natural Landmarks, Wilderness Areas or wilderness study areas, or Wild and Scenic River areas; or

(6) Possible significant direct, indirect, or cumulative environmental impacts exist.

(c) Actions that normally qualify for a CE include:

(1) Minor renovations or repairs within an existing facility, unless the project would adversely impact a structure listed in the National Register of Historic Places or is eligible for listing in the register.

(2) Facility expansion or construction of a limited addition to an existing structure or facility and new construction or reconstruction of a small facility on a previously developed site. The exclusion applies only if:

(i) The structure and proposed use comply with local planning and zoning and any applicable state or federal requirements; and

(ii) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings.

(3) Security upgrades of existing facility grounds and perimeter fences. This exclusion does not include such upgrades as adding lethal fences or major increases in height or lighting of a perimeter fence in a residential area or other area sensitive to the visual impacts resulting from height and lighting changes.

(4) Federal contracts or agreements for detentions services, including actions such as procuring guards for detention services or leasing bed space (which may include operational costs) from an existing facility operated by a state or a local government or a private correctional corporation.

(5) General administrative activities that involve a limited commitment of resources. Examples of such include: personnel actions or policy related to personnel issues, organizational changes, procurement of office supplies and systems, and commitment or reallocation of funds for previously reviewed and approved programs or activities.

(6) Change in contractor or federal operators at an existing contractor-operated correctional or detention facility.

(7) Transferring, leasing, maintaining, acquiring, or disposing of interests in land where there is no change in the current scope and intensity of land use, including management and disposal of seized assets pursuant to federal laws.

(8) Transferring, leasing, maintaining, acquiring, or disposing of equipment, personal property, or vessels that do not increase the current scope and intensity of USMS activities, including management and disposal of seized assets pursuant to Federal forfeiture laws.

(9) Routine procurement of goods and services to support operations and infrastructure that are conducted in accordance with Department of Justice energy efficiency policies and applicable Executive Orders, such as E.O. 13148.

(10) Routine transportation of prisoners or detainees between facilities and flying activities in compliance with Federal Aviation Administration Regulations. This only applies where the activity is in accordance with normal flight patterns and elevations for the facility and where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been the subject of a NEPA review.

(11) Lease extensions, renewals, or succeeding leases where there is no change in the intensity of the facility's use.

8. Responsibilities.

(a) The Director of the USMS, in conjunction with the Senior Environmental Advisor, possesses ultimate authority over the NEPA process.

(b) The Senior Environmental Advisor's duties include:

(1) Advising the Director or other USMS decision maker on USMS NEPA procedures and compliance.

(2) Supervising the Environmental Coordinator.

(3) Acting as NEPA liaison to CEQ for the Director and other USMS decision makers on important decisions outside the authority of the Environmental Coordinator.

(4) Consulting with CEQ regarding alternative NEPA procedures requiring the preparation of an EIS in emergency situations.

(5) Consulting with CEQ and officials of other federal agencies to settle agency disputes over the NEPA process, including designating lead and cooperating agencies.

(c) The USMS Environmental Coordinator will act as the agency's NEPA contact, and will be responsible for:

(1) Ensuring that adequate EAs and EISs are prepared at the earliest possible time; ensuring that decisions are made in accordance with the general policies and purposes of NEPA; verifying information provided by applicants; evaluating environmental effects; assuring that, when appropriate, EAs and EISs contain documentation from independent parties with expertise in particular environmental matters; and taking responsibility for the scope and content of EAs prepared by applicants. The Environmental Coordinator shall return EAs and EISs that are found to be inadequate.

(2) Ensuring that the USMS conducts an independent evaluation, and where appropriate, prepares a FONSI, a NOI, and/or a ROD.

(3) Coordinating the efforts for preparation of an EIS consistent with the requirements of the CEQ regulations at 40 CFR part 1502.

(4) Cooperating and coordinating planning efforts with other federal agencies.

(5) Providing for agency training on environmental matters.

(d) The agency shall ensure compliance with NEPA for cases where actions are planned by private applicants or other non-federal entities before federal involvement. The USMS, through the Environmental Coordinator, shall:

(1) identify types of actions initiated by private parties, state and local agencies and other non-federal entities for which agency involvement is reasonably foreseeable;

(2) Provide (A) full public notice that agency advice on such matters is available, (B) detailed written publications containing that advice, and (C) early consultation in cases where

agency involvement is reasonably foresseeable; and

(3) Consult early with appropriate Indian tribes, state and local agencies, and interested private persons and organizations on those projects in which USMS involvement is reasonably foreseeable.

(e) To assist in ensuring that all federal agencies' decisions are made in accordance with the general policies and purposes of NEPA, the USMS, through the Environmental Coordinator, shall:

(1) Comment within the specified time period on other federal agencies' EISs, where the USMS has jurisdiction by law regarding a project, and make such comments as specific as possible with regard to adequacy of the document, the merits of the alternatives, or both.

(2) Where the USMS is the lead agency on a project, coordinate with other federal agencies and supervise the development of and retain responsibility for the EIS.

(3) Where the USMS is a cooperating agency on a project, cooperate with any other federal agency acting as lead agency through information-sharing and staff support.

(4) Independently evaluate, provide guidance on, and take responsibility for scope and contents of NEPA analyses performed by contractors or applicants used by USMS. When the USMS is the lead agency, USMS will choose the contractor to prepare and EIS, require the contractor to execute a disclosure statement stating that the contractor has no financial or other interest in the outcome of the project, and participate in the preparation of the EIS by providing guidance and an independent evaluation prior to approval.

(5) Consider alternatives to a proposed action where it involves unresolved conflicts concerning available resources. The USMS shall make available to the public, prior to a final decision, any NEPA documents and additional decision documents or parts thereof addressing alternatives.

(6) Conduct appropriate NEPA procedures for the proposed action as early as possible for consideration by the appropriate decision-maker, and ensure that all relevant environmental documents, comments, and responses accompany the proposal through the agency review process for the final decision.

(7) Include as part of the administrative record relevant environmental documents, comments, and responses in formal rulemaking or adjudicatory proceedings.

(8) Where emergency circumstances require taking action that will result in a significant environmental impact, contact CEQ via the USMS Senior Environmental Advisor for consultation on alternative arrangements. Alternative arrangements will be limited to those necessary to control the immediate impacts of the emergency.

9. Public Involvement.

(a) In accordance with NEPA and CEQ regulations and to ensure public involvement in decision-making regarding environmental impact on local communities, the USMS shall also engage in the following procedures during its NEPA process:

(1) When preparing an EA, EIS, or FONSI, USMS personnel in charge of preparing the document will invite comment from affected federal, tribal, state, local agencies, and other interested persons, as early as the scoping process.

(2) The USMS will disseminate information to potentially interested or affected parties, such as local communities and Indian tribes, through such means as news releases to various local media, announcements to local citizens groups, public hearings, and posting signs near the affected area.

(3) The USMS will mail notice to those individuals or groups who have requested one on a specific action or similar actions.

(4) For matters of national concern, the USMS will publish notification in the **Federal Register** and will send notification by mail to national organizations reasonably expected to be interested.

(5) If a decision is made to develop an EIS, the USMS will publish a NOI in the **Federal Register** as soon as possible.

(6) The personnel in charge of preparing the NEPA analysis and documentation will invite public comment and maintain two-way communication channels throughout the NEPA process, provide explanations of where interested parties can obtain information on status reports of the NEPA process and other relevant documents, and keep public affairs officers at all levels informed.

(7) The USMS will establish a Web site to keep the public informed.

(8) During the NEPA process, responsible personnel will consult with local government and tribal officials, leaders of citizen groups, and members of identifiable population segments within the potentially affected environment, such as farmers and ranchers, homeowners, small business owners, minority and disadvantaged communities, and tribal members.

10. Scoping. Prior to starting the NEPA analysis, USMS personnel responsible for preparing either an EA or EIS shall engage in an early scoping process to identify the significant issues to be examined in depth, and to identify and eliminate from detailed study those issues which are not significant or which have been adequately addressed by prior environmental review. The scoping process should identify any other environmental analyses being conducted relevant to the proposed action, address timing and set time limits with respect to the NEPA process, set page limits, designate respective responsibilities among the lead and cooperating agencies, identify any other environmental review and consultation requirements to allow for integration with the NEPA analysis, and hold an early scoping meeting which may be integrated with other initial planning meetings.

11. Mitigation and Monitoring. USMS personnel, who are responsible for preparing NEPA analyses and documents, will consider mitigation measures to avoid or minimize environmental harm. EAs and EISs will consider reasonable mitigation measures relevant to the proposed action and alternatives. Paragraph 5(b) of this Appendix describes the requirements for documenting mitigation measures in a ROD.

12. Supplementing an EA or EIS. When substantial changes are made to a proposed action that are relevant to environmental concerns, a supplement will be prepared for an EA or a draft or final EIS. A supplement will also be prepared when significant new circumstances arise or new relevant information surfaces concerning and bearing upon the proposed action or its impacts. Any necessary supplement shall be processed in the same way as an original EA or EIS, with the exception that new scoping is not required. Any supplement shall be added to the formal administrative record, if such record exists.

13. Compliance with Other Environmental Statutes.

To the extent practicable, a NEPA document shall include information necessary to assure compliance with all applicable environmental statutes.

Dated: January 6, 2006.

John F. Clark,

Acting Director, United States Marshals Service.

[FR Doc. 06–517 Filed 1–19–06; 8:45 am]

BILLING CODE 4410–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 153

[0790–AH73]

Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Service Members, and Former Service Members

AGENCY: Department of Defense.

ACTION: Proposed rule; withdrawal.

SUMMARY: On December 22, 2005, The Department of Defense published another proposed rule in error. The rule should have been published as a final rule. This document withdraws that rule.

DATES: *Effective Date:* The proposed rule published at 70 FR 75998 is withdrawn, effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–696–4970.

SUPPLEMENTARY INFORMATION: The proposed rule for public comments was previously published on February 2, 2004 (69 FR 4890). Comments received were considered.

List of Subjects in 32 CFR Part 153

Courts, Intergovernmental relations, Military personnel.

Dated: January 13, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–527 Filed 1–19–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051202322–5322–01; I.D. 010506C]

RIN 0648–AU11

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Guam Longline Fishing Prohibited Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would amend the geographic coordinates that define the longline fishing prohibited area in waters of the U.S. Exclusive Economic Zone (EEZ) around Guam. This action is necessary to correct an error in one of the published coordinates. The intended effect of this action is to accurately implement the Guam longline closed area.

DATES: Comments on the proposed rule must be received by February 21, 2006.

ADDRESSES: You may submit comments on this proposed rule, identified by I.D. 010506C by any of the following methods:

- E-mail: *GuamCorrect@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ‘‘Guam longline correction.’’ Comments sent via e-mail, including all attachments, must not exceed a 10 megabyte file size.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 808–973–2941.
- Mail: William L. Robinson, Administrator,NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Robert Harman, Pacific Islands Region, NMFS, 808 944–2271.

SUPPLEMENTARY INFORMATION: Portions of the EEZ around Guam are closed to pelagic longline fishing to prevent conflicts with users of other types of fishing gear. In 1992, NMFS published in the **Federal Register** a final rule that created a 50–nm longline closed area around Guam (57 FR 45989, October 6, 1992); the regulations that were implemented by that final rule contained an error in the geographic coordinates for one of the points that define the closed area. NMFS published a technical amendment (59 FR 46933, September 13, 1994) that corrected those coordinates. NMFS subsequently published a rule that consolidated several sections of the Code of Federal Regulations (CFR) under 50 CFR 660 (61 FR 34570, July 2, 1996). In that rule, the geographic coordinates for the same point (Point ‘‘C’’) were inadvertently published with an error in 50 CFR 660.26(d). This proposed rule corrects the coordinates.

Classification

NMFS prepared a Final Environmental Impact Statement (EIS) and a supplemental EIS in 2001 and 2005, respectively. The EIS and supplement discuss the potential impacts on the environment as a result of pelagic longline fishing, and incorporate sea turtle conservation measures, protected species workshops, seabird deterrent measures in the Hawaii-based longline fishery, nearshore longline area closures around the islands of American Samoa, and more comprehensive pelagic fisheries monitoring through permit and logbook requirements for troll and handline fisheries in the U.S. EEZ around Pacific remote island areas.

This proposed rule does not contain any new, nor does it revise any existing, reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate or overlap or conflict with other Federal rules.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

The objective of the proposed action is an administrative correction of an error in the published geographic coordinates for one of the points that defines the longline closed area around Guam. The legal authority for this action is the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), which established authority for regulation of U.S. fisheries in the EEZ to prevent overfishing and achieve optimum yield from those fisheries. There are currently no vessels participating in the pelagic longline fishery around Guam, so there are no vessels that would be directly affected by this proposed rule. No small entities are placed in competitive disadvantage to larger entities. Because there are no current participants in the fishery, there will be no significant reductions in profitability for a substantial number of small entities in any user groups, and there will be no disproportionate impacts between gear types, vessels, or port of landing.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 13, 2006.

James W. Balsiger,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be correctly amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.26, revise the entry for Point C in the table in paragraph (d) to read as follows:

§ 660.26 Longline fishing prohibited area management.

* * * * *

(d) * * *

Point	N. lat.	E. long.
* * * * *		
C	13°41′	143°33′33″
* * * * *		

[FR Doc. E6–650 Filed 1–19–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 13
Friday, January 20, 2006

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 13, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Civil Rights Title VI—Collection Reports—FNS–191 and FNS–101.

OMB Control Number: 0584–0025.

Summary of Collection: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving Federal financial assistance. Title 28 of the Code of Federal Regulations (CFR), § 42.106(b), require all Federal Departments to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI. In order to comply with the Civil Rights Act, Department of Justice regulations and the Department's nondiscrimination policy and regulations (7 CFR Part 15), the Department's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of person receiving benefits from FNS food assistance programs. FNS will collect information using forms FNS 191 and FNS 101.

Need and Use of the Information: FNS will collect the names, address, telephone number, and number of clinics to compile a local agency directory which serves as the primary source of data on number and location for local agencies and number of clinics operating Commodity Supplemental Food Program (CSFP). FNS will also collect information on the number of CFSP individuals (women, infant, children, and elderly) in each racial/ethnic category for one month of the year. The information will be used in the Department's annual USDA Equal Opportunity Report. If the information is not collected FNS could not track racial/ethnic data for program evaluation.

Description of Respondents: State, local or tribal government.

Number of Respondents: 2,870.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 6,422.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–587 Filed 1–19–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee; Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Province Advisory Committee (OPAC) will meet on Friday, February 10, 2006. The meeting will be held at the Olympic National Forest Headquarters office, 1835 Black Lake Blvd., SW., Olympia, Washington. The meeting will begin at 9:30 a.m., and end at approximately 3 p.m.

The OPAC provides advice to facilitate successful implementation of the Northwest Forest Plan and better integrate forest management activities between Federal and non-Federal entities. Agenda topics are: 10 Year Report on the Northwest Forest Plan; 2005 Olympic National Forest Implementation Monitoring; Stewardship Contracting Update; Fisher Reintroduction; Open Forum; and Public Comments.

All Olympic Province Advisory Committee meetings are open to the public. A public comment period will be at 2:45 p.m., interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Karl Denison, Olympic National Forest Headquarters, 1835 Black Lake Blvd., SW., Olympia, WA 98512–5623, (360) 956–2306.

Dated: January 12, 2006.

Dale Hom,

Forest Supervisor.

[FR Doc. 06–506 Filed 1–19–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Flathead National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Flathead National Forest proposes to begin charging fees ranging between $65–$135 for the overnight rental of Wurtz Cabin and a $200–$300 fee for group use of Wurtz Cabin. Rentals of other cabins on the Flathead National Forest have shown that publics appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of Wurtz Cabin.

DATES: Wurtz Cabin will become available for rent June, 2006. Comments, concerns or questions about this new fee must be submitted by February 21, 2006.

ADDRESSES: Submit comments, concerns or questions about the new fee associated with the Wurtz Cabin rental to: Forest Supervisor, Flathead National Forest, 1935 3rd Avenue East, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Paula K. Peterson, Resource Assistant, 406–387–3818.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The intent of this notice is to give publics an opportunity to comment if they have concerns or questions about new fees.

The Flathead National Forest currently has ten other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of Wurtz Cabin has shown that people desire having this sort of recreation experience on the Flathead National Forest. A market analysis indicates that the nightly and group use fees are both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Wurtz Cabin will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: January 12, 2006.

Cathy Barbouletos,

Flathead National Forest Supervisor.

[FR Doc. 06–508 Filed 1–19–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Housing Application Packaging Grants.

DATES: Comments on this notice must be received by March 21, 2006 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South Building, Washington, DC 20250, Telephone 202–720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Title: Housing Application Packaging Grants.

OMB Number: 0575–0157.

Expiration Date of Approval: May 31, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) under section 509 of the Housing Act of 1949, 42 U.S.C. 1479, provides grants to public and private nonprofit organizations and state and local governments to package housing applications for loans under sections 502, 504, 514, 515, and 524 grants under section 533 of the Housing Act of 1949 in colonias and designated undeserved counties. RHS reimburses eligible organizations for part or all of the costs of conducting, administering and coordinating an effective housing application packaging program in colonias and designated underserved counties. Eligible organizations assist very low and low-income families that are without adequate housing to buy, build, or repair housing for their own use. Also, the organizations package applications for loans to buy, build or repair rental units for lower income families.

RHS will be collecting information from grantees to assure the organizations participating in this program are eligible entities and have participated in RHS training in application packaging. The respondents are nonprofit organizations, States, State agencies, and units of general local government. The information required for approval of housing application packaging grants is used by RHS personnel to verify program eligibility requirements. The information is collected at the RHS field office responsible for the processing of the application being submitted. The information is also used to ensure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, RHS would be unable to determine if a grantee would qualify for grant assistance.

The grantees facilitate the application process by helping applicants submit complete applications to RHS. This saves RHS time by prescreening applicants, making preliminary determinations of eligibility, ensuring that the application is complete, and helping the applicant understand the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.12 hours per response.

Respondents: Private and public nonprofit organizations and State and local governments.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 300.

Estimated Total Annual Burden on Respondents: 900 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimates of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

January 5, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–612 Filed 1–19–06; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposed Information Collection; Comment Request

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Committee is submitting to the Office of Management and Budget for their review the following collection as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Committee Form 403—Annual Certification—Qualified Nonprofit Agency Serving People Who Are Blind.

Committee From 404—Annual Certification—Qualified Nonprofit Agency Serving People Who Are Severely Disabled.

DATES: Interested persons are invited to submit comments about the collection on or before February 20, 2006. The agency's 60-day notice informing the public of the intent to renew this form with no changes was published in the **Federal Register** on November 18, 2005 on page 69932–69933.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Rachel F. Potter, OMB Desk Officer by any of the following two methods within 30 days from the date of publication in the **Federal Register**: (1) By fax to: (202) 395–6974, Attention: Rachel F. Potter, OMB Desk Office; and (2) Electronically by e-mail to: *Rachel_Potter@omb.eop.gov.*

Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Janet Yandik, Information Management Specialist, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or e-mailed to *jyandik@jwod.gov.*

SUPPLEMENTARY INFORMATION: The Committee has two annual certification forms, one for nonprofit agencies serving people who are blind (Committee Form 401, OMB Control Number 3037–0001) and one for nonprofit agencies primarily serving people who have other severe disabilities (Committee Form 404, OMB Control Number 3037–0002). The information included on the forms is required to ensure that nonprofit agencies that particpate in the Committee's program meet the requirements of the Javits-Wagner-O'Day Act (JWOD), 41 U.S.C. 46–48c. No comments were received in response to the agency's 60-day notice informing the public of the intent to renew this form with no changes published in the **Federal Register** on November 18, 2005 on page 69932–69933.

Title: Annual Certification—Qualified Nonprofit Agency Serving People Who Are Blind, Committee Form 403.

OMB Number: 3037–0001.

Agency Number: 3037.

Frequency: Annually.

Affected Public: Nonprofit agencies serving people who are blind that participate in the JWOD program.

Number of Respondents: 77.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 231.

Total Annual costs: $0.

Title: Annual Certification—Qualified Nonprofit Agency Serving People Who Are Severely Disabled, Committee Form 404.

OMB Number: 3037–0002.

Agency Number: 3037.

Affected Public: Nonprofit agencies serving people who are severely disabled that participate in the JWOD program.

Number of Respondents: 565.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 1695.

Total Annual costs: $0.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–638 Filed 1–19–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: February 19, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product 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 product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

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 product is proposed for addition to Procurement List for production by the nonprofit agency listed:

Product

Product/NSNs: Filter, Element Coalescer, 4330–00–983–0998.
NPA: New Ventures Enterprises, Inc., LaGrange, GA.
Contracting Activity: Defense Supply Center Columbus, Columbus, OH.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products 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 deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSNs: Pillowcase, Disposable, 7210–00–883–8494.
NPA: None currently authorized.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, TX.
Product/NSNs: Potatoes, White, Fresh, 8915–00–456–6111 (Whole), 8915–00–228–1945 (Diced).
NPA: Montgomery County Chapter, NYSARC, Inc., Amsterdam, NY.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–639 Filed 1–19–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Suspension of effective date.

In the document appearing on page 76234, FR Doc 05–7764, in the issue of December 23, 2005, in the first and second columns, the Committee published an effective date of January 22, 2006, for addition of the following service:

Service Type/Location: Basewide Custodial Services: U.S. Naval Academy Complex, Annapolis, Maryland.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contracting Activity: Naval Facilities Engineering Command, Chesapeake, Washington, DC.

The effective date for this service is suspended until further notice.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–640 Filed 1–19–06; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alaska State Advisory Committee in the Western Region will convene at 11 a.m. (PDT) and adjourn at 12 p.m., Thursday, January 26, 2006. The purpose of the conference call is to plan future activities and discuss on-going projects.

This conference call is available to the public through the following call-in number: 1–800–473–7796, access code number 46781981. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Wednesday, January 25, 2006.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, January 17, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 06–526 Filed 1–17–06; 12:00 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD DECEMBER 21, 2005 THROUGH JANUARY 13, 2006

Firm	Address	Date petition accepted	Product
M.M.D. Mountain Mold & Die, Inc.	127 River Bend Drive, Sevierville, TN 37876.	12/21/05	Injection molded and plastic parts, and steel machine parts.
Perfekt Punch Manufacturing Co.	1885 Holste Road, Northbrook, IL 60062.	1/5/06	Die components for the tool and die industry.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD DECEMBER 21, 2005 THROUGH JANUARY 13, 2006—Continued

Firm	Address	Date petition accepted	Product
M and H Machine Corporation	611 West Country Road E., Shoreview, MN 55126.	1/5/06	Precision-machined metal parts.
Fitzpatrick & Weller, Inc.	12 Mill Street, P.O. Box 490, Ellicottville, NY 14731.	1/5/06	Wood dimension products.
Naegle's Industrial Leather Machinery Co.	401 Irvine Street, Yoakum, TX 77995	1/5/06	Machinery for making leather products.
Lukas Confections, Inc.	231 W. College Avenue, York, PA 17405.	1/10/06	Milk caramel, toffee and taffy products.
Home, Inc.	500 W. 9th Street, Hermann, MO 65041.	1/11/06	Standard and custom metal cabinets.
Columbia Sewing Company, Inc.	201 W. University Street Magnolia, AR 71753.	1/13/06	Outdoor camouflaged coats and trousers.
Excellon Acquisitions, LLC	2451 Crenshaw Boulevard, Torrance, CA 90505.	1/13/06	Drilling equipment for printed circuit board industry.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Barry Bird,

Chief Counsel.

[FR Doc. E6–618 Filed 1–19–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112505C]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Eastern Tropical Pacific

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

ACTION: Notice; receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Scripps Institution of Oceanography (SIO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey in the Eastern Tropical Pacific from approximately March 3 to April 1, 2006. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to SIO to incidentally take, by harassment, small numbers of several species of marine mammals during the seismic survey.

DATES: Comments and information must be received no later than February 21, 2006.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.112505C@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 2, 2005, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a marine seismic survey in the Eastern Tropical Pacific during March-April, 2006. The purpose of the seismic survey is to collect the site survey data for a future Integrated Ocean Drilling Program (IODP) drilling transect (not currently scheduled). The proposed drilling program will study the structure of the Cenozoic equatorial Pacific by drilling an age-transect flowline along the position of the paleo-equator in the Pacific, targeting selected time-slices of interest where calcareous sediments have been preserved best. The seismic survey and respective drilling transect will span the early Eocene to Miocene equatorial Pacific. Recovered sediments will: (1) Contribute towards resolving questions of how and why paleo-productivity of the equatorial Pacific changed over time, (2) provide rare material to validate and extend the astronomical calibration of the geological time scale for the Cenozoic, (3) determine sea-surface and benthic temperature and nutrient profiles and gradients, (4) provide important information about the detailed nature of calcium carbonate dissolution (CCD) and changes in the CCD, (5) enhance understanding of bio- and magnetostratigraphic datums at the equator, as well as (6) provide information about rapid biological evolution and turn-over during times of climatic stress. As SIO's strategy also implies a paleo-depth transect, they also hope to improve knowledge about the reorganization of water masses as a function of depth and time. Last, SIO intends to make use of the high level of correlation between tropical sediment sections and seismic stratigraphy collected on the survey cruise to develop a more complete model of equatorial circulation and sedimentation.

Description of the Activity

The seismic survey will utilize one source vessel, the R/V *Roger Revelle*, which is scheduled to depart from Papeete, French Polynesia, on or about March 03, 2006 and will return to port in Honolulu, Hawaii, on or about April 01, 2006. The exact dates of the activity may vary by a few days because of weather conditions, repositioning, streamer operations and adjustments, airgun deployment, or the need to repeat some lines if data quality is substandard. The overall area within which the seismic survey will occur is located between approx. 20° N and 10° S, and between approx. 100° and 155° W. The survey will be conducted entirely in International Waters.

The R/V *Roger Revelle* will deploy a pair of low-energy Generator-Injector Guns (GI guns) as an energy source (each with a discharge volume of 45 in^3), plus a 450 m-long, 48-channel, towed hydrophone streamer. As the GI guns are towed along the survey lines, the receiving system will acquire the returning acoustic signals. The program will consist of approximately (approx.) 8,900 km (4,800 nm) of survey, including turns. Water depths within the study area are 3,900 to 5,200 m (12,800 to 16,700 ft). The seismic source will be operated along the single track line en route between piston-coring sites, where seismic data will be acquired on a small scale grid and cores will be collected. There will be additional operations associated with equipment testing, start-up, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

All planned geophysical data acquisition activities will be conducted by SIO under the direction of the scientists who have proposed the study. The scientists are Dr. Mitch Lyle of Boise State University, Drs. Neil Mitchell and Carolyn Lear of Cardiff University, and Dr. Heiko Palike of University of Southampton. The vessel will be self-contained and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the pair of GI guns, a Kongsberg Simrad EM–120 multibeam echosounder, a 3.5 kHz sub-bottom profiler, and passive geophysical sensors (gravimeter and magnetometer) will be operated continuously throughout the entire cruise.

Vessel Specifications

The R/V *Roger Revelle* is owned by the U.S. Navy Office of Naval Research (ONR) and operated by SIO under a charter agreement. The R/V *Roger Revelle* has a length of 83 m (273 ft), a beam of 16 m (53 ft), and a maximum draft of 5.2 m (17 ft). The ship is powered by two 3000 hp Propulsion General Electric motors and a 1180 hp retracting azimuthing bow thruster. Typical operation speed of approx. 13 km/h (7 knots) is used during seismic acquisition. When not towing seismic survey gear, the R/V *Roger Revelle* cruises at 22 km/h (12 knots) and has a maximum speed of 28 km/h (15 knots). It has a normal operating range of approx. 27780 km (15,000 nm).

The R/V *Roger Revelle* holds 22 crew plus 37 scientists and will also serve as the platform from which marine mammal observers will watch for marine mammals before and during GI gun operations.

Seismic Source Description

The R/V *Roger Revelle* will tow the pair of GI guns and a streamer containing hydrophones along predetermined lines. Seismic pulses will be emitted at intervals of 6–10 seconds. At a speed of 7 knots (13 km/h), the 6–10-s spacing corresponds to a shot interval of approx. 22–36 m (71–118 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the water, is 45 in^3. The larger (105 in^3) injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two 45 in^3 GI guns will be towed 8 m (26 ft) apart side by side, 21 m (69 ft) behind the R/V *Roger Revelle*, at a depth of 2 m (7 ft). Specifications for the GI guns are as follows.

The two GI guns discharge a total volume of approx. 90 in^3 and the dominant frequency components are 1–188 Hz. The source output (downward) is 7.2 bar-m (237 dB re 1 microPascal-m) at 0-peak (0-pk) and 14.0 bar-m (243 dB re 1 microPascal-m) at peak-peak (pk-pk). The nominal downward-directed source levels indicated above do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m from a hypothetical point source emitting the same total amount of sound as is emitted by the combined GI guns. The actual received level at any location in the water near the GI guns will not exceed the source level of the strongest individual source. In this case, that will be about 231 dB re 1 microPa-m peak, or 237 dB re 1 microPa-m pk-pk. Actual levels experienced by any organism more than 1 m from either GI gun will be significantly lower.

A further consideration is that the rms (root mean square) received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or pk-pk values normally used to characterize source levels of seismic sources. The measurement units used to describe seismic sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. A measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*, 1998, 2000a). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for a seismic source.

In 1998, scientists convened at the High Energy Seismic Sound (HESS) Workshop, reviewed the available science, and agreed on the received sound levels above which marine mammals might incur permanent tissue damage resulting in a permanent threshold shift (PTS) of hearing. Shortly thereafter, a NMFS panel of bioacousticians used the information gathered at the HESS workshop to establish the current Level A Harassement acoustic criteria for non-explosive sounds, 180 re 1 microPa-m (rms) for for cetaceans, and 190 re 1 microPa-m (rms) for pinnipeds. Since no data existed, linking Permanent Threshold Shift (PTS) in marine mammals to any particular sound level to attain these thresholds scientists took the level at which Temporary Threshold Shift (TTS) was generally predicted to occur (180 dB) and conservatively suggested that PTS could occur anywhere above that level. NMFS established the acoustic criteria for Level B Harassment (160 re 1 microPa-m (rms) for impulse noises, 120 re 1 microPa-m (rms) for non-impulse, continuous, industrial noises) based on the work of Malme *et al.*, 1984, who looked at the effects of anthropogenic noise on the migration of grey whales. NMFS uses the isopleths of these sound levels to estimate Level A Harassment and Level B Harassment take of marine mammals and to establish safety zones within which monitoring or mitigation measures must be applied.

Received sound levels have been modeled by the Lamont-Doherty Earth Observatory (L–DEO) for two 105 in^3 GI guns in relation to distance and direction from the source. The model does not allow for bottom interactions, and is most directly applicable to deep water (such as will be ensonified in this survey). Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 160, 180, and 190 dB re 1 microPa (rms) are predicted to be received are as follows: 160 dB out to 175 m (574 ft); 180 dB out to 54 m (177 ft); and 190 dB out to 17 m (56 ft). Because the model results are for the larger 105 in^3 GI guns, those distances are overestimates of the distances for the two 45 in^3 GI guns used in this study.

Empirical data concerning the 160- and 180-dB distances have been acquired based on measurements during the acoustic verification study conducted by L–DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that radii around the GI guns where the received level would be 180 dB re 1 microPa (rms) vary with water depth. Similar depth-related variation is likely in the 190 dB distances applicable to pinnipeds. The empirical data indicate that, for deep water (>1,000 m (3,281 ft)), the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). However, to be precautionary pending acquisition of additional empirical data, it is proposed that safety radii during seismic operations in the deep water of this study will be the values predicted by L–DEO's model. Therefore, the assumed 180- and 190-dB radii are 54 m (177 ft) and 17 m (56 ft), respectively.

Bathymetric Sonar

Along with the GI-gun operations, two additional acoustical data acquisition systems will be operated during much or all of the cruise. One of the instruments used to map the ocean floor will be the Kongsberg Simrad EM–120 multi-beam echosounder, which is commonly operated simultaneously with GI guns.

The nominal transmit frequency of the Kongsberg Simrad EM–120 is 12 kHz with an angular coverage sector of up to 150 degrees and 191 beams per ping. The transmit fan is split into several individual sectors with independent active steering according to vessel roll, pitch and yaw. This method places all soundings on a ‘‘best fit’’ to a line perpendicular to the survey line, thus ensuring a uniform sampling of the bottom and 100 percent coverage. The sectors are frequency coded (11.25 to 12.60 kHz), and are transmitted sequentially at each ping. Pulse length and range sampling rate are variable with depth for best resolution, and in shallow waters due care is taken to the near field effects. The ping rate is primarily limited by round trip travel time in water, up to a ping rate of 5 Hz in shallow water. A pulse length of 15 ms is typically used in deep water. The transmit fan is split into nine different sectors transmitted sequentially within the same ping. Using electronic steering, the sectors are individually tilted alongtrack to take into account the vessel's current roll, pitch and yaw with respect to the survey line heading. The manufacturer provided information to show relevant parameters for their multibeam echosounders. For the model EM–120, with a one degree beamwidth (BW), the pressure levels at a set of fixed distances are as follows: 211 dB at 1 m (2.9 ft); 205 dB at 10 m (29 ft); 195 dB at 100 m (287 ft); and 180 dB at 1,000 m (3,280 ft). Note that the pressure levels are worst case, i.e. on-axis and with no defocusing. For our purpose the on-axis direction is vertical from the ship to the sea floor. The pressure level for sound traveling off-axis will fall rapidly for a narrow beam (alongtrack for a multibeam echosounder). The level will reduce by 20 dB at a little more than twice the beamwidth, which is 1 degree for the system installed on R/V *Roger Revelle.* Acrosstrack, the pressure level will typically reduce by 20 dB for angles of more than 75–80° from the vertical. For multibeams which use sectorized transmission, such as most current Kongsberg Simrad systems, beam defocusing is applied in the central sector(s) in shallow waters which results in a more rapid reduction in the pressure level. There will be a similar reduction for the outer sectors in flat arrays, as used with the EM–120, due to the virtual shortening of the array width in these directions.

The pressure level at 1 m (2.9 ft) is less for the Kongsberg Simrad EM–120 multibeam echosounder (211 dB) than it is for the pair of GI guns (237 dB) used in this study. However due to the very narrow (1°) directivity of the beam, the distance from the transducer at which 180 dB re 1 microPa-m is encountered is larger (1,000 m (3,280 ft)) than that calculated for the GI guns (54 m (177 ft)). Conversely, the narrowness of the beam, the short pulse length, the ping rate, and the ship's speed during the survey greatly lessens the probability of exposing an animal under the ship during one ping of the multibeam echosounder, much less for multiple pings. Since the 1° beam of sound is directed downward from transducers permanently mounted in the ship's hull, the horizontal safety radius of 54 m (177 ft) for 180 dB established for the GI guns will encompass the entire area ensonified by the multibeam echosounder, as well, and marine mammals takes by the echosounder will be avoided through the mitigation measures discussed later.

Sub-Bottom Profiler

A sub-bottom profiler will also be used simultaneously with the GI guns to map the ocean floor. The Knudsen Engineering Model 320BR sub-bottom profiler is a dual frequency transceiver designed to operate at 3.5 and/or 12 kHz. It is used in conjunction with the multibeam echosounder to provide data about the sedimentary features which occur below the sea floor. The maximum power output of the 320BR is 10 kilowatts for the 3.5 kHz section and 2 kilowatts for the 12 kHz section (the 12 kHz section is seldom used in survey mode on R/V *Roger Revelle* due to overlap with the operating frequency of the Kongsberg Simrad EM–120 multibeam).

Using the Sonar Equations and assuming 100 percent efficiency in the system, the source level for the 320BR is calculated to be 211 dB re 1 microPa-m. In practice, the system is rarely operated above 80 percent power level. The pulse length for the 3.5 kHz section of the 320BR ranges from 1.5 to 24 ms, and is controlled automatically by the system.

Since the maximum attainable source level of the 320BR sub-bottom profiler (211 db re 1 microPa-m) is less than that of the pair of GI guns (237 dB re 1 microPa-m) to be used in this study and the sound produced by the sub-bottom profiler is directed downward from transducers permanently mounted in the ship's hull, the 54 m (177 ft) horizontal safety radius established for the GI guns will encompass the entire area ensonified by the multibeam echosounder, and marine mammals takes by the echosounder will be avoided through the mitigation measures discussed later.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses has been provided in the application and in previous **Federal Register** notices (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)). Reviewers are referred to those documents for additional information.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the R/V *Roger Revelle's* track from Papeete, French Polynesia to Honolulu, Hawaii and the associated marine mammals can be found in the SIO application and a number of documents referenced in the SIO application. In the proposed seismic survey region during the late winter and early spring months of 2006, 29 cetacean species are likely to occur including dolphins, small whales, tooth and baleen whales. Several of these species are listed under the U.S. Endangered Species Act (ESA) as endangered, including sperm whales, humpback whales, and blue whales; fin and sei whales may also occur in the proposed seismic program area. Information on the distribution of these and other species inhabiting the study area and the wider Eastern Tropical Pacific (ETP) has been summarized by several studies (e.g., Polacheck, 1987; Wade and Gerrodette, 1993; Ferguson and Barlow, 2001; Ferguson and Barlow 2003). Four species of pinnipeds (Guadelope fur seal (federally listed endangered under the ESA), northern elephant seal, South American sea lion, and California sea lion) could potentially be encountered during the proposed survey. However, impacts to pinnipeds are not anticipated due to the decreased likelihood of encountering them in very deep water, the relatively small area proposed to be ensonified, and the likely effectiveness of the proposed mitigation measures in such a small area. The species that may be impacted by this activity and their estimated abundances in the ETP are listed in Table 1.

The marine mammal populations in the proposed seismic survey area have not been studied in detail, but the region is included in the greater ETP, where several studies of marine mammal distribution and abundance have been conducted. The ETP is thought to be a biologically productive area (Wyrtki, 1966), and is known to support a variety of cetacean species (Au and Perryman, 1985).

Initial systematic studies of cetaceans in the ETP were prompted by the incidental killing of dolphins in the purse-seine fishery for yellowfin tuna, *Thunnus albacares*, in this area (Perrin 1968, 1969; Smith 1983; Wahlen, 1986; Wade, 1995). The main cetacean species that have been affected by the fishery include pantropical spotted dolphins (*Stenella attenuata*) and spinner dolphins (*S. longirostris*) (Smith, 1983). Short-beaked common dolphins (*Delphinus delphis*), striped dolphins (*S. coeruleoalba*), bottlenose dolphins (*Tursiops truncatus*), Fraser's dolphins (*Lagenodelphis hosei*), rough-toothed dolphins (*Steno bredanensis*), and short-finned pilot whales (*Globicephala macrorhynchus*) have also been killed in the fishery (e.g., Hall and Boyer, 1989). Dolphin mortality was high at the onset of the fishery (Allen, 1985). The average annual mortality from 1959 to 1972 was an estimated 347,082 dolphins (Wade, 1995). However, between 1973 and 1980, mortality dropped considerably (Allen, 1985). From 1986 to 1994, total annual mortality declined from approximately 130,000 to 4096 (Lennert and Hall, 1996). By 1995, annual mortality was 3300 (Hall, 1997), and in 1996, it was 2600 (Hall, 1998).

The center of the ETP is characterized by warm, tropical waters (Reilly and Fiedler, 1994). Cooler water is found along the equator and the eastern boundary current waters of Peru and California; this cool water is brought to the surface by upwelling (Reilly and Fiedler, 1994). The two different habitats are generally thought to support different cetacean species (Au and Perryman, 1985). Au *et al.* (1980 in Polacheck, 1987) noted an association between cetaceans and the equatorial surface water masses in the ETP, which are thought to be highly productive. Increased biological productivity has also been observed due to upwelling at the Costa Rica Dome (Wyrtki, 1964; Fiedler *et al.*,1991). Several studies have correlated these zones of high productivity with concentrations of cetaceans (Volkov and Moroz, 1977; Reilly and Thayer, 1990; Wade and Gerrodette, 1993). The ETP is also characterized by a shallow thermocline (Wyrtki, 1966) and a pronounced oxygen minimum layer (Perrin *et al.,* 1976; Au and Perryman, 1985). These features are thought to result in an ''oxythermal floor'' 20–100 m below the surface, which may cause large groups of cetaceans to concentrate in the warm surface waters (Scott and Cattanach, 1998).

In the application, many references are made to the occurrence of cetaceans in the Galapagos; however, for some species, abundance in the Galapagos can be quite different from that in the wider ETP (Smith and Whitehead, 1999). In addition, references to surveys in the ETP are also made. For example, Polacheck (1987) summarized cetacean abundance in the ETP for 1977–1980, although the season when surveys were carried out was not given. Polacheck (1987) calculated encounter rates as the number of schools sighted per 1,000 mi (1,609 km) surveyed. His encounter rates do not include any correction factors to account for changes in detectability of species with distance from the survey track line or the diving behavior of the animals. Wade and Gerrodette (1993) also calculated encounter rates for cetaceans (number of schools per 1,000 km surveyed) in the ETP, based on surveys between late July and early December from 1986 to 1990. Their encounter rates include a correction factor to account for detectability bias but do not include a correction factor to account for availability bias. Ferguson and Barlow (2001) calculated cetacean densities in the ETP based on summer/fall research vessel surveys in 1986–1996. Their densities are corrected for both detectability and availability biases. Ferguson and Barlow (2003) followed their 2001 report up with an addendum that estimated density and abundance with the respective coefficients of variation, whereas before some species and groups were pooled. Although species encounter rates and densities are generally given for summer/fall, the proposed seismic survey will be conducted in winter/spring 2006.

Potential Effects on Marine Mammals

Summary of Potential Effects of GI Gun Sounds

The effects of sounds from GI guns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and at least in theory temporary or permanent hearing impairment (Richardson *et al.*, 1995). Given the small size of the GI guns planned for the present project, effects are anticipated to be considerably less than would be the case with a large array of airguns. Both NMFS and SIO believe it very unlikely that there would be any cases of temporary or, especially, permanent hearing impairment. Also, behavioral disturbance is expected to be limited to animals that are at distances less than 510 m (1673 ft). A further review of potential impacts of airgun sounds on marine mammals is included in Appendix A of SIO's application.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. However, it should be noted that most of the measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than those planned for use in the present project.

Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the relatively small and low-energy GI gun source planned for use in this project, mammals are expected to tolerate being closer to this source than might be the case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data on this. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002c). Given the small source planned for use here, there is even less potential for masking of baleen or sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the GI guns to be used here. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds. Further information on masking effects may be found in Appendix A(d) of SIO's application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Disturbance is one of the main concerns in this project. In the terminology of the 1994 amendments to the MMPA, seismic noise could cause ''Level B'' harassment of certain marine mammals. Level B harassment is defined as ''* * * disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, it is difficult to know if the impacts of the change are significant to the individual, or the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals are most likely significant. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals were present within a particular distance of industrial activities, or exposed to a particular level of industrial sound, and assume that all of the animals within that area may have been disturbed.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, and bowhead whales, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, and small toothed whales. Most of those studies have concerned reactions to much larger airgun sources than planned for use in the present project. Thus, effects are expected to be limited to considerably smaller distances and shorter periods of exposure in the present project than in most of the previous work concerning marine mammal reactions to airguns.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix A of SIO's application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/ or interrupting their feeding and moving away. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 microPa (rms) range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4.5–14.5 km (2.4–7.8 nm) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies reviewed in the application have shown that some species of baleen whales, notably bowheads and humpbacks, at times show strong avoidance at received levels lower than 160–170 dB re 1 microPa (rms). Reaction distances would be considerably smaller during the present project, in which the 160 dB radius is predicted to be approx. 0.5 km (0.27 nm), as compared with several kilometers when a large array of airguns is operating.

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Malme *et al.*, 1984). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987). In any event, the brief exposures to sound pulses from the present small GI gun source are highly unlikely to result in prolonged effects in baleen whales.

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, systematic work on sperm whales is underway.

Seismic operators sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.,* Goold, 1996a; Calambokidis and Osmek, 1998; Stone, 2003). Similarly, captive bottlenose dolphins and beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002). However, the animals tolerated high received levels of sound (pk-pk level >200 dB re 1 microPa) before exhibiting aversive behaviors. With the presently-planned pair of GI guns, such levels would only be found within a few meters of the source.

There are no specific data on the behavioral reactions of beaked whales to seismic surveys. However, most beaked whales tend to avoid approaching vessels of other types (*e.g.*, Kasuya, 1986; Würsig *et al.*, 1998). There are increasing indications that some beaked whales tend to strand when naval exercises, including sonar operations, are ongoing nearby—see Appendix A of SIO's application. The strandings are apparently at least in part a disturbance response, although auditory or other injuries may also be a factor. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonars in operation during the above-cited incidents. There has been a recent (Sept. 2002) stranding of Cuvier's beaked whales in the Gulf of California (Mexico) when the L–DEO vessel *Maurice Ewing* was operating a large array of airguns (20 guns; 8,490 in^3) in the general area. This might be a first indication that seismic surveys can have effects similar to those attributed to naval sonars. However, the evidence with respect to seismic surveys and beaked whale strandings is inconclusive even for large airgun sources.

All three species of sperm whales have been reported to show avoidance reactions to standard vessels not emitting airgun sounds, and it is to be expected that they would tend to avoid an operating seismic survey vessel. There were some limited early observations suggesting that sperm whales in the Southern Ocean and Gulf of Mexico might be fairly sensitive to airgun sounds from distant seismic surveys. However, more extensive data from recent studies in the North Atlantic suggest that sperm whales in those areas show little evidence of avoidance or behavioral disruption in the presence of operating seismic vessels, (McCall Howard 1999; Madsen *et al.*, 2002c; Stone, 2003). An experimental study of sperm whale reactions to seismic surveys in the Gulf of Mexico has been done recently (Tyack *et al.*, 2003).

Odontocete reactions to large arrays of airguns are variable and, at least for small odontocetes, seem to be confined to a smaller radius than has been observed for mysticetes. Thus, behavioral reactions of odontocetes to the small GI gun source to be used here are expected to be very localized, probably to distances <0.5 km (<0.3 mi).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the small GI gun source that will be used. Visual monitoring from seismic vessels, usually employing larger sources, has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. Those studies show that pinnipeds frequently do not avoid the area within a few hundred meters of operating airgun arrays, even for arrays much larger than the one to be used here (*e.g.*, Harris *et al.*, 2001). However, initial telemetry work suggests that avoidance and other behavioral reactions to small airgun sources may be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinnipeds.

Additional details on the behavioral reactions (or the lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix A (e) of SIO's application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy regarding exposure of marine mammals to high-level sounds is that in order to avoid hearing impairment, cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB re1 microPa (rms), respectively (NMFS, 2000). Those criteria have been used in defining the safety (shutdown) radii planned for this seismic survey. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in Appendix A (f) of the application and summarized here:

• The 180-dB criterion for cetaceans is probably quite precautionary, *i.e.*, lower than necessary to avoid TTS, let alone permanent auditory injury, at least for delphinids;

• The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS; and

• The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Because of the small size of the GI gun source in this project (two 45 in^3 guns), along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the pair of GI guns (and multibeam echosounder), and to avoid exposing them to sound pulses that might cause hearing impairment (see Mitigation Measures). In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations (see above). In those cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, it is very unlikely that any effects of these types would occur during the present project given the small size of the source and the brief duration of exposure of any given mammal, especially in view of the planned monitoring and mitigation measures.

Temporary Threshold Shift (TTS)—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little information on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Finneran *et al.* (2002) compared the few available data that exist on sound levels and durations necessary to elicit mild TTS and found that for toothed whales exposed to single short pulses, the TTS threshold appears to be a function of the energy content of the pulse. Finneran used the available data to plot known TTS in odontocetes on a line depicting sound pressure level versus duration of pulse, and SIO used that line to estimate that a single seismic pulse received at 210 dB re 1 microPa (rms) (approx. 221–226 dB pk-pk) may produce brief, mild TTS in Odontocetes. If received sound energy is calculated from the sound pressure, a single seismic pulse at 210 dB re 1 microPa (rms) equates to several seismic pulses at received levels near 200–205 dB (rms). The L–DEO model indicates that seismic pulses with received levels of 200–205 dB would be limited to distances within a few meters of the small GI gun source to be used in this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. Richardson *et al.* (1995) compiled studies of the reactions of several species of baleen whales to seismic sound and found that baleen whales often show strong avoidance several kilometers away from an airgun at received levels of 150–180 dB. Given the small size of the source, and the likelihood that baleen whales will avoid the approaching airguns (or vessel) before being exposed to levels high enough to induce TTS, NMFS believes it unlikely that the R/V *Roger Revelle's* airguns will cause TTS in any baleen whales.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured. However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; cf. Au *et al.*, 2000).

A marine mammal within a radius of 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of 205 dB, and possibly more pulses if the mammal moved with the seismic vessel. As noted above, most cetaceans show some degree of avoidance of operating airguns. In addition, ramping up airgun arrays, which is standard operational protocol for large airgun arrays, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Even with a large airgun array, it is unlikely that the cetaceans would be exposed to airgun pulses at a sufficiently high level (180 dB) for a sufficiently long period (due to the tendency of baleen whales to avoid seismic sources) to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. The potential for TTS is much lower in this project due to the small size of the airgun array (past IHA's have authorized take of marine mammals incidental to the operation of seismic airguns with a total volume of up to 8,800 in^3 (L–DEO 20-gun array)) . With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. In this project, the anticipated 180-dB distance is <54 m (<155 ft), and the bow of the R/V *Roger Revelle* will be 106 m (304 ft) ahead of the GI guns. As noted above, the TTS threshold (at least for brief or intermittent exposures) is likely >180 dB. Thus, TTS would not be expected in the case of odontocetes bow riding during the planned seismic operations. Furthermore, even if some cetaceans did incur TTS through exposure to GI gun sounds, this would very likely be mild, temporary, and reversible.

As mentioned earlier, NMFS has established acoustic criteria to avoid permanent physiological damage that indicate that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 microPa (rms). The predicted 180 and 190 dB distances for the GI guns operated by SIO are <54 m (<155 ft) and <17 m (<49 ft), respectively (Those distances actually apply to operations with two 105 in^3 GI guns, and smaller distances would be expected for the two

45 in^3 GI guns to be used here.). These sound levels represent the received levels above which one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As mentioned previously in the toothed whale section, Finneran *et al.*'s (2000 and 2002) TTS data indicate that a small number of captive dolphins have been exposed to more 200 dB re 1 microPa (rms) without suffering from TTS, though NMFS believes that the sound levels represented by these studies of small numbers of captive animals may not accurately represent the predicted reactions of wild animals under the same circumstances. Scientists at NMFS are currently compiling and reanalyzing available information on the reactions of marine mammals to sound in an effort to eventually establish new acoustic criteria. However, NMFS currently considers the 160, 180, and 190 dB thresholds to be the appropriate sound pressure level criteria for non-explosive sounds.

Permanent Threshold Shift (PTS)—When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but NMFS assumes they are probably similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level 20 dB or more above that inducing mild TTS if the animal were exposed to the strong sound for an extended period, or to a strong sound with rather rapid rise time (Cavanaugh, 2000).

It is highly unlikely that marine mammals could receive sounds strong enough to cause permanent hearing impairment during a project employing two 45 in^3 GI guns. In the present project, marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, as they would probably need to be within a few meters of the GI guns for this to occur. Given the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. In fact, even the levels immediately adjacent to the GI guns may not be sufficient to induce PTS, especially since a mammal would not be exposed to more than one strong pulse unless it swam immediately alongside a GI gun for a period longer than the inter-pulse interval (6–10 s). Also, baleen whales generally avoid the immediate area around operating seismic vessels. Furthermore, the planned monitoring and mitigation measures, including visual monitoring, ramp ups, and shut downs of the GI guns when mammals are seen within the ''safety radii,'' will minimize the already-minimal probability of exposure of marine mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no proof that any of these effects occur in marine mammals exposed to sound from airgun arrays (even large ones), but there have been no direct studies of the potential for airgun pulses to elicit any of those effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the present project where the GI guns are small, the ship's speed is relatively fast (7 knots (13 km/h)), and for the most part the survey lines are widely spaced with little or no overlap.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at that frequency, the ensuing resonance could cause damage to the animal. A workshop (Gentry [ed.], 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. However, a short paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, that might occur if they ascend unusually quickly when exposed to aversive sounds. Even if that can occur during exposure to mid-frequency sonar, there is no evidence that that type of effect occurs in response to airgun sounds. It is especially unlikely in the case of this project involving only two small GI guns.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances and probably to projects involving large arrays of airguns. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur auditory impairment or other physical effects. Also, the planned mitigation measures, including shut downs, will reduce any such effects that might otherwise occur.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L–DEO seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Additional details may be found in Appendix A (g) of SIO's application.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and mortality NOAA and USN, 2001; Jepson *et al.*, 2003), even if only indirectly, suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In Sept. 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel *Maurice Ewing* was operating a 20-gun 8490 in^3 array in the general area. The link between this stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that plus the incidents involving beaked whale strandings near naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales. The present project will involve a much smaller sound source than used in typical seismic surveys. That, along with the monitoring and mitigation measures that are planned, are expected to minimize any possibility for strandings and mortality.

Possible Effects of Bathymetric Sonar Signals

A multibeam bathymetric echosounder (Kongsberg Simrad EM–120, 12 kHz) will be operated from the source vessel during much of the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for 5–15 ms at up to 5 Hz, depending on water depth. As compared with the GI guns, the sound pulses emitted by this multibeam echosounder are at moderately high frequencies, centered at 12 kHz. The beam is narrow (1°) in fore-aft extent, and wide (150°) in the cross-track extent.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the Kongsberg Simrad EM–120, (2) have a longer pulse duration, and (3) are directed close to horizontally, vs. downward, as for the multibeam echosounder. The area of possible influence of the Kongsberg Simrad EM–120 is much smaller—a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the EM–120 at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses.

Masking

Marine mammal communications will not be masked appreciably by the multibeam echosounder signals given the low duty cycle of the system and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. However, all of those observations are of limited relevance to the present situation. Pulse durations from those sonars were much longer than those of the SIO multibeam echosounder, and a given mammal would have received many pulses from the naval sonars. During SIO's operations, the individual pulses will be very short, and a given mammal would not be likely to receive more than a few of the downward-directed pulses as the vessel passes by unless it were swimming in the same speed and direction as the ship in a fixed position underneath the ship.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 s pulsed sounds at frequencies similar to those that will be emitted by the multibeam echosounder used by SIO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from a bathymetric echosounder.

NMFS is not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the R/V *Roger Revelle's* multibeam echosounder. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the multibeam sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals. NMFS (2001) concluded that momentary behavioral reactions ''do not rise to the level of taking.'' Thus, brief exposure of cetaceans or pinnipeds to small numbers of signals from the multibeam bathymetric echosounder system are not expected to result in a ''take'' by harassment.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the multibeam echosounder proposed for use by SIO is quite different than sonars used for navy operations. Pulse duration of the multibeam echosounder is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be exposed to the multibeam sound signal for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) Those factors would all reduce the sound energy received from the multibeam echosounder rather drastically relative to that from the sonars used by the Navy.

Possible Effects of Sub-Bottom Profiler Signals

A sub-bottom profiler will be operated from the source vessel much of the time during the planned study. Sounds from the sub-bottom profiler are short pulses of 1.5–24 ms duration. The triggering rate is controlled automatically so that only one pulse is in the water column at a time. Most of the energy in the sound pulses emitted by this sub-bottom profiler is at mid frequencies, centered at 3.5 kHz. The beamwidth is approx. 30° and is directed downward. Sound levels have not been measured directly for the sub-bottom profiler used by the R/V *Roger Revelle,* but Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 microPa-m). The 160 and 180 dB re 1 microPa (rms) radii, in the horizontal direction, were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the R/V *Roger Revelle* has a stated maximum source level of 211 dB re 1 microPa-m and a normal source level of 200 dB re 1 microPa-m. Thus the received level would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, again assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Masking

Marine mammal communications will not be masked appreciably by the sub-bottom profiler signals given its relatively low power output, the low duty cycle, directionality, and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most odontocetes, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the sub-bottom profiler are likely to be similar to those for other pulsed sources received at the same levels. Therefore, behavioral responses are not expected unless marine mammals are very close to the source, *e.g.*, within approx. 160 m (525 ft) below the vessel, or about 17 m (54 ft) to the side of a vessel.

NMFS (2001) has concluded that momentary behavioral reactions ''do not rise to the level of taking''. Thus, brief exposure of cetaceans to a few signals from the sub-bottom profiler would not result in a ''take'' by harassment.

Hearing Impairment and Other Physical Effects

Source levels of the sub-bottom profiler are much lower than those of the GI guns that are discussed above. Sound levels from a sub-bottom profiler similar to the one on the R/V *Roger Revelle* were estimated to decrease to 180 dB re 1 microPa (rms) (NMFS criteria for Level A harassment) at 8 m (26 ft) horizontally from the source, Burgess and Lawson 2000), and at approx. 18 m (59 ft) downward from the source. Because of the fact that the entire area to be ensonified by the sub-bottom profiler will be within the safety radius in which mitigation measures will be taken and because an animal would have to be directly beneath, close to, and traveling at the same speed and direction as the boat to be exposed to multiple pings above 180 dB, it is unlikely that the sub-bottom profiler will cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimated Take by Incidental Harassment for the Eastern Tropical Pacific Seismic Survey

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that would constitute Level B harassment, at most. The proposed mitigation measures are expected to minimize or eliminate the possibility of Level A harassment or mortality. It is difficult to make accurate, scientifically defensible, and observationally verifiable estimates of the number of individuals likely to be subject to low-level harassment by the noise from SIO's GI guns. There are many uncertainties in marine mammal distribution and seasonally varying abundance, and in local horizontal and vertical distribution; in marine mammal reactions to varying frequencies and levels of acoustic pulses; and in perceived sound levels at different horizontal and oblique ranges from the source. The best estimate of potential ''take by harassment'' is derived by converting the abundances of the affected species in Table 1 to per km abundances (even though most of the data used in this table were collected in different seasons than the SIO planned activity), and multiplying these abundances (for the appropriate region) by the area to be ensonified at levels greater than 160 dB (rms) (NMFS Level B harassment criteria). The area to be ensonified at levels greater than 160 dB is calculated using a 9-dB loss when converting from p-p to rms, and purely spherical spreading with no sea-surface baffling, which results in a swath width of 4.5 km (2.8 mi) (2.3 km (1.4 mi) either side of the survey vessel). The total area ensonified is derived by multiplying this width by the numbers of hours profiling on each leg, and by the 13 km/hr (7 mi/hr) average speed of the R/V *Roger Revelle* during the sea floor profiling. The total estimated ''take by harassment'' is presented in Table 1. Eleven species of odontocete whales, one species of mysticete whale, and no pinnipeds are expected to be harassed. No more than 0.72 percent of any stock is expected to be affected, and NMFS believes that this is a very small proportion of the eastern tropical Pacific population of any of the affected species.

Data regarding distribution, seasonal abundance, and response of pinnipeds to seismic sonar is sparse. While estimating numbers potentially vulnerable to noise harassment is difficult, NMFS believes the R/V *Roger Revelle* is unlikely to encounter significant numbers of any of the four pinniped species that live, for at least part of the year, in SIO's proposed survey area because of the decreased likelihood of encountering them in the very deep water, the relatively small area proposed to be ensonified, and the likely effectiveness of the proposed mitigation measures in such a small area.

The proposed SIO seismic survey in the Eastern Tropical Pacific Ocean will involve towing a pair of GI guns that introduce pulsed sounds into the ocean, along with simultaneous operation of a multi-beam echosounder and sub-bottom profiler. A towed hydrophone streamer will be deployed to receive and record the returning signals. No ''taking'' by harassment, injury, or mortality of marine mammals is expected in association with operations of the other sources discussed (bathymetric sonar or sub-bottom profiler), as produced sounds are beamed downward, the beam is narrow, and the pulses are extremely short.

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3–4 nm) and occasionally as far as 20–30 km (11–16 nm) from the source vessel when much larger airgun arrays have been used. Additionally, the numbers of mysticetes estimated to occur within the 160-dB isopleth in the survey area are expected to be low (4 or less, see Table 1). In addition, the estimated numbers presented in Table 1 are considered overestimates of actual numbers for two primary reasons. First, the estimated 160-radii used here are probably overestimates of the actual 160-radii at deep-water sites (Tolstoy *et al.*, 2004) such as the Eastern Tropical Pacific Ocean survey area. Second, SIO plans to use smaller GI guns than those on which the radii are based.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins and some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the proposed mitigation measures, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of their population sizes in the Eastern Tropical Pacific Ocean.

Larger numbers of delphinids may be affected by the proposed seismic study, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes.

Mitigation measures such as controlled speed, course alternation, look outs, non-pursuit, ramp ups, and shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions and minimize any effects on hearing sensitivity. Effects on marine mammals are expected to be short-term, with no lasting biological consequences anticipated.

Potential Effects on Habitat

The proposed GI gun operations will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activities will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not appear to result in any appreciable fish kill. Various experimental studies showed that airgun discharges caused little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on hearing, may occur to somewhat greater distances than previously thought (McCauley *et al*., 2000a,b, 2002, 2003). Even so, any injurious effects on fish would be limited to short distances. Also, many of the fish that might otherwise be within the injury radius likely would be displaced from the region prior to the approach of the GI guns through avoidance reactions to the passing seismic vessel or to the GI gun sounds as received at distances beyond the injury radius.

Short, sharp sounds can cause overt or subtle changes in fish behavior. Chapman and Hawkins (1969) tested the reactions of whiting (hake) in the field to an airgun. When the airgun was fired, the fish dove from 25 to 55 m (80 to 180 ft) and formed a compact layer. By the end of an hour of exposure to the sound pulses, the fish had habituated; they rose in the water despite the continued presence of the sound pulses. However, they began to descend again when the airgun resumed firing after it had stopped. The whiting dove when received sound levels were higher than 178 dB re 1 microPa (peak pressure) (Pearson *et al*., 1992).

Pearson *et al.* (1992) conducted a controlled experiment to determine effects of strong noise pulses on several species of rockfish off the California coast. They used an airgun with a source level of 223 dB re 1 microPa. They noted: startle responses at received levels of 200–205 dB re 1 microPa (peak pressure) and above for two sensitive species, but not for two other species exposed to levels up to 207 dB; alarm responses at 177–180 dB (peak) for the two sensitive species, and at 186–199 dB for other species; an overall threshold for the above behavioral response at approx. 180 dB (peak); an extrapolated threshold of approx. 161 dB (peak) for subtle changes in the behavior of rockfish; and a return to pre-exposure behaviors within the 20–60 min. after the exposure period.

In other airgun experiments, catch per unit effort (CPUE) of demersal fish declined when airgun pulses were emitted (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Skalski *et al*., 1992). Reductions in the catch may have resulted from a change in behavior of the fish. The fish schools descended to near the bottom when the airgun was firing, and the fish may have changed their swimming and schooling behavior. Fish behavior returned to normal minutes after the sounds ceased. In the Barents Sea, abundance of cod and haddock measured acoustically was reduced by 44 percent within 9 km (5 nm) of an area where airguns operated (Engås *et al*., 1993). Actual catches declined by 50 percent throughout the trial area and 70 percent within the shooting area. The reduction in catch decreased with increasing distance out to 30–33 km (16–18 nm), where catches were unchanged.

Other recent work concerning behavioral reactions of fish to seismic surveys, and concerning effects of seismic surveys on fishing success, is reviewed in Turnpenny and Nedwell (1994), Santulli *et al*., (1999), Hirst and Rodhouse, (2000), Thomson *et al*., (2001), Wardle *et al*., (2001), and Engås and Løkkeborg, (2002).

In summary, fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 microPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al*., 1992; Skalski *et al*., 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the GI guns are likely to dive or exhibit some other kind of behavioral response. That might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed survey would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching GI guns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the shock wave. They have an exoskeleton and no air sacs. Little or no mortality is expected. Many crustaceans can make sounds, and some crustaceans and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction probably would occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes. Furthermore, in the proposed project area, mysticetes are expected to be rare.

The effects of the planned activity on marine mammal habitats and food resources are expected to be negligible, as described above. A small minority of the marine mammals that are present near the proposed activity may be temporarily displaced as much as a few kilometers by the planned activity.

The proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations, since operations at the various sites will be limited in duration.

Potential Effects on Subsistence Use of Marine Mammals

There is no known legal subsistence hunting for marine mammals in the ETP near the survey area, so the proposed activities will not have any impact on the availability of the species or stocks for subsistence users.

Mitigation

For the proposed seismic survey in the ETP during March–April 2006, SIO will deploy a pair of GI guns as an energy source, with a total discharge volume of 90 in^3. The energy from the GI guns will be directed mostly downward. The small size of the GI guns to be used during the proposed study is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun array.

Received sound levels have been estimated by L–DEO in relation to distance from two 105 in^3 GI guns, but not two 45 in^3 GI guns. The radii around two 105 in^3 GI guns where received levels would be 180 and 190 dB re 1 microPa (rms) are small (54 and 17 m (155 ft and 45 ft), respectively), especially in the deep waters (>4,000 m (11,494 ft)) of the survey area. The 180 and 190 dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000).

Vessel-based observers will watch for marine mammals near the GI guns when they are in use. Proposed mitigation and monitoring measures for the seismic survey have been developed and refined in cooperation with NMFS during previous SIO seismic studies and associated EAs, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other SIO and L–DEO projects. The measures are described in detail below.

The number of individual animals expected to be approached closely during the proposed activity will be small in relation to regional population sizes. With the proposed monitoring, ramp-up, and shut-down provisions (see below), any effects on individuals are expected to be limited to behavioral disturbance. That is expected to have negligible impacts on the species and stocks.

The following subsections provide more detailed information about the mitigation measures that are an integral part of the planned activity.

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daytime GI gun operations and during any nighttime start ups of the GI guns. The observations will provide the real-time data needed to implement some of the key mitigation measures. When marine mammals are observed within, or about to enter, designated safety zones (see below) where there is a possibility of significant effects on hearing or other physical effects, GI gun operations will be shut down immediately. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during all periods while operating airguns and for a minimum of 30 min prior to the planned start of GI gun operations after an extended shut down.

SIO proposes to conduct nighttime as well as daytime operations. Observers dedicated to marine mammal observations will not be on duty during ongoing seismic operations at night. At night, bridge personnel will watch for marine mammals (insofar as practical at night) and will call for the GI guns to be shut down if marine mammals are observed in or about to enter the safety radii. If the GI guns are started up at night, two marine mammal observers will monitor marine mammals near the source vessel for 30 min prior to start up of the GI guns using (aft-directed) ship's lights and night vision devices.

Proposed Safety Radii

Received sound levels have been modeled by L–DEO for two 105 in^3 GI guns, but not for the 45 in^3 GI guns, in relation to distance and direction from the source. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 160, 180, and 190 dB re 1 microPa (rms) are predicted to be 510, 54, and 17 m (1466, 155, 49 ft), respectively. Because the model results are for the larger 105 in^3 GI guns, those distances are overestimates of the distances for the 45 in^3 GI guns used in this study.

Empirical data concerning the 160-, and 180-dB distances have been acquired based on measurements during the acoustic verification study conducted by L–DEO in the northern Gulf of Mexico from 27 May to 3 June 2003, using the larger 105 in^3 GI guns (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that radii around the GI guns where the received level would be 180 dB re 1 microPa (rms), the safety criteria applicable to cetaceans (NMFS, 2000), vary with water depth. Similar depth-related variation is likely in the 190 dB distances applicable to pinnipeds. Correction factors were developed for water depths 100–1,000 m (328–3,281 ft). The proposed survey will occur in depths 4,000–5,000 m (13,123–16,400 ft), so those correction factors are not relevant here.

The empirical data indicate that, for deep water (>1000 m (>3281 ft)), the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). However, to be precautionary pending acquisition of additional empirical data, it is proposed that safety radii during GI gun operations in deep water will be the values predicted by L–DEO's model. Therefore, the assumed 180– and 190–dB radii are 54 m (177 ft) and 17 m (56 ft), respectively.

The GI guns would be shut down immediately when cetaceans or pinnipeds are detected within or about to enter the appropriate 180-dB (rms) or 190-dB (rms) radius, respectively. The 180-; and 190-dB shut-down criteria are consistent with guidelines listed for cetaceans and pinnipeds, respectively, by NMFS (2000) and other guidance by NMFS.

Operational Mitigation Measures

In addition to marine mammal monitoring, the following mitigation measures will be adopted during the proposed seismic program, provided that doing so will not compromise operational safety requirements. Although power-down procedures are often standard operating practice for seismic surveys, they will not be used here because powering down from two GI guns to one GI gun would make only a small difference in the 180- or 190-dB radius, probably not enough to allow continued one-gun operations if a mammal came within the safety radius for two guns. Mitigation measures that will be adopted are

—Speed or course alteration;
—Ramp-up and shut-down procedures;
—Specific start-up measures for night operations;
—Operation of GI guns only in water greater than 3,000 m (8,621 ft) deep.

Speed or Course Alteration—If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect on the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the animal does not approach within the safety radius. If the animal appears likely to enter the safety radius, further mitigative actions will be taken, *i.e.*, either further course alterations or shut down of the GI guns.

Shut-down Procedures—If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the GI guns will be shut down before the animal is within the safety radius. Likewise, if a marine mammal is already within the safety radius when first detected, the GI guns will be shut down immediately.

GI gun activity will not resume until the animal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked, and bottlenose whales).

Ramp-up Procedures—A modified ''ramp-up'' procedure will be followed when the GI guns begin operating after a period without GI gun operations. The two GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the two GI guns will be maintained.

Night Operations—At night, vessel lights and/or night vision devices (NVDs) will be used to monitor the safety radius for marine mammals while airguns are operating. Nighttime start up of the GI guns will only occur in situations when the entire safety radius is visible for the entire 30 minutes prior to start-up.

Monitoring

SIO proposes to sponsor marine mammal monitoring during the present project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the Incidental Harassment Authorization. SIO's proposed Monitoring Plan is described here.

The monitoring work has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. SIO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

Either dedicated marine mammal observers (MMOs) or other vessel-based personnel will watch for marine mammals near the seismic source vessel during all daytime and nighttime GI gun operations. GI gun operations will be suspended when marine mammals are observed within, or about to enter, designated safety radii where there is a possibility of significant effects on hearing or other physical effects. At least one dedicated vessel-based MMO will watch for marine mammals near the seismic vessel during daylight periods with seismic operations, and two MMOs will watch for marine mammals for at least 30 min prior to start-up of GI gun operations. Observations of marine mammals will also be made and recorded during any daytime periods without GI gun operations. At night, the forward-looking bridge watch of the ship's crew will look for marine mammals that the vessel is approaching and execute avoidance maneuvers; the 180dB/190dB safety radii around the GI guns will be continuously monitored by an aft-looking member of the scientific party, who will call for shutdown of the guns if mammals are observed within the safety radii. Nighttime observers will be aided by (aft-directed) ship's lights and NVDs.

Observers will be on duty in shifts usually of no longer than two hours in duration. Use of two simultaneous observers prior to start up will increase the detectability of marine mammals present near the source vessel, and will allow simultaneous forward and rearward observations. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

Standard equipment for marine mammal observers will be 7 × 50 reticle binoculars and optical range finders. At night, night vision equipment will be available. The observers will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or GI gun power-down or shut-down.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially ''taken'' by harassment. It will also provide the information needed in order to shut down the GI guns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (*e.g.*, none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and GI gun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer when observers are off duty. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered, and by subsequent manual checking of the database. Those procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (GI gun shut down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A report will be submitted to NMFS within 90 days after the end of the ETP cruise, which is predicted to occur around 01 April, 2006. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

Endangered Species Act

Under section 7 of the ESA, the National Science Foundation (NSF) has begun consultation on this proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA. Preliminarily, NMFS believes that the only ESA listed species that may experience Level B Harassment is the sperm whale.

National Environmental Policy Act (NEPA)

In 2003, NSF prepared an Environmental Assessment (EA) for a marine seismic survey by the R/V *Maurice Ewing* in the Hess Deep Area of the Eastern Tropical Pacific Ocean. This EA addressed the potential effects of a much larger airgun array (10 airguns, total volume 3005 in^3) being operated in the same part of the ocean as is proposed for the R/V *Roger Revelle* in this application. NMFS has posted this EA on the NMFS Web site and solicits public comments regarding impacts to marine mammals with respect to this proposed IHA. NMFS will review the EA and the public comments on the IHA application and subsequently either adopt the existing EA or prepare its own NEPA document before making a determination on the issuance of an IHA. The aforementioned EA is available upon request or on the NMFS Web site (see **ADDRESSES**). Comments regarding impacts to marine mammals may be submitted by mail, fax, or e-mail (see **ADDRESSES**). All other comments should be addressed to SIO or the National Science Foundation.

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the ETP may result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by: (1) The likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within 15 m (41 ft) of the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

NMFS has preliminarily determined that small numbers of 12 species of cetaceans may be taken by Level B harassment. While the number of incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the estimated number of potential harassment takings is not expected to greater than 0.72 percent of the population of any of the stocks affected (see Table 1). In addition, the proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not be conducted in the same space and time as the hunts in subsistence whaling and sealing areas and will not adversely affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to SIO for conducting a low-intensity oceanographic seismic survey in the ETP, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

BILLING CODE 3510–22–P

Table 1. Species expected to be impacted by the seismic survey in the ETP, their estimated abundance in the area, and the estimated amount of takes by Level B Harassment expected to occur during the seismic survey in the ETP.

Species	Habitat	Abundance Estimate	Harrassmt. Estimate	Estimated % Stock Harass'd
Odontocetes				
Sperm whale* (*Physeter macrocephalus*)	Usually pelagic and deep seas	26,053	20	0.08
Pygmy sperm whale (*Kogia breviceps*)	Deeper waters off the shelf	N.A.	0	0
Dwarf sperm whale (*Kogia sima*)	Deeper waters off the shelf	11,200	145	1.29
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	20,000	0	0
Longman's beaked whale (*Indopacetus pacificus*)	Pelagic	N.A.	0	0
Pygmy beaked whale (*Mesoplodon peruvianus*)	Deep waters	25,300	0	0
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*)	Likely pelagic	25,300	0	0
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	25,300	182	0.72
Rough-toothed dolphin (*Steno bredanensis*)	Mostly pelagic	145,900	0	0
Bottlenose dolphin (*Tursiops truncatus*)	Coastal and oceanic	243,500	285	0.12
Pantropical spotted dolphin (*Stenella attenuata*)	Coastal and pelagic	2,059,100	3,424	0.17
Spinner dolphin (*Stenella longirostris*)	Coastal and pelagic	1,651,100	627	0.04
Striped dolphin (*Stenella coeruleoalba*)	Off the continental shelf	1,918,000	694	0.04
Short-beaked common dolphin (*Delphinus delphis*)	Continental shelf and pelagic waters	3,093,300	5,275	0.17
Pacific white-sided dolphin (*Lagenorhynchus obliquidis*)	Coastal waters	N.A.	0	0
Dusky Dolphin (*Lagenorhynchus obscurus*)	Coastal and continental shelf waters	N.A.	0	0
Fraser's dolphin (*Lagenodelphis hosei*)	Water deeper than 1000 m	289,300	808	0.28
Risso's dolphin (*Grampus griseus*)	Waters deeper than 1000 m	175,800	573	0.33
Melon-headed whale (*Peponocephala electra*)	Oceanic	45,400	0	0
Pygmy killer whale (*Feresa attenuata*)	Deep, pantropical waters	38,900	0	0
False killer whale (*Pseudorca crassidens*)	Pelagic	39,800	0	0
Killer whale (*Orcinus orca*)	Widely distributed	8,500	8	0.09
Short-finned pilot whale (*Globicephala macrorhynchus*)	Mostly pelagic	160,200	105	0.07
Mysticetes				
Humpback whale* (*Megaptera novaeangliae*)	Mainly near-shore waters and banks	N.A.	0	0
Minke whale (*Balaenoptera acutorostrata*)	Continental shelf, coastal waters	N.A.	0	0
Bryde's whale (*Balaenoptera edeni*)	Pelagic and coastal	13,000	4	0.03
Sei whale* (*Balaenoptera borealis*)	Primarily offshore, pelagic	N.A.	0	0
Fin whale* (*Balaenoptera physalus*)	Continental slope, mostly pelagic	N.A.	0	0
Blue whale* (*Balaenoptera musculus*)	Pelagic and coastal	1400	0	0

* Listed as Endangered under the Endangered Species Act

Dated: January 16, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–532 Filed 1–19–06; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120605B]

Vessel Monitoring Systems; Additional Approved Mobile Transmitting Units for Use in the Fisheries Off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery

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

ACTION: Notice; additional approval of vessel monitoring systems.

SUMMARY: This document provides notice of vessel monitoring systems (VMS) approved by NOAA for use by vessels participating in the Pacific Coast Groundfish Fishery and sets forth relevant features of the VMS.

ADDRESSES: To obtain copies of the list of NOAA-approved VMS mobile transmitting units and NOAA-approved VMS communications service providers, or information regarding the status of VMS systems being evaluated by NOAA for approval, write to NOAA Fisheries Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

To submit a completed and signed checklist, mail or fax it to NOAA Enforcement, 7600 Sand Point Way, Seattle, WA 98115, fax 206–526–6528. For more addresses regarding approved VMS, see the **SUPPLEMENTARY INFORMATION** section, under the heading VMS Provider Addresses. The public may acquire this notice, installation checklist, and relevant updates by calling 301–427–2300.

FOR FURTHER INFORMATION CONTACT: For current listing information contact Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation, activation checklists, and status of evaluations, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300; fax 301–427–2055. For questions regarding the checklist, contact Joe Albert, Northwest Divisional VMS Program Manager, NMFS Office for Law Enforcement, Northwest Division, phone 206–526–6135.

SUPPLEMENTARY INFORMATION:

I. VMS Mobile Transceiver Units

BOATRACS - Fisheries Mobile Communications Terminal with GPS

The Boatracs satellite communications VMS transmitting unit that meets the minimum technical requirements for the Pacific Coast Groundfish Fishery is the BOATRACS - FMTC/G. The address for the Boatracs distributor is provided under the heading VMS Provider Addresses.

The FMTC/G is an integrated GPS two-way satellite communications system, consisting of two major hardware components, the Mobile Communication Transceiver (MCT) and the Enhanced Display Unit (EDU). The MCT contains the antenna and integrated GPS that communicates with the satellite and contains the operating circuitry and memory. The EDU is a shock and splash-resistant display and keyboard unit consisting of, a liquid crystal display, keyboard, with adjustable contrast, brightness, and audible alerts. A backlight illuminates the display for night view. The EDU has message waiting, no signal, and audible message received indicators.

The MCT is 6.7 inches high by 11.4 inches wide and weighs 11 pounds. The base of the unit is 6.595 inches in diameter. The MCT draws approximately 2.3 amps of current from the power supply while transmitting and 1.2 amps when the vessel is idle.

The EDU is a hardened and splash proof keyboard display unit with a 15–line X 40–character screen that allows for both text and graphics. It is 12.72 inches wide by 9.3 inches long by 2.21 inches in depth, and weighs 3 pounds and is holster-mounted in the cabin.

II. Satellite Communication Services

The FMTC/G utilizes KU band geostationary satellite to provide two-way date services. The data satellite transmits and receives all two-way message traffic between the vessel and NMFS, Shore Office, Network Operations Center or third party. The Satellite is located 22,300 miles over the equator at 103° W. long. (south of Florida).

Boatracs operates a redundant NOC. This facility is online 24 hours a day, 365 days a year, including holidays. Customer service representatives are available to relay messages and provide customer service. The NOC is also the facility that allows for automatic boat-to-boat, boat-to-e-mail, boat-to-fax, and e-mail-to-boat service. Data on demand and information services are also provided by the NOC.

Boatracs contracts their satellite communication services from QUALCOMM Corporation of California. QUALCOMM offers 24x7, 365 days a year network support, and operates fully redundant earth stations in California and Nevada.

VMS units must be installed in accordance with vendor instructions and specifications. All installation costs are paid by the owner. The vessel owner is required to fax or mail the Activation Fax directly to NOAA Enforcement, 7600 Sand Point Way, Seattle, WA 98115, fax 206–526–6528.

The owner must confirm the FMTC/G operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on their first fishing trip requiring VMS. OLE does not regard the fishing vessel as meeting the requirements until position reports are automatically received. For confirmation purposes, owners must contact the NOAA Enforcement, 7600 Sand Point Way, Seattle, WA 98115, voice 206–526–6135, fax 206–526–6528.

III. VMS Provider Addresses

Boatracs corporate office address is 9155 Brown Deer Rd, Suite 8, San Diego, CA. 92121. The primary point of contact is Lauri Paul, Fisheries Market Segment Executive, e-mail *lpaul@boatracs.com*, direct telephone number (858)458–8113, and toll free (877)468–8722 ext 113. The alternate contact is David Brandos, e-mail *dbrandos@boatracs.com*, direct telephone number (858)458–8102, and toll free (877)468–8722 ext 102.

Dated: January 13, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–649 Filed 1–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Baltimore Harbor and Channels Dredged Material Management Plan and Final Tiered Environmental Impact Statement

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

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act, the U.S. Army Corps of Engineers (USACE), Baltimore District has prepared a Final

Tiered Environmental Impact Statement (FTEIS) and Dredged Material Management Plan (DMMP) to analyze dredged material placement for the Port of Baltimore for 20 years of maintenance and new work dredging. USACE is making the document available to the public through a Notice of Availability published in the **Federal Register**. The overall goal of the DMMP is to develop a plan to maintain, in an economically and environmentally sound manner, channels necessary for navigation for the Port of Baltimore, conduct dredged material placement in the most environmentally sound manner, and maximize the use of dredged material as a beneficial resource. The recommendations which will provide a minimum of 20 years of dredged material placement capacity for the Port of Baltimore are:

- Continued maintenance dredging of the Virginia channels and use of the existing open-water placement sites in Virginia (Dam Neck Open Water Placement; Rappahannock Shoal Deep Alternate Open Water Placement; and Wolf Trap Alternate Open Water Placement).
- Continued maintenance dredging of the Maryland channels and use of the existing sites in Maryland including Pooles Island Open Water Site, Hart-Miller Island Dredged Material Containment Facility (HMI DMCF), Cox Creek Confined Disposal Facility (CDF) (+36 ft dike height), and Poplar Island Environmental Restoration Project (PIERP).
- Multiple confined disposal facilities for harbor material in Patapsco River.
- PIERP Expansion in Talbot County, Maryland.
- Large Island Restoration in Middle Chesapeake Bay, Maryland.
- Wetland Restoration in Dorchester County, Maryland.
- Continue to pursue opportunities to innovatively use dredged material.

ADDRESSES: U.S. Army Corps of Engineers, Baltimore District, Attn: Mr. Mark Mendelsohn, Planning Division, P.O. Box 1715, Baltimore, MD 21203–1715, or electronically to *Mark.Mendelsohn@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Mendelsohn, Biologist, USACE, Baltimore District, Planning Division, (410) 962–9499 or (800) 295–1610.

SUPPLEMENTARY INFORMATION: A key mission of the U.S. Army Corps of Engineers is to provide safe, reliable, and efficient waterborne transportation systems (channels, harbors, and waterways) for movement of commerce, national security needs, and recreation. Accomplishing this successfully requires dredging of channels to adequately meet the needs of waterborne transportation. Operating and maintaining the nation's harbors and waterways, which includes the placement and/or management of dredged material, is an increasingly challenging task. USACE continues its priority mission to plan and implement sound management of dredged materials.

Since 1824, the USACE Baltimore District has been actively involved in constructing and maintaining a system of channels to allow large, deep-draft commercial shipping vessels to call on the Port of Baltimore. In addition to the shipping channels, a number of anchorage areas were established within the Port of Baltimore for vessels requiring layover. The existing project for the Baltimore Harbor and Channels was authorized by the River and Harbor Act of August 8, 1917 and was modified by the River and Harbor Acts of January 1927, July 1930, October 1940, March 1945, July 1958, and December 1970. The USACE *Engineering Regulation (ER) 1105–2–100* mandates that the USACE Districts develop a DMMP for all federally maintained navigation harbor projects where there is an indication of insufficient placement capacity to accommodate maintenance dredging for the next 20 years. The DMMP is a planning document that ensures maintenance-dredging activities are performed in an environmentally acceptable manner, use sound engineering techniques, and are economically justified. A DMMP addresses a full range of placement alternatives, leading to the selection of a final plan that ensures that sufficient placement capacity is available for the next 20 years.

The DMMP for the Baltimore Harbor and Channels project has been developed using a consistent and logical procedure by which dredged material management alternatives have been identified, evaluated, screened, and recommended so that dredged material placement operations are conducted in a timely, environmentally sensitive, and cost-effective manner.

A Notice of Intent to prepare and Environmental Impact Statement was published in the **Federal Register** in May 2002 and scoping meetings were held in June 2002. The public was invited to provide oral comments at the scoping meetings and to submit additional comments to the Baltimore District. The Draft TEIS was distributed to the public on February 9, 2005. Two public meetings on the Draft TEIS were held in March 2005. All persons and organizations that have an interest in the DMMP were urged to participate in one or both meetings.

The Final TEIS may be viewed on the Baltimore District's Web page at *http://www.nab.usace.army.mil/projects//DMMP/index.html.* USACE has distributed copies of the TEIS to appropriate members of Congress, State and local government officials, Federal agencies, and other interested parties. Copies are available for public review at the following locations:

(1) Queen Anne's Public Library, Stevensville Branch, 200 Library Circle, Stevensville, MD 21666.

(2) Baltimore County Public Library, 1110 Eastern Boulevard, Baltimore, MD 21221.

(3) Anne Arundel County Public Library, 1410 West Street, Annapolis, MD 21401.

(4) St. Mary's County Public Library, 23250 Hollywood Road, Leonardtown, MD 20650.

(5) Somerset County Public Library, 11767 Beachwood St., Princess Anne, MD 21853.

(6) Dorchester County Public Library, 303 Gay Street, Cambridge, MD 21613.

For information on this document or to obtain copies, please contact Mr. Mark Mendelsohn (see **ADDRESSES**).

The Final TEIS has been prepared in accordance with (1) The National Environmental Policy Act (NEPA) of 1969, 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), and (3) USACE regulations implementing NEPA (ER–200–2–2). A record of decision (ROD) for this project will not be signed until at least 30 days from the date of EPA's notice of availability publication in the **Federal Register**.

Mark Mendelsohn,

Biologist, Baltimore District, USACE.

[FR Doc. 06–484 Filed 1–19–06; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for the Draft 2006 Supplemental Environmental Assessment to the 2002 Rim of the Pacific Programmatic Environmental Assessment, Hawaii

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy

Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR, Parts 1500–1508) implementing the procedural provisions of NEPA, the United States Department of the Navy (Navy) gives notice that a draft Supplement to the Programmatic Environmental Assessment (Supplemental PEA) has been prepared to evaluate the environmental impacts associated with implementation of the 2006 Rim of the Pacific (RIMPAC) exercises. RIMPAC 2006 is scheduled to be conducted from about June 26 to July 28, 2006. The United States National Marine Fisheries Service (NMFS), National Atmospheric and Oceanic Administration (NOAA), Department of Commerce, is a cooperating agency in the preparation of this draft Supplemental PEA.

DATES: Written comments on the draft EA are requested not later than February 21, 2006. Comments should be specific as possible. Comments should be mailed to: Commander, U.S. Pacific Fleet (N01CE1), 251 Makalapa Drive, Pearl Harbor, HI 96860. For additional information, write to the above address or call Pacific Fleet Environmental Office at 808-474–7836.

ADDRESSES: Copies of the Supplemental PEA addressing the proposed action are available by written request to the above address. Copies of the draft Supplemental PEA are also available for public review at the project Web site at *http://www.smdcen.us/rimpac06/.* In addition, the document may be reviewed at the following locations:

1. Wailuku Public Library, 251 High Street, Wailuku, HI 96793 (Maui).
2. Hilo Public Library, 300 Waianaenue Avenue, Hilo, HI 96720.
3. Hawaii State Library, Hawaii and Pacific Section Document Unit, 478 South King Street, Honolulu, HI 96813 (Oahu).
4. Lihue Public Library, 4344 Hardy Street, Lihue, HI 96766 (Kauai).

FOR FURTHER INFORMATION CONTACT: Pacific Fleet Environmental Office at 808–474–7836 or write to Commander, U.S. Pacific Fleet (N01CE1), 251 Makalapa Drive, Pearl Harbor, HI 96860.

SUPPLEMENTARY INFORMATION: RIMPAC has been conducted at various locations throughout the State of Hawaii and surrounding ocean areas biennially for the last 36 years. The purpose of RIMPAC is to implement a selected set of exercise activities that are combined into a multinational, sea control/power projection Fleet training exercise in a multi-threat environment. RIMPAC exercises enhance the abilities of a multinational Fleet force to communicate and operate in simulated hostile scenarios. In 2002, a Programmatic EA (PEA) was prepared in support of the RIMPAC exercises. The PEA identified the Proposed Action as the set of exercises and locations that would be used for RIMPAC activities for the foreseeable future. It identified the maximum usage of ongoing training assets and exercises that could be conducted within a given RIMPAC event and evaluated the impacts on the environment within those bounds. The FONSI for the RIMPAC PEA, signed June 11, 2002, concluded that as long as future RIMPAC exercises did not exceed the evaluated set of activities, the Proposed Action could be implemented without supplemental NEPA documentation. Thus, the scope of each future RIMPAC exercise has been evaluated for any emergent science affecting impact analysis and for consistency with the 2002 RIMPAC PEA and its FONSI.

The 2006 Supplement to the 2002 RIMPAC PEA was prepared to evaluate additional training event locations and to review all proposed RIMPAC 2006 activities to the analysis in the 2002 RIMPAC PEA and a 2004 Supplement to ensure all proposed activities are addressed. The review included an evaluation of: training levels (personnel and equipment) and types of equipment; facilities and procedures for implementing RIMPAC at each installation or range; and changes in the affected environment or environmental sensitivities. In addition, the 2006 Supplemental PEA also includes a description of the Antisubmarine Warfare (ASW) operations, and the ASW acoustic effects modeling completed for RIMPAC 2006.

The only change being proposed is the location for conducting the Non-Combatant Evacuation Operation (NEO) at the Pacific Missile Range Facility (PMRF) and Niihau. No new training events are proposed. The NEO training event locations at PMRF and Niihau, when added to the Proposed Action assessed in the RIMPAC PEA and 2004 Supplement, form the Proposed Action for the purpose of the draft 2006 Supplemental PEA.

Accordingly, the analysis conducted in the draft Supplemental PEA focused on the following resources: terrestrial and marine environments and cultural resources. Specifically, the 2006 Supplemental PEA includes analysis related to mid-frequency active sonar based on application of emergent science. Long-term studies of the quantification and effects of exposure of marine mammal species to acoustic emissions are progressing, and Navy, in coordination with the NMFS, is incorporating the results into this Supplemental PEA. The Antisubmarine Warfare (ASW) training events being analyzed are not new and have taken place with no significant changes over the previous 19 RIMPAC exercises. However, new scientific information has led to the ability to quantitatively identify harassment levels, as defined in the Marine Mammal Protection Act (MMPA), through the use of newly derived threshold criteria metrics. Additionally, scientific advances in effects-analysis modeling of sound on marine mammals have provided Navy the ability to predict cumulative effects on marine species due to a proposed action. Due to these advances in scientific information, the 2006 Supplemental PEA provides an effects-analysis on marine mammals that may be affected by the RIMPAC training events that use mid-frequency active sonar.

Based on the assumptions and analyses in the draft SPEA, the proposed action appears to have no significant impacts on the environment. However, Navy will consider and incorporate public comments into the final SPEA before making a decision on the environmental significance of the proposed action. If warranted, a Finding of No Significant Impact (FONSI) will be prepared and the final Supplemental PEA and FONSI will be made available for public review on or about May 5, 2006.

Dated: January 10, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–647 Filed 1–19–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent (NOI) To Prepare an Environmental Assessment for the Use of a More Efficient Shipping Container System for Spent Nuclear Fuel From Naval Aircraft Carriers

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and the Chief of Naval Operations Environmental and Natural Resources Program Manual

(OPNAV Instruction 5090.1B), the Department of the Navy, Naval Nuclear Propulsion Program, announces its intent to prepare an Environmental Assessment (EA) on the potential environmental impacts associated with using a more efficient shipping container system for spent nuclear fuel to support refueling and defueling U.S. Navy nuclear-powered aircraft carriers at Newport News Shipbuilding and Dry Dock Company (NNS) in Virginia, and the associated rail shipment of this spent nuclear fuel to the Naval Reactors Facility (NRF) in Idaho for temporary storage.

DATES: Interested parties are invited to provide comments on environmental issues and concerns relative to this NOI and the scope of the EA, on or before February 21, 2006, to ensure full consideration during the completion of the EA.

ADDRESSES: All comments should include name, organization, and mailing address. Written comments should be addressed to Mr. Alan Denko (08U-Naval Reactors), Naval Sea Systems Command, 1240 Isaac Hull Avenue, SE Stop 8036, Washington Navy Yard, DC 20376–8036. Comments provided by E-Mail should use the following address: *snfshippingcontainer@bettis.gov.* Comments provided via phone should use this number: 1–866–369–4802.

SUPPLEMENTARY INFORMATION: Consistent with the Record of Decision for the April 1995 Department of Energy Programmatic Environmental Impact Statement (EIS) for Spent Nuclear Fuel Management, Naval spent nuclear fuel is shipped by rail from refueling shipyards to NRF in shipping containers meeting Nuclear Regulatory Commission (NRC) and Department of Transportation (DOT) requirements. These requirements provide for public safety and protect the environment. A new shipping container system is being proposed to provide improved support for the refueling schedules and operational needs of the U.S. Navy fleet, while continuing to provide for public safety and environmental protection. The new shipping containers would be longer than existing containers and could be used for any type of Naval spent nuclear fuel; however, their primary function would be to transport aircraft carrier spent nuclear fuel assemblies without disassembly of the spent nuclear fuel from its non-fuel structural components. Elimination of this disassembly operation at the shipyard would result in more efficient defueling/refueling operations, which are necessary to meet the current refueling schedules for the fleet in support of national defense. The aircraft carrier spent nuclear fuel assemblies would be loaded directly into the new containers and shipped to NRF in Idaho for temporary storage and processing, which includes examination, removal of non-fuel structural components, and placement into canisters that are ready for shipment to the geologic repository. This method of direct loading of Naval spent nuclear fuel into shipping containers and removing non-fuel structural components at NRF is the same processing approach used for submarines.

The Naval Nuclear Propulsion Program's conservative design practices and stringent operating procedures have resulted in a demonstrated safety record for Naval nuclear propulsion plants with respect to operations, transportation, and handling of spent nuclear fuel. There has never been an accident resulting in personnel injury or release of radioactivity to the environment in over 1.5 million miles traveled by the Naval spent fuel shipping containers. The new longer shipping container would be designed to the same robust criteria and Federal regulations as current Naval spent nuclear fuel shipping containers. These regulations require that the shipping container meet specific criteria for protection of the public and the environment under normal transport as well as accident conditions. The new container will meet the same high standards as existing shipping containers with respect to minimizing radiation exposure to the public and workers.

The increased length of the containers would require new railcars capable of carrying containers in a horizontal position, versus the vertical position used for current container designs. The new railcars and containers would meet NRC and DOT regulations and provide equivalent safety to existing design railcars and containers used for transporting Naval spent nuclear fuel.

Construction of a new facility at NNS to support loading the longer shipping containers would be needed. Equipment used to remove and transfer the spent nuclear fuel assemblies from the ship to the new shipping container would be the same as that currently used for aircraft carrier defueling/refueling operations.

No new facilities would be needed at NRF, but minor facility modifications would be required to support unloading of the new containers and to allow for scheduled return of the containers to NNS. The return of the emptied shipping containers to NNS is needed to support defueling/refueling schedules and to minimize the number of containers that must be procured and maintained. To support container turnaround, the Navy is evaluating the option of increasing spent fuel receiving capability at NRF to include temporary dry storage of spent nuclear fuel prior to processing. The fuel would be stored in concrete shielded overpacks in the temporary dry storage building. Operations for temporary dry storage of spent nuclear fuel prior to processing would be similar to current NRF operations for temporary dry storage after processing.

The EA will evaluate the environmental impacts associated with the new container, construction of a new shipping container loading facility at NNS, loading the shipping containers with Naval spent nuclear fuel at NNS, and transport from the shipyard to NRF. The EA will evaluate the modification of facilities at NRF, unloading the spent nuclear fuel assemblies, temporary dry storage, disassembly of the spent nuclear fuel from its non-fuel structural components, and disposal of the non-fuel structural components. The environmental impacts associated with these operations are expected to be similar to those associated with the use of existing shipping container systems. Use of the proposed new container system will not impact continued compliance with the 1995 Settlement Agreement between the U.S. Navy and the State of Idaho concerning the management of Naval spent nuclear fuel.

The EA will also address the viability of alternative actions to the proposed action to use the new longer shipping container system. These alternatives include (1) Changing the aircraft carrier defueling/refueling schedules, (2) increasing the facilities at the refueling shipyard, (3) procurement of additional shipping containers of the existing design, (4) performing some activities at other facilities, and (5) the no action alternative, continuing to use the existing shipping containers.

Dated: January 6, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 06–289 Filed 1–19–06; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice; Meeting

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Thursday, February 2, 2006, 10 a.m.–1 p.m.

PLACE: Hyatt Regency (Valley Forge Room), 400 New Jersey Avenue, NW., Washington, DC 20001. (Metro Stop: Union Station).

AGENDA: The Commission will receive the following reports: Title II Requirements Payments Update; and updates on other administrative matters. The Commission will receive presentations on the following topics: Implementation of the EAC Voting System Certification Program.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener. Telephone: (202) 566–3100.

Ray Martinez III,

Vice-Chairman, U.S. Election Assistance Commission.

[FR Doc. 06–607 Filed 1–18–06; 3:32 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Emergency Order To Resume Limited Operation at the Potomac River Generating Station, Alexandria, VA, in Response to Electricity Reliability Concerns in Washington, DC

AGENCY: Department of Energy.

ACTION: Notice of emergency action.

SUMMARY: Pursuant to 10 CFR 1021.343, the U.S. Department of Energy is issuing this Notice to document emergency actions that it has taken, and to set forth the steps it intends to take in the future, to comply with the National Environmental Policy Act (NEPA) in the matter described in this Notice.

On August 24, 2005, Mirant Corporation, and its wholly owned subsidiary, Mirant Potomac River, LLC (collectively referred to herein as Mirant), ceased operations at its Potomac River Generating Station (the ‘‘Plant’’) in Alexandria, Virginia, after modeling that it conducted indicated that the Plant's operations were causing exceedances of the National Ambient Air Quality Standards (NAAQS) of the Clean Air Act. On the same day, the District of Columbia Public Service Commission (DCPSC) filed with the U.S. Department of Energy (DOE or ‘‘Department’’), a petition for an emergency order pursuant to section 202(c) of the Federal Power Act (FPA), asserting that the Plant's closure reduced the reliability of the electrical supply to much of the central business district of the District of Columbia, many federal institutions, the Georgetown area in DC, as well as other portions of Northwest DC, and the District of Columbia Water and Sewer Authority's Blue Plains Advanced Water Treatment Plant (collectively referred to herein as the ‘‘Central DC area’’), placing these electrical customers in risk of a blackout.

After an exhaustive review of the facts, and consultation with Federal and state officials responsible for environmental compliance and the private entities responsible for electricity transmission, the Secretary of the Department of Energy on December 20, 2005, issued an emergency order (the ‘‘Order’’) directing the Plant's owner, Mirant, to generate electricity at the coal-fired Plant under certain, limited circumstances. The section below on ‘‘Further Information’’ includes information on how to obtain paper and electronic copies of the Order.

In emergency situations such as this one, the Council on Environmental Quality (CEQ) Regulations Implementing the Procedural Requirements of NEPA at 40 CFR 1506.11 provide that a federal agency may take an action with significant environmental impacts without observing the provisions of the NEPA regulations associated with preparing an Environmental Impact Statement (EIS). Instead, the agency should consult with CEQ to determine what alternative arrangements the agency will take in lieu of preparing a normal NEPA EIS. DOE has consulted with CEQ about alternative arrangements it will take in this matter and is publishing this notice to inform the public of those arrangements pursuant to DOE's NEPA regulations at 10 CFR 1021.343.

Consistent with its consultation with CEQ, DOE will implement the following alternative arrangements: (1) Prepare a Special Environmental Analysis (SEA) that will examine the potential impacts from issuance of the order, and identify potential mitigation measures; (2) provide opportunities for public involvement by disseminating information related to the environmental effects of Mirant's operations and by accepting public comment on this notice, the compliance plan Mirant submitted to DOE, and the SEA; (3) continue consultations with appropriate agencies with regard to relevant environmental issues; and (4) identify in the SEA any steps that DOE believes can be taken to mitigate the impacts from its Order.

DATES: Comments on this notice and on issues to be addressed in the SEA should be submitted to DOE on or before February 21, 2006.

ADDRESSES: Comments should be addressed to: Lawrence Mansueti, Permitting, Siting, and Analysis Division, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: 202–586–2588; fax: 202–586–5860; *Lawrence.Mansueti@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on this Notice, to obtain paper copies of the Order and compliance plan, to submit comments on the compliance plan, or for information on the emergency activities related to the Plant, contact Mr. Mansueti at the above address. In addition, all publicly available documents, including the Order and compliance plan, are available on DOE's Web site for this matter at *http://www.electricity.doe.gov/about/dcpsc_docket.cfm* or via hyperlinks from that Web site (referred to herein as the ‘‘Mirant matter Web site''). Copies of the SEA will also be available on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/.*

For information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at: 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Procedural Background

On August 19, 2005, Mirant submitted to the Virginia Department of Environmental Quality (DEQ) a computerized emissions modeling study Mirant had conducted of its Plant that indicated that emissions from the Plant caused or contributed to significant localized exceedances of the NAAQS. Also on August 19, 2005, DEQ issued a letter to Mirant which requested ‘‘that Mirant *immediately* undertake such action as is necessary to ensure protection of human health and the environment, in the area surrounding the Potomac River Generating Station, including the potential reduction of levels of operation, or potential shut down of the facility.'' (emphasis in original). On August 24, 2005, Mirant shut down all five of the generating units at the Plant, and on the same day, the District of Columbia Public Service

Commission (DCPSC) filed an Emergency Petition and Complaint with DOE and the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act (FPA). The DCPSC requested the Secretary of Energy to find that an emergency existed under section 202(c) of the FPA and to issue an order directing Mirant to continue operation of the Plant. The basis for the petition was that the shutdown of the Plant ''* * * will have a drastic and potentially immediate effect on the electric reliability in the greater Washington, DC, area and could expose hundreds of thousands of consumers, agencies of the Federal Government and critical federal infrastructure to curtailments of electric service, load shedding and, potentially, blackouts.'' On September 20, 2005, Mirant restarted its unit number one on an 8/8/8 basis—that is, in any given 24-hour period, the unit runs for eight hours at its maximum level of 88 MW, eight hours at its minimum level of 35 MW, and has eight hours when it does not run. DOE has been informed that both the U.S. Environmental Protection Agency (EPA) and DEQ acknowledge that the operation of this unit in this manner does not result in any modeled NAAQS exceedances.

Electricity Reliability

The coal-fired Mirant Plant consists of five generating units, two of which are cycling units that range in output from 35 MW to 88 MW, and three of which are baseload units that range in output from 35 MW to 102 MW. The Plant is one of only three sources of electricity to the Central DC area. The other two sources are two 230,000-volt (230 kV) transmission lines that deliver electricity from other generating sources in the regional electric grid operated by PJM Interconnection (PJM). Although there are other generating units in close physical proximity to the Central DC area, there are no transmission lines that would allow delivery of power from these other units to reach the Central DC area. Under North American Electric Reliability Council (NERC) standards, at a minimum, the power system must carry at least enough contingency reserves of electricity to cover the most severe single contingency. The standards require that an area's system always be operated with sufficient reserves to compensate for the sudden failure of the area's most important single generator or transmission line. Based on the fact that the Central DC area has only three sources of supply, the Plant and the two 230 kV transmission lines, in order to maintain a minimally reliable electric power system, the Plant must be available to run when one of the 230 kV lines is out of service, because if the remaining line failed there would be no other source of electricity to serve the Central DC area load.

The outage of one of these two lines is not merely a theoretical possibility. Since 2000, there have been 34 one-line outages for maintenance, and seven occasions where one of the lines has failed unexpectedly. DOE has been informed that, prior to 2000, there were two occasions when both of the lines failed simultaneously. Moreover, just days before issuance of the Order, PJM informed DOE on December 16, 2005, that on the previous night, ''one of the two circuits critical to providing service to the District tripped. Continued [electric] service to certain load within the District was at that time entirely dependent on the remaining circuit.'' Fortunately, full service to the line that failed was restored by the morning of December 16, 2005. Nonetheless, there can be no assurance that the Central DC area would be so lucky next time. In addition, the Potomac Electric Power Company (PEPCO) informed DOE that it needed to perform maintenance on the lines in January of 2006.

The Order

On December 20, 2005, DOE found that in the circumstances presented, an emergency existed within the meaning of section 202(c) of the FPA because of the reasonable possibility an outage would occur that would cause a blackout, the number and importance of facilities and operations in our Nation's Capital that would be potentially affected by such a blackout, the extended number of hours of any blackout that might in fact occur, and the fact that the current situation violated applicable reliability standards. PEPCO has applied to the DCPSC to construct two additional 230 kV lines that would supply electricity to the Central DC area and in the same application, proposed building two new 69kV lines to supply the Blue Plains wastewater treatment plant. Once completed, these lines will likely provide a high level of electricity reliability in the Central DC area, even in the absence of production from the Plant. However, it will likely take 18–24 months to construct the new lines.

Based on this finding, on December 20, 2005, DOE issued an Order requiring Mirant to, among other things, (1) operate the Plant to produce the amount of power (up to its full capabilities) needed to meet demand in the Central DC area during any period in which one or both of the 230kV lines serving the Central DC area is out of service as specified by PJM for the duration of the outage, and (2) keep as many generating units in operation and take all other measures to reduce the start-up time of units not in operation, for the purpose of providing electricity reliability, as feasible, as determined by DOE after consideration of the plan submitted by Mirant pursuant to the Order and after consultation with EPA, without regard to cost, and without causing or significantly contributing to any exceedance of the NAAQS. A blackout in the Central DC area would have drastic impacts on the environment, as well as for the employees and citizens of the Central DC area, affecting hundreds of thousands of residents and workers, as well as public safety and protection facilities, including hospitals, police, and fire facilities. In addition, DOE has been informed that within 24 hours of a blackout in the Central DC area, untreated sewage from the Blue Plains Wastewater Treatment plant would be discharged into the Potomac River.

The time period for DOE's Order extends through October 1, 2006.

Mirant's Compliance Plan

Pursuant to DOE's Order, Mirant submitted a compliance plan (referred to as the Operating Plan by Mirant) on December 30, 2005. The plan outlines a proposed temporary phase, and two options for a proposed intermediate phase, Option A and Option B. All proposals include the use of ''trona'' (sodium sesquicarbonate, a naturally occurring substance similar to baking soda) and/or lower sulfur coal to manage air emissions. On January 4, 2006, DOE authorized Mirant to ''immediately take the necessary steps to implement Option A of the intermediate phase proposed in the implementation plan,'' stating that ''Mirant represents that implementation of this option will produce no NAAQS exceedences.'' DOE will work with EPA to verify the accuracy of that representation. DOE is still in the process of reviewing the other proposals described in Mirant's compliance plan in consultation with EPA.

NEPA Compliance Actions

Pursuant to CEQ regulations at 40 CFR 1506.11, DOE consulted with CEQ on December 20, 2005, December 22, 2005, January 13, 2006, and January 17, 2006, about formulating a plan for alternative arrangements. Under the agreed upon alternative arrangements plan, which will expire October 1, 2006, unless extended, DOE will:

1. *Prepare a Special Environmental Analysis (SEA).* The SEA will examine potential impacts resulting from issuance of the Order, and describe further DOE decisionmaking regarding reasonable future alternatives and potential further mitigation actions DOE may take in this matter. The analysis will present reasonably foreseeable impacts from possible changes in operations of the Plant over the time until two additional transmission lines planned by PEPCO are installed. DOE intends to issue its SEA no later than August 2006 and will make it available to the public on the DOE NEPA and Mirant matter Web sites as well as announce its availability in the **Federal Register**. DOE will consider information contained in the SEA, and public input received on the SEA, in any future decisionmaking in this matter.

2. *Provide Opportunities for Public Involvement.* DOE is currently accepting public comments on the compliance plan that DOE required Mirant to submit under the DOE Order. DOE also invites public comments on this Notice, as well as on issues to be addressed in the SEA. DOE will consider public input in determining appropriate mitigation measures and any additional actions DOE may take as DOE adaptively manages implementation of the Order. DOE will post on the Mirant matter Web site publicly available information (not exempt from disclosure under the Freedom of Information Act) regarding the environmental effects of ongoing or alternative operations of the Plant (*e.g.*, reasonably available ambient air quality data and results of air quality modeling), that the Department receives from Mirant, EPA, and DEQ.

3. *Continue Agency Consultations.* DOE will continue to consult with EPA and DEQ concerning information on emissions, modeling results, potential mitigation measures, and any changes to the operation of the Plant. EPA will act as a ''cooperating agency'' (see 40 CFR 1501.6 and 1508.5) for purposes of providing reasonably available public information regarding the environmental effects of operations of the Plant to be disseminated via DOE's Mirant matter Web site and evaluated in the SEA.

4. *Identify Mitigation.* DOE will identify in its SEA any steps that it believes can be taken to mitigate the impacts from its Order. DOE will continue to track the impacts of its Order and public input and provide for appropriate mitigation where practicable. DOE will publish on its Web sites, as noted above, its discussion of which mitigation measures are adopted for any future decision, and if not, why they are not adopted.

DOE may modify, in consultation with CEQ, the foregoing alternative arrangements as conditions warrant and will notify the public in the **Federal Register** if it does so.

Issued in Washington, DC, on January 18, 2006.

John Spitaleri Shaw,

Assistant Secretary for Environment, Safety and Health.

[FR Doc. 06–570 Filed 1–19–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12481–002]

AMG Energy, LLC; Notice of Surrender of Preliminary Permit

January 12, 2006.

Take notice that AMG Energy, LLC, permittee for the proposed Selden Dam Project, has requested that its preliminary permit be terminated. The permit was issued on April 20, 2004, and would have expired on March 31, 2007.[1] The project would have been located on the Black Warrior River in Greene and Hale Counties, Alabama.

The permittee filed the request on December 7, 2005, and the preliminary permit for Project No. 12481 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E6–598 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

[1] 107 FERC ¶ 62,053.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12485–002]

AMG Energy, LLC; Notice of Surrender of Preliminary Permit

January 12, 2006.

Take notice that AMG Energy, LLC, permittee for the proposed Claiborne Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on June 28, 2004, and would have expired on May 31, 2007.[1] The project would have been located on the Alabama River in Monroe County, Alabama.

The permittee filed the request on December 7, 2005, and the preliminary permit for Project No. 12485 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E6–599 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

[1] 107 FERC ¶ 62,287.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–015]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

January 13, 2006.

Take notice that on January 9, 2006, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective February 9, 2006.

Twenty-Fourth Revised Sheet No. 9.
Nineteenth Revised Sheet No. 10.
Seventh Revised Sheet No. 359.
Third Revised Sheet No. 427.

Dauphin Island states that these tariff sheets reflect changes to its statement of negotiated rates and nonconforming transportation and reserve commitment agreement tariff sheets.

Dauphin Island further states that copies of the filing are being served on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–602 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–47–000]

Dominion Transmission, Inc.; Notice of Filing

January 12, 2006.

Take notice that on January 5, 2006, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed an abbreviated application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commissiion's Rules and Regulations. Dominion requests authorization to convert an existing observation well (well UW–207) to an injection/withdrawal (I/W) well located in Dominion's North Summit Storage Complex in Fayette County, Pennsylvania. Dominion states that it also intends to install, under its blanket certificate authorization, a new storage pipeline (UP–25), in order to tie the well into the storage field. Dominion estimates to complete the proposed work by September 30, 2006. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application are to be directed to Anne E. Bomar, Managing Director Transmission Rates and Regulation, 120 Tredegar Street, Richmond, Virginia 23219; phone number (804) 819–2134.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–600 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–46–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

January 13, 2006.

Take notice that on January 4, 2006, Great Lakes Gas Transmission Limited Partnership (Great Lakes), 5250 Corporate Drive, Troy, Michigan 48098, filed in Docket No. CP06–46–000 a request pursuant to sections 157.205(b) and 157.216(b)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain metering facilities at its St. Clair Delivery Point, located at the end of the Great Lakes' system on the west side of the St. Clair River in lower Michigan, under the authorization issued in Docket No. CP90–2053–000 pursuant to section 7 of the Natural Gas Act, all as more fully described in the request.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this request may be directed to Vern Meier, Director of Operations, Great Lakes Gas Transmission Company, 5250 Corporate

Drive, Troy, Michigan 48098, at (248) 205–7584 or *vmeier@glgt.com.*

Great Lakes states that its St. Clair metering facilities have reached the end of their serviceable life. Great Lakes indicates that in lieu of replacement, Great Lakes requests authorization to utilize third party measurement data available from TransCanada PipeLines Ltd., downstream of the St. Clair Delivery Point. Great Lakes proposes to abandon the metering function at its St. Clair Delivery Point by removing the orifice plates and the differential pressure and temperature transmitters from the existing meter runs. Great Lakes maintains that the proposed abandonment would not affect service to any shipper at the St. Clair Point.

Great Lakes contends that all customers receiving deliveries at the St. Clair Delivery Point have provided their written consent to the abandonment except one. Great Lakes avers that the customer not providing written consent has not indicated that it objects to the abandonment. Great Lakes, therefore, seeks a waiver to permit the abandonment notwithstanding the withholding of written consent by the one customer.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–603 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–250–000]

Knedergy LLC; Notice of Issuance of Order

January 13, 2006.

Knedergy LLC (Knedergy) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy, and ancillary services at market-based rates and for the reassignment of transmission capacity. Knedergy also requested waiver of various Commission regulations. In particular, Knedergy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Knedergy.

On January 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Knedergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is February 13, 2006.

Absent a request to be heard in opposition by the deadline above, Knedergy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Knedergy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Knedergy's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–606 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–008, RP03–211–004 and RP01–97–007]

Texas Gas Transmission, LLC; Notice of Compliance

January 13, 2006.

Take notice that on December 15, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing its Segmentation Transactions Report in compliance with Ordering Paragraph B of ''Order on Rehearing'', issued December 24, 2002.[1]

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

[1] Texas Gas Transmission, 101 FERC ¶ 61,359 (2002).

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on January 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–610 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–47–000]

Devon Power LLC, Complainant v. ISO New England, Inc., Respondent; Notice of Complaint

January 13, 2006.

Take notice that on January 12, 2006, Devon Power LLC filed a formal complaint against ISO New England, Inc. pursuant to 18 CFR 385.206 and Rule 206 of the Commission's Rule of Practice and Procedure, seeking appeal, pursuant to section 6.3.6 of the ISO New England Billing Policy, of ISO–NE England Inc.'s denial of Devon Power LLC's Requested Billing Adjustment submitted on November 9, 2005.

Devon Power LLC states that copies of the complaint were served on the contacts for ISO New England, Inc.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on February 1, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–605 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–42–000]

ALLETE, Inc. (d/b/a Minnesota Power) Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint

January 13, 2006.

Take notice that on January 5, 2006, ALLETE, Inc. (d/b/a Minnesota Power) filed a formal complaint against the Midwest Independent Transmission System Operator, Inc. pursuant to section 206 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedures of the Commission, 18 CFR 385–206, alleging that the Midwest ISO has erred in assessing Real-Time Revenue Sufficiency Guarantee First Pass Distribution Amount charges against Minnesota Power.

Minnesota Power states that copies of the complaint were served on the contacts for the Midwest Independent Transmission System Operator, Inc.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on January 25, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–604 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 13, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–1947–007.

Applicants: Occidental Power Services, Inc.

Description: Occidental Power Services, Inc informs FERC of a correction to the description of the ownership of one of its affiliates that was included in its 5/31/02 application for market-based rate authority.

Filed Date: 01/09/2006.

Accession Number: 20060112–0311.

Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER02–2330–039.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits quarterly status report concerning the implementation of Standard Market Design.

Filed Date: 12/12/2005.

Accession Number: 20051214–0206.

Comment Date: 5 p.m. Eastern Time on Monday, January 23, 2006.

Docket Numbers: ER02–2263–006.
Applicants: Southern California Edison Company.
Description: Southern Calif. Edison Co. submits Notice of Change in Status.
Filed Date: 01/09/2006.
Accession Number: 20060109–5041.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER03–9–005; ER98–2157–006; EL05–64–000.
Applicants: Westar Energy, Inc. and Kansas Gas and Electric Company.
Description: Westar Energy Inc. and Kansas Gas and Elec Co., submit additional information in response to FERC's deficiency letter order dated 12/8/01.
Filed Date: 01/09/2006.
Accession Number: 20060112–0304.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER05–283–004; ER05–1232–002.
Applicants: JPMorgan Chase Bank, N.A.; J.P. Morgan Ventures Energy Corporation.
Description: JPMorgan Chase Bank, N.A. and J.P. Morgan Ventures Energy Corp., submit Change in Status.
Filed Date: 01/09/2006.
Accession Number: 20060109–5058.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER05–1452–001.
Applicants: Duke Energy Transmission.
Description: Duke Electric Transmission submits a clean version of the Affected System Operating Agreement with North Carolina Electric Membership Corp, designated as First Revised Service Agreement No. 339 etc.
Filed Date: 01/06/2006.
Accession Number: 20060112–0340.
Comment Date: 5 p.m. Eastern Time on Friday, January 27, 2006.

Docket Numbers: ER06–22–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a supplemental informational filing to its unexecuted Large Generator Interconnection Agreement with Endeavor Power Partners, LLC et al.
Filed Date: 01/09/2006.
Accession Number: 20060112–0312.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER06–35–001.
Applicants: Aquila, Inc.
Description: Aquila, Inc submitted for approval changes to an existing Agreement for Interchange of Power & Interconnected Operations Agreement between Aquila and Associated Electric Cooperative, Inc.
Filed Date: 01/09/2006.
Accession Number: 20060112–0313.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER06–196–001.
Applicants: Cantor Fitzgerald Brokerage, LP.
Description: Cantor Fitzgerald Brokerage, LP submits revisions to its proposed tariff to address concerns raised by FERC Staff.
Filed Date: 01/06/2006.
Accession Number: 20060112–0322.
Comment Date: 5 p.m. Eastern Time on Friday, January 27, 2006.

Docket Numbers: ER06–461–000.
Applicants: Velocity Futures, LP.
Description: Velocity Futures submits the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 01/09/2006.
Accession Number: 20060112–0320.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER06–467–000.
Applicants: Union Electric Company.
Description: Union Electric Co dba AmerenUE et al submits the Second Amendment to the Joint Dispatch Agreement between Union Electric Co, Central Illinois Public Service and AmerenUE.
Filed Date: 01/09/2006.
Accession Number: 20060112–0327.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER06–469–000.
Applicants: Western Systems Power Pool.
Description: Western Systems Power Pool Inc submits this letter requesting that the Commission amend the Western Systems Power Pool Agreement to include CalBear Energy LP et al.
Filed Date: 01/09/2006.
Accession Number: 20060112–0328.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER06–78–002.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an amendment to their Open Access Transmission Tariff, First Revised Sheet No. 268B to FERC Electric Tariff, Sixth Revised Volume No. 1 in compliance with FERC's 12/20/05 Order.
Filed Date: 01/09/2006.
Accession Number: 20060112–0314.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER99–830–015; ER04–925–007.
Applicants: Merrill Lynch Capital Services, Inc.; Merrill Lynch Commodities, Inc.
Description: Merrill Lynch Capital Services, Inc. & Merrill Lynch Commodities, Inc reports a change in status.
Filed Date: 01/09/2006.
Accession Number: 20060112–0319.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Docket Numbers: ER99–3665–006.
Applicants: Occidental Power Marketing, LP.
Description: Occidental Power Marketing, LP informs FERC of a correction of the description of the ownership of one of its affiliates that was included in its 4/15/04 market power update.
Filed Date: 01/09/2006.
Accession Number: 20060112–0318.
Comment Date: 5 p.m. Eastern Time on Monday, January 30, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–601 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

January 12, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial Transfer of License.

b. *Project No.:* 4784–072.

c. *Date Filed:* December 29, 2005.

d. *Applicants:* Teton Power Funding, LLC (Teton), DaimlerChrysler Services North America LLC, and Topsham Hydro Partners Limited Partnership (Topsham), licensees, and DaimlerChrysler Financial Services America LLC.

e. *Name and Location of Project:* The Pejepscot Hydroelectric Project is located on the Androscoggin River in the town of Topsham, in Sagadahoc, Cumberland and Androscoggin Counties, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Teton: Teton Power Funding, LLC, c/o Barry E. Welch, c/o Atlantic Power Holdings, LLC, 200 Clarendon Street, 55th Floor, Boston, MA 02117, (617) 531–6379. Margaret A. Moore, Van Ness Feldman, PC, 1050 Thomas Jefferson Street, NW., Washington, DC 20007, (202) 298–1800, For DaimlerChrysler: DaimlerChrysler Services North America LLC, Marco DeSanto, Esq., 27777 Inkster Road, Farmington Hills, MI 48334–5326, (248) 427–2500. Andrew Holmes, Esq., Holland & Knight LLP, 195 Broadway, New York, NY 10007–3189, (212) 513–3243. For Topsham: Topsham Hydro Partners Limited Partnership, Charles N. Lucas, 7301 East Sundance, Suite D102, P.O. Box 2244, Carefree, AZ 85377, (952) 545–0975. Patrick J. Scully, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. 9729, Portland, ME 04104, (207) 774–1200.

h. *FERC Contact:* Etta L. Foster, (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* February 10, 2006.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–4784–072) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document 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 documents on that resource agency.

j. *Description of Application:* Applicants request approval, under section 8 of the Federal Power Act, of a partial transfer of the license for the Pejepscot Project No. 4784 to reflect a January 1, 2006 reorganization in which licensee DaimlerChrysler Services North America LLC was to be absorbed by DaimlerChrysler Financial Services America LLC, its wholly-owned subsidiary.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the project number excluding the last three digits (P–4784) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *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 assumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–596 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

January 13, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Applications:* New Major Licenses.

b. *Project Nos.:* 12606–000 and 2545–091.

c. *Date Filed:* July 28, 2005.

d. *Applicant:* Avista Corporation.

e. *Name of Projects:* (1) Post Falls and (2) Spokane River Development of the Spokane River.

f. *Location:* Post Falls—on the Spokane River and Coeur d'Alene Lake in portions of Kootenai and Benewah counties, Idaho. The project occupies Federal lands under the supervision of the U.S. Bureau of Indian Affairs, and may occupy lands under the supervision of the U.S. Forest Service and the U.S. Bureau of Land Management.

Spokane River Developments—on the Spokane River in portions of Steven and Lincoln counties, Washington. No federal lands are included.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bruce F. Howard, License Manager, Avista Corporation, 1411 East Mission, P.O. Box 3727, Spokane, Washington 99220–3727; telephone: (509) 495–2941.

i. *FERC Contact:* John S. Blair, at (202) 502–6092, *john.blair@ferc.gov.*

j. *Deadline for filing motions to intervene and protests and requests for cooperation agency status:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protest and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is accepted, but is not ready for environmental analysis at this time.

l. The Post falls hydroelectric development, has a seasonal storage capacity consisting of the 40,402 acre Coeur d'Alene Lake with a usable storage capacity of 223,100 acre-feet. The facility is composed of a 431-foot-long, 31-foot-high dam across the north channel of the Spokane River, a 127-foot-long, 25-foot-high dam across the south channel, and a 215-foot-long, 64-foot-high dam across the middle channel; six 56-foot-long, 11.25-foot-diameter penstocks; and a 6-unit powerhouse integral to the middle channel dam with a generator nameplate capacity of 14.75 megawatts.

The Spokane River Developments include four hydroelectric developments (HED) with a total authorized capacity of 122.92 MW as follows:

(1) Upper Falls HED is a run-of-river facility consisting of a 366-foot-long, 35.5-foot-high dam across the north channel of the Spokane River; a 70-foot-long, 30-foot-high intake structure across the south channel; an 800-acre-foot reservoir; a 350-foot-long, 18-foot-diameter penstock; and a single-unit powerhouse with a generator nameplate capacity of 10 MW.

(2) Monroe Street HED is a run-of-river facility consisting of a 240-foot-long, 24-foot-high dam; a 30-acre-foot reservoir; a 332-foot-long, 14-foot-diameter penstock; and an underground single-unit powerhouse with a generator nameplate capacity of 14.82 MW.

(3) Nine Mile HED is a run-of-river facility consisting of a 466-foot-long, 58-foot-high dam; a 4,600 acre-foot reservoir; a 120-foot-long, 5 foot-diameter diversion tunnel; and a 4-unit powerhouse with a nameplate capacity of 26.4 MW.

(4) Long Lake HED is a storage-type facility consisting of a 593-foot-long, 213-foot-high main dam; a 247-foot-long, 108-foot-high cutoff dam; a 105,080-acre-foot reservoir; four 236-foot-long, 16-foot-diameter penstocks; and a 4-unit powerhouse with a nameplate capacity of 71.7 MW.

m. A copy of the application is available for review in the Commission's Public Reference Room or may be viewed on its Web site: *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

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.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 386.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E6–607 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD06–2–000; ER06–406–000; ER02–2330–040; ER03–345–006; ER01–3001–014]

Assessment of Demand Respose Resources; PJM Interconnection, L.L.C.; ISO New England Inc.; ISO New England Inc.; New York Independent Transmission System Operator, Inc.; Notice of Agenda and Procedures for Technical Conference on Demand Response and Advanced Metering

January 13, 2006.

This notice establishes the agenda and procedures for the technical conference to be held on Wednesday, January 25, 2006, at 9:00 am (EST),[1] on demand response and advanced metering regarding issues raised by the Energy Policy Act of 2005 (EPAct 2005) section

[1] The initial notice setting the date of this technical conference was issued on December 12, 2005. 70 Fed. Reg. 74,804 (2005).

1252(e)(3).[2] This notice includes additional dockets numbers because those filings all contain issues associated with demand response and those issues may be discussed within presentations. The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. This will be a staff conference, but Commissioners may attend.

The agenda for this conference is attached. In order to allot sufficient time for questions and responses, each speaker will be provided with five minutes for prepared remarks. Due to the limitation of time, slides and graphic displays (i.e, PowerPoint® presentations) will not be permitted during the conference. Presenters who want to distribute copies of their prepared remarks or handouts should bring 100 double-sided copies to the technical conference. Presenters who wish to include comments, presentations, or handouts in the record for this proceeding should file their comments with the Commission. Comments may either be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.*

A free webcast of this event will be 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 Webcast. The Capitol Connection provides technical support for the webcasts. It also offers access to this event via television in the Washington, DC area and via phone bridge for a fee. Visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at the Capitol Connection 703–993–3100 for information about this service.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information on the technical conference, please contact:

David Kathan (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6404, *David.Kathan@ferc.gov.*

Aileen Roder (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6022, *Aileen.Roder@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–611 Filed 1–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

January 13, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt:

Docket number	Date received	Presenter or requester
1. CP05–25–000	1–5–06	Charles Brown.
2. CP06–32–000	12–22–05	Hon. Tom Allen.

[2] Energy Policy Act of 2005, Pub. L. No. 109–58, § 1252(e)(3), 119 Stat. 594, (2005) (EPAct section 1252(e)(3)). Section 1252(e)(3) requires the Commission, not later than one year after the date of enactment of the EPAct 2005, to draft and publish a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. Specifically, the Commission must identify and review:

(A) Saturation and penetration rates of advanced meters and communications technologies, devices and systems;

(B) existing demand response programs and time-based rate programs;

(C) the annual resource contribution of demand resources;

(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes;

(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and

(F) regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

Docket number	Date received	Presenter or requester
3. CP06–34–000	1–4–06	Hon. James T. Phillips.
4. EC06–4–000, EC06–20–000	12–20–05	Hon. Ed Whitfield.
5. Project No. 2000–000	1–4–06	Hon. John M. McHugh.
6. Project No. 2145–060	12–27–05	Ellen Hall.
7. Project No. 2216–066	1–5–06	Justin Schapp.

Magalie R. Salas,
Secretary.
[FR Doc. E6–609 Filed 1–19–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–32–000]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005; Notice of New Docket Prefixes ''HC'' and ''PH''

January 13, 2006.

Notice is hereby given that new docket prefixes ''HC'' and ''PH'' have been established for certain filings under the Public Utility Holding Company Act of 2005.

An ''HC'' docket prefix will be assigned to filings that, pursuant to 18 CFR 366.4(a), notify the Commission that a company meets the definition of a holding company. Thus, an ''HC'' docket prefix will be assigned to FERC–65 filings, ''Notification of Holding Company Status.''

A ''PH'' docket prefix will be assigned to filings that, pursuant to 18 CFR 366.4(b)(1), (c)(1), seek exemption from the requirements of the Public Utility Holding Company Act of 2005, or waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005. Thus, a ''PH'' docket prefix will be assigned to FERC–65A filings, ''Exemption Notification,'' and to FERC–65B filings, ''Waiver Notification.''

Petitions for declaratory order made pursuant to 18 CFR 366.4(b)(2), (c)(2), however, will be assigned an ''EL'' docket prefix, as the Commission has traditionally done for petitions for declaratory orders under the Federal Power Act.

The ''HC'' and ''PH'' docket prefix formats will be HCFY–NNN–000 and PHFY–NNN–000, where ''FY'' is the fiscal year in which the proceeding commenced, and ''NNN'' is a sequential number. For ''HC'' filings, a single docket number will be assigned to all Notification of Holding Company Status filings made within a fiscal year. For example, ''HC06–1–000'' will be assigned to all such filings made in fiscal year 2006; ''HC07–1–000'' to all such filings made in fiscal year 2007. ''PH'' filings, however, will be docketed individually.

Filing guidelines for ''HC'' and ''PH'' filings are attached to this notice and will be posted on the Commission's Web site at *http://www.ferc.gov/help/how-to.asp.*

Magalie R. Salas,
Secretary.

Filing Guidelines for ''HC'' and ''PH'' Filings Under the Public Utility Holding Company Act of 2005 and 18 CFR 366

FERC–65, Notification of Holding Company Status

These notification filings should be submitted using the Commission's eFiling system. Do not include waiver or exemption notifications with these filings. The document you submit should include HC06–1–000 in the caption or heading of the document, for filings made on or before September 30, 2006. During the eFiling submission process:

1. Select the filing type ''Production of Document.''
2. On the Select Docket screen, enter HC06–1 in the docket number search block and select HC06–1–000 from the results.
3. Before you browse, select, and attach the file, make sure that the file name is less than 25 characters and contains no spaces or special characters.
4. On the Submission Description screen, edit the description by replacing ''Production of Document'' with ''Notification of Holding Company Status.''

If you are unable to file electronically, you must submit an original and 14 paper copies of the filing to the address below. It is not necessary to include a form of notice for the Federal Register.

FERC–65A, Exemption Notification, and FERC–65B, Waiver Notification

These filings must be submitted on paper at this time. The document you submit should include PH06–__–000 in the caption or heading of the document, for filings made on or before September 30, 2006.

Submit an original and 14 copies of all ''PH'' filings, with a form of notice of the ''PH'' filing suitable for publication in the **Federal Register** on a 3½'' diskette, to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Forms of notice for ''PH'' exemption and waiver requests are available on the Commission's Web site at *http://www.ferc.gov/docs-filing/not-form.asp.*

Please be advised that the United States Postal Service scans all documents addressed to the Commission with a heat-treatment process that may corrupt diskettes and render filings unusable. You are recommended to use express mail or courier delivery services.

[FR Doc. E6–608 Filed 1–19–06; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0039, FRL–8023–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System, EPA ICR Number 2014.03, OMB Control Number 2060–0498, Correction

ACTION: Notice; correction.

SUMMARY: Through this action, EPA is correcting the Notice published in the **Federal Register** on December 20, 2005 (70 FR 75458). Specifically, EPA is clarifying that the OMB Control Number for this Information Collection Activity is 2060–0498 and not 2060–0948. All other components of the December 20, 2005 Notice remain the same.

FOR FURTHER INFORMATION CONTACT: Cindy Axinn Newberg, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9729 and e-mail address: *newberg.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION: Although the Notice was published in the **Federal Register** on December 20, 2005 (70 FR 75458) with the correct EPA ICR Number (2014.03), the OMB Control Number in the title and in the Notice itself was incorrect. Therefore, EPA is clarifying that the OMB Control Number is 2060–0498 and not 2060–0948.

Need for Correction

As published, the Notice contains errors which may prove to be misleading and need to be corrected.

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System, EPA ICR Number 2014.03, OMB Control Number 2060–0498, Correction.

Dated: January 12, 2006.

Drusilla Hufford,

Division Director, Stratospheric Protection Division.

[FR Doc. E6–635 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6671–5]

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. 20050308, ERP No. D–BLM–K65289–NV, Ely District Resource Management Plan, Implementation, White Pine, Lincoln Counties and a Portion of Nye County, NV.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20050365, ERP No. D–NRC–F06027–OH, American Centrifuge Plant, Gas Centrifuge Uranium Enrichment Facility, Construction, Operation, and Decommission, License Issuance, Piketon, OH.

Summary: EPA expressed concerns about the generic approach in the preparation of the DEIS, because it does not address all related enrichment, decommissioning, and disposal activities and does not fully evaluate all feasible alternatives. EPA requested additional information on the handling and control of source, product and waste materials, more comprehensive cancer rate data, more comprehensive pollutant modeling data, a more comprehensive radiation monitoring scheme, and the most current annual radiological emission data. EPA also requested an analysis of the cumulative impacts for (1) construction of Cylinder Storage Yard X–745H on the currently impaired stream (Little Beaver Creek) due to additional erosion and sedimentation impacts, and (2) groundwater contamination. Rating EC2.

EIS No. 20050374, ERP No. D–BLM–K65290–CA, Ukiah Resource Management Plan, Implementation, Several Counties, CA.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20050414, ERP No. D–NRC–C06015–NY, Generic—License Renewal of Nuclear Plants for Nine Mile Point Nuclear Station, Units 1 and 2, Supplement 24 to NUREG 1437, Implementation, Lake Ontario, Oswego County, NY.

Summary: EPA expressed environmental concerns about the project's impingement and entrainment impacts to fish and shellfish, as well as from heat shock and the need to perform a narrower EJ analysis. EPA also requested that the issues of waste treatment and pollution prevention be addressed. Rating EC2.

EIS No. 20050441, ERP No. D–COE–L32013–AK, Delong Mountain Terminal Project, Proposed Construction and Operation of Navigation Improvements, Northwest Arctic Borough, AK.

Summary: EPA expressed environmental concerns about potential adverse impacts to subsistence resources and the ability of native hunters to harvest these resources. EPA recommended consideration of changes to the preferred alternative and additional mitigation measures to reduce these impacts be considered during Government-to-Government Consultation with the local Tribes. EPA also recommended that the Final EIS include additional information regarding the planning process, evaluation of alternatives, cost estimates, and economic analysis. Rating EC2.

EIS No. 20050469, ERP No. D–NOA–A91073–00, Programmatic—Towards an Ecosystem Approach for the Western Pacific Region: From Species Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans, Realignment, Implementation, Western Pacific Region (America Samoa, Guam, Hawaii, Commonwealth of the Northern Mariana Islands), and U.S. Pacific Remote Island Areas.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20050481, ERP No. D–FTA–H40187–MO, St. Louis Metro South Metrolink Extension, Transportation Improvement, City of St. Louis, St. Louis County, MO.

Summary: EPA has expressed environmental concerns about the proposed project regarding potential impacts to floodplains, park and recreation lands, water quality, wetlands, noise and vibration. EPA is also concerned about the uncertainty of potential issues that could arise between now and the projected construction start date, which is likely greater than 5 years, considered to be the useful life of an EIS. Rating EC2.

EIS No. 20050493, ERP No. D–NPS–G61043–AR, Pea Ridge National Military Park General Management Plan, Implementation, AR.

Summary: EPA does not object to the preferred action as described in the DEIS. Rating LO.

EIS No. 20050460, ERP No. DS–USN–A10072–00, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Systems, Updated and Additional Information, Implementation.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20050483, ERP No. DS–UAF–G11038–00, Realistic Bomber Training Initiative, Addresses Impacts of Wake Vortices on Surface Structures, Dyess Air Force Base, TX and Barksdale Air Force Base, LA.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20050420, ERP No. F–IBR–K60035–NV, Humboldt Project Conveyance, Transferring 83,530 Acres from Federal Ownership to the Pershing County Water Conservation District (PCWCD), Pershing and Lander Counties, NV.

Summary: EPA does not object to the proposed project.

EIS No. 20050474, ERP No. F–COE–K11114–CA, Mare Island Reuse of Dredged Material Disposal Ponds as a Confirmed Updated Dredged Material Disposal Facility, Issuing Section 404 Permit Clean Water Act and Section 10 Permit Rivers and Harbor Act, San

Francisco Bay Area, City of Vallejo, Solando County, CA.

Summary: EPA concerns regarding responsibility for key aspects of site operations were addressed in the Final EIS; therefore, EPA does not object to the proposed action.

EIS No. 20050482, ERP No. F–AFS–J65427–WY, Cottonwood II Vegetation Management Project, Vegetation Management in the North and South Cottonwood Creek Drainages, Implementation, Bridger-Teton National Forest, Big Piney Ranger District, Sublette County, WY.

Summary: EPA has remaining concerns about potential adverse impacts to water quality, soils, fish and wildlife habitat, and socio-economic impacts to the community.

EIS No. 20050499, ERP No. F–AFS–H65022–MO, Mark Twain National Forest Land and Resource Management Plan, Implementation, Revise to the 1986 Land and Resource Management Plan, several counties, MO.

Summary: The Final EIS addressed EPA's concerns on air quality impacts of prescribed burning, degree of cumulative impacts assessment and provides more detail on the adaptive management process. Therefore, EPA does not object to the proposed action.

EIS No. 20050505, ERP No. F–AFS–L65481–00, Caribou Travel Plan Revision, Determine the Motorized Road and Trail System, Implementation, Caribou-Targhee National Forest, Westside, Soda Spring and Montpeller Ranger Districts, Bannock, Bear River, Bonneville, Caribou, Franklin, Oneida and Power Counties, ID; Box Elder and Cache Counties, UT and Lincoln County, WY.

Summary: The final EIS addressed EPA's concerns about the travel plan's potential adverse impacts to water quality, air quality, and wilderness; therefore, EPA does not object to the proposed action.

EIS No. 20050512, ERP No. F–NPS–D61056–DC, Rock Creek Park and the Rock Creek and Potomac Parkway Project, General Management Plan, Implementation, Washington, DC.

Summary: The Final EIS has adequately addressed EPA's concerns with road improvements and visitor safety, wildlife management, and historic resources; therefore, EPA does not object to the proposed action.

EIS No. 20050536, ERP No. F–FAA–A12043–00, Horizontal Launch and Reentry of Reentry Vehicles, Facilitate the Issuance of Licenses in United States.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060000, ERP No. F–BLM–G65096–NM, McGregor Range Resource Management Plan Amendment (RMPA), Implementation, Otero County, NM.

Summary: No comment letter was sent to the preparing agency.

Dated: January 17, 2006.

Pearl Young,

Management Analyst, Office of Federal Activities.

[FR Doc. E6–651 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6671–4]

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 1/9/2006 through 1/13/2006

Pursuant to 40 CFR 1506.9.

EIS No. 20060006, Final EIS, AFS, AK, Scott Peak Project Area, Harvesting Timber and Development of Road Management, Tongrass National Forest, Petersburg Ranger District, Northeast of Kupreanof Island, AK, Wait Period Ends: 2/13/2006, Contact: Linda Slaght 907–772–3871.

Revision to FR Notice published on 1/6/2006: The above EIS should have appeared in the FR on 1/6/2006. The Wait Period is calculated from the FR on 1/6/2006.

EIS No. 20060007, Draft Supplement, COE, MA, Boston Harbor Inner Harbor Maintenance Dredging Project, Updated Information, Boston Harbor, Mystic River and Chelsea River, MA, Comment Period Ends: 3/6/2006, Contact: Michael Keegan, 978–318–8087.

EIS No. 20060008, Draft EIS, FHW, LA, East-West Corridor Highway Component, from I–130 to Louis Armstrong International Airport, to Central Business District (CBD), Jefferson, Orleans and St. Charles Parishes, LA, Comment Period Ends: 3/6/2006, Contact: William Farr, 225–757–7615.

EIS No. 20060009, Final EIS, NPS, AK, Denali National Park and Preserve Revised Final Backcountry Management Plan, General Management Plan Amendment, Implementation, AK, Wait Period Ends: 2/21/2006, Contact: Adrienne Lindholm, 907–644–3613.

EIS No. 20060010, Draft EIS, IBR, NM, Long-Term Miscellaneous Purposes Contract Abstract, To Use Carlsbad Project Water for Purposes Other than Irrigation, Eddy County, NM, Comment Period Ends: 3/13/2006, Contact: Marsha Carra, 505–462–3602.

EIS No. 20060011, Draft EIS, BLM, UT, Chapita Wells-Stagecoach Area Natural Gas Development, Drilling and Production Operations of Natural Gas Wells and Associated Access Road, and Pipelines, Uintah County, UT, Comment Period Ends: 3/6/2006, Contact: Stephanie Howard, 435–781–4400.

EIS No. 20060012, Final Supplement, COE, CA, U.S. Army National Training Center, Additional Maneuver Training Land at Fort Irwin, Implementation, San Bernardino County, CA, Wait Period Ends: 2/21/2006, Contact: Ray Marler, 760–380–3035.

EIS No. 20060013, Final EIS, COE, 00, TIERED–FEIS Baltimore Harbor and Channels Dredged Material Management Plan (DMMP), To Analyze Dredged Material Placement, Port of Baltimore, Chesapeake Bay, MD, PA, DE, WV, DC, and NY, Wait Period Ends: 2/21/2006, Contact: Mark Mendelsohn, 401–962–9499.

EIS No. 20060014, Draft EIS, NPS, OH, Dayton Aviation Heritage National Historical Park, General Management Plan Amendment, Implementation, Dayton, OH, Comment Period Ends: 3/20/2006, Contact: Lawrence Blake, 937–225–7710.

EIS No. 20060015, Draft EIS, AFS, CA, Kirkwood Mountain Resort, Proposed 2003 Mountain Master Development Plan, Implementation, Eldorado National Forest, Amador, Alpine and EL Dorado Counties, CA, Comment Period Ends: 3/6/2006, Contact: Sue Rodman, 530–622–5061.

EIS No. 20060016, Fourth Draft Supplement, NOA, 00, Amendment 26 to the Gulf of Mexico Reef Fish Fishery Management Plan, Proposed Individual Fishing Quota (IFQ) Program to Reduce Overcapacity in the Commercial Red Snapper Fishery, Comment Period Ends: 3/6/2006, Contact: Dr. Roy E. Crabtree, 727–824–5308.

EIS No. 20060017, Draft EIS, AFS, FL, Ocala National Forest Access Designation Process, Roads and Trails Systems Development, Implementation, Lake, Marion and Putnam Counties, FL, Comment Period Ends: 2/21/2006, Contact: Will Ebaugh, 850–523–8557.

EIS No. 20060018, Final EIS, COE, TX, Upper Trinity River Basin Project, To Provide Flood Damage Reduction, Ecosystem Improvement, Recreation and Urban Revitalization, Trinity River, Central City, Fort Worth, Tarrant County, TX, Wait Period Ends: 2/21/

2006, Contact: Dr. Rebecca Griffith, 817–886–1820.

Amended Notices

EIS No. 20050459, Draft EIS, BLM, 00, PROGRAMMATIC—Vegetation Treatments Using Herbicides on Bureau of Land Management Public Lands in 17 Westerns, including Alaska, Comment Period Ends: 2/10/2006, Contact: Brian Amme, 775–861–6645.

Revision of FR Notice Published 11/10/2005: Comment Period Ending 1/9/2006 has been Extended to 2/10/2006.

EIS No. 20060004, Final EIS, FHW, MD, Intercounty Connector (ICC) from I–270 to US1, Funding and US Army COE Section 404 Permit, Montgomery and Prince George's Counties, MD, Wait Period Ends: 2/27/2006, Contact: Dan Johnson, 410–779–7154.

Revision of FR Notice Published 1/13/2006: Correction to Wait Period Ending 2/13/2006 has been extended to 2/27/2006.

Dated: January 17, 2006.

Dawn Roberts,

Management Analyst, Office of Federal Activities.

[FR Doc. 06–539 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–8023–1]

California State Nonroad Engine and Vehicle Pollution Control Standards; TRU Authorization Request; Notice of New Hearing Date

AGENCY: Environmental Protection Agency.

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted an Airborne Toxic Control Measure (ATCM) establishing in-use performance standards for nonroad engines used in transport refrigeration units (TRU) and TRU generator sets that will be phased-in commencing on December 31, 2008. By letter dated March 28, 2005, CARB requested that EPA grant California authorization for such standards under section 209(e)(2) of the Clean Air Act (CAA), 42 U.S.C. 7543(b). On November 21, 2005, EPA announced an opportunity for public hearing and request for public comment on this request (70 FR 70075). In that Notice, EPA tentatively scheduled a public hearing on this request for January 3, 2006, and a deadline date for written public comments of February 6, 2006. EPA has received requests for this hearing from multiple parties, and has been asked if the hearing could be held later in January because of travel concerns. By today's notice, EPA announces a rescheduled hearing date and public comment deadline for this request.

DATES: EPA will hold a public hearing concerning CARB's request on Monday, January 23, 2006, beginning at 10 a.m. Any party may submit written comments on this request by February 22, 2006. Parties wishing to present oral testimony at the public hearing should provide written notice to Robert M. Doyle at the address noted below, by or before January 18, 2005.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is OAR–2005–0123. Parties wishing to present oral testimony at the public hearing should provide written notice to Robert M. Doyle at the address noted below. EPA will hold the public hearing at 1310 L St, NW., Room 152, Washington, DC. 20005.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343–9258, Fax: (202) 343–2804, e-mail address: *Doyle.Robert@EPA.GOV.* EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Federal Register Notices." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: *http://www.epa.gov/docs/fedrgstr/EPA-AIR/.*

Docket: An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, select "Environmental Protection Agency" from the pull-down Agency list, then scroll to Docket ID EPA–HQ–OAR–2005–0123 to view documents in, or submit comments to, the record of the TRU authorization request. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Dated: January 13, 2006.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E6–637 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0517; FRL–7758–7]

Endangered Species Protection Program; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a public meeting on February 22, 2006. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics. The focus of the meeting is to inform the public about aspects of EPA's Endangered Species Protection Program field implementation, including EPA's overall approach to field implementation, under what circumstances EPA will be employing this approach, the responsibilities of the public, and the roles of other government agencies. The meeting will also provide an opportunity for the public to ask specific questions and receive answers.

DATES: The meeting will be held on Wednesday, February 22, 2006, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Megan Thynge, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6005; fax number: (703) 305–6309; e-mail address:*thynge.megan@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 particular interest to State and Tribal regulatory partners, other interested Federal agencies, environmental or public interest groups, pesticide registrants and pesticide users. 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 Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0517. Publicly available docket materials are available either electronically at*http://www.regulations.gov* or in hard copy 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/*.

II. Background

In the **Federal Register** of November 2, 2005 (70 FR 66392) (FRL–7739–7), EPA published a notice announcing its approach to field implementation of its Endangered Species Protection Program (ESPP). The goal of the ESPP is to carry out responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in compliance with the Endangered Species Act (ESA), while at the same time not placing unnecessary burden on agriculture and other pesticide users. The implementation approach will relay geographically specific pesticide use limitations to the pesticide user when necessary to protect listed species. All pesticide products EPA determines ''may affect'' a listed species or their designated critical habitat, may be subject to the ESPP.

This public meeting will address ESPP program elements so that the public will understand EPA's overall approach to field implementation, what their responsibilities will be, under what circumstances EPA would be employing this approach, and the roles of other government agencies. The meeting will also provide an opportunity for the public to ask specific questions and receive answers.

III. Tentative Agenda

The tentative meeting agenda is outlined below, and the final agenda will be posted at *http://www.epa.gov/espp*, along with hotel information and meeting logistics.

1. Overview of Endangered Species Act (ESA) and Endangered Species Protection Program (ESPP).
2. Scope of ESPP.
3. Implementation process.
4. Label language and enforcement.
5. Endangered Species Protection Bulletins (Bulletins).
6. Public participation and the role of States and Tribes.
7. Implementation timing.

List of Subjects

Environmental protection, Endangered species, Pesticides.

Dated: January 13, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–648 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

Adequacy of Wisconsin Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determination of adequacy.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 is proposing to approve a modification to Wisconsin's approved municipal solid waste landfill (MSWLF) permit program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its state law.

DATES: All comments on Wisconsin's application for approval of its research, development and demonstration permit modification must be received by February 21, 2006.

ADDRESSES: Written comments should be sent to Susan Mooney, Waste Management Branch (Mail Code DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, telephone: (312) 886–3585. Comments may also be submitted electronically to *mooney.susan@epa.gov* or by facsimile at (312) 353–4788. You may examine copies of the relevant portions of Wisconsin's regulations during normal business hours at U.S. EPA Region 5.

FOR FURTHER INFORMATION CONTACT: Susan Mooney, Waste Management Branch (mail code DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–3585, *mooney.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are only available in states with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Wisconsin's MSWLF permit program was approved on November 20, 1996 (61 FR 59096). On November 8, 2005, Wisconsin applied for approval of its RD&D permit provisions. Wisconsin submitted its rules under NR 514.10 for review.

B. Decision

After a thorough review, U.S. EPA Region 5 is proposing that Wisconsin's RD&D permit provisions as defined under NR 514.10 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: January 10, 2006.

Bharat Mathur,

Deputy Regional Administrator, U.S. EPA, Region 5.

[FR Doc. E6–636 Filed 1–19–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 05–352; DA 06–15]

Modification to RAO Letter 12

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comments on a petition filed by BellSouth Corporation, AT&T Inc., and Qwest Corporation asking the Commission to modify RAO Letter 12 to eliminate, at the earliest possible date, the $1 million materiality threshold applicable to Joint Cost audits and ARMIS filings.

DATES: Comments are due February 1, 2006 and reply comments are due February 22, 2006.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–352, 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.
- E-mail: Include the docket number in the subject line of the message.
- Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- 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.

FOR FURTHER INFORMATION CONTACT: Kim Yee, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0805.

SUPPLEMENTARY INFORMATION: On December 5, 2005, BellSouth Corporation, AT&T Inc., and Qwest Corporation (''Joint Petitioners'') filed a petition asking the Commission to modify RAO Letter 12 to eliminate, at the earliest possible date, the $1 million materiality threshold applicable to Joint Cost audits and ARMIS filings. Joint Petitioners believe the public interest would best be served if large incumbent LECs use the same materiality standard for both Generally Accepted Accounting Principles (''GAAP'') and Commission regulatory purposes. In the alternative, Joint Petitioners request that the Commission adopt a percentage-based materiality threshold, rather than an absolute number, for both individual items and aggregate discrepancies for a given reporting period.

Interested parties may file comments on or before February 1, 2006 and reply comments on or before February 22, 2006. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WC Docket No. 05–352. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

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 we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor, Natek, Inc., 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Kim Yee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 6–C242, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *kim.yee@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

The petition and comments and reply comments filed by participating parties will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or by e-mail at *fcc@bcpiweb.com.*

This matter 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 generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 06–572 Filed 1–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Revised Sunshine Notice; Sunshine Act Meeting; Open Commission Meeting; Friday, January 20, 2006

January 17, 2006.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, January 20, 2006, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. The Meeting will focus on presentations by senior agency officials regarding implementations of the agency's strategic plan and a comprehensive review of FCC policies and procedures.

Presentations will be made in three panels:

Panel One will feature the Chiefs of the Wireless Telecommunications Bureau, the Office of Engineering and Technology and the International Bureau.

Panel Two will feature the Chief of the Consumer & Governmental Affairs Bureau and the Chief of the Enforcement Bureau.

Panel Three will feature the Chief of the Media Bureau and the Chief of the Wireline Competition Bureau.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–573 Filed 1–18–06; 12:48 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 6, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Woosung (Edward) Park, Seattle, Washington; to retain voting shares of Pacific International Bancorp, Inc., and thereby retain voting shares of Pacific International Bank, both of Seattle, Washington.

Board of Governors of the Federal Reserve System, January 17, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–643 Filed 1–19–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire at least 50 percent of the voting shares of Community Bank of Lemont, Illinois.

Board of Governors of the Federal Reserve System, January 17, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–642 Filed 1–19–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through January 31, 2009 the current PRA clearances for information collection requirements contained in four consumer financial regulations enforced by the Commission. Those clearances expire on January 31, 2006.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Regs BEMZ: FTC File No. P054803'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *paperworkcomment@ftc.gov.* However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION: The four regulations covered by this notice are:

(1) Regulations promulgated under The Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (''ECOA'') (''Regulation B'') (Control Number: 3084–0087);

(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (''EFTA'') (''Regulation E'') (Control Number: 3084–0085);

(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (''CLA'') (''Regulation M'') (Control Number: 3084–0086);

(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (''TILA'') (''Regulation Z'') (Control Number: 3084–0088).

On September 28, 2005, the FTC sought comment on the information collection requirements associated with the regulations discussed below. *See* 70 FR 56696. The Commission received one comment from the National Automobile Dealers Association (''NADA'') pertaining to certain aspects of regulatory burden affecting Regulations B, M, and Z.[2] The issues raised in the NADA comment are discussed under the applicable regulation subheadings. As required by the PRA, the FTC is providing this second opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations discussed herein. 44 U.S.C. 3506(c)(2)(A).

Each of these four rules impose certain recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. As detailed below, FTC staff has calculated the PRA burden for each rule based on the compliance costs of entities subject to enforcement by the FTC. All of these rules require covered entities to keep certain records. As discussed below, in most instances, staff believes that these entities would generally retain these records in the normal course of business even absent the recordkeeping requirement in the rules.[3] There is also some burden associated with ensuring that covered entities do not prematurely dispose of relevant records during the period of time required by the applicable rule.

Disclosure requirements involve both set-up and monitoring costs as well as certain transaction-specific costs. ''Set-up'' burden, incurred by new entrants only, includes identifying the applicable disclosure requirements, determining compliance obligations, and designing and developing compliance systems and procedures. ''Monitoring'' burden, incurred by all covered entities, includes reviewing and obtaining guidance on revisions to regulatory requirements, revising compliance systems and procedures as necessary, and monitoring the ongoing operation of systems and procedures to ensure continued compliance. ''Transaction-related'' burden refers to the effort associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages.

The actual range of compliance burden experienced by covered entities, and reflected in those averages, varies widely. Depending on the extent to which covered entities have developed computer-based systems and procedures for providing the required disclosures (and/or the extent which such entities utilize electronic transactions, communications, and/or electronic recordkeeping), and the efficacy of those systems and procedures, some entities may have little burden, while others may incur a higher burden.[4]

Calculating the burden associated with the four regulations' disclosure requirements is very difficult because of the highly diverse group of affected entities. The ''respondents'' included in the following burden calculations consist of credit and lease advertisers, creditors, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers (EFTs) of government benefits, and lessors.[5] The burden estimates represent staff's best assessment, based on its knowledge and expertise relating to the financial services industry. To derive these estimates, staff considered the wide variations in covered entities': (1) Size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) types of EFTs used; (4) types and occurrences of adverse actions; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

The required disclosures do not impose PRA burden on some covered

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] NADA represents approximately 20,000 franchised automobile and truck dealers (''auto dealers'') who sell new and used vehicles and engage in service, repair and parts sales. NADA's comment is available at *http://www.ftc.gov/os/comments/pra-regsbemz/index.htm.*

[3] Because most records would be retained in the ordinary course of business, entities can use existing retention or storage facilities for any particular records that might be maintained for regulatory purposes. Additionally, as discussed below, paper retention is not required under the regulations; financial entities may use electronic or other non-paper retention formats.

[4] For example, large retailers may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, *e.g.*, notices of changes in terms. Smaller retailers or other creditors may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; as such, they may have minimal additional burden. Other entities, including auto dealers, may have incorporated fewer of these approaches into their systems and may have a higher burden.

[5] The Commission generally does not have jurisdiction over banks under the applicable regulations.

entities because the entities make those disclosures in the ordinary course of business. In addition, as noted above, some entities use computer-based and/or electronic means of providing the required disclosures, while others rely on methods requiring more manual effort.

The cost estimates shown below relate to labor costs and include the time necessary to train employees to be in compliance with the regulations.[6] The applicable PRA requirements generally impose minimal capital or other non-labor costs, as affected entities usually have the necessary equipment and storage for other business purposes. Similarly, staff estimates that compliance with these rules generally entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business.[7]

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B, 12 CFR 202, promulgated by the Board of Governors of the Federal Reserve System (''FRB''), establishes both recordkeeping and disclosure requirements to assist consumers in understanding their rights under the ECOA and to assist in detecting unlawful discrimination. The FTC enforces the ECOA as to all creditors except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).[8]

Estimated annual hours burden: 3,689,000 hours, rounded to the nearest thousand (1,436,833 recordkeeping hours + 2,251,771 disclosure hours).

Recordkeeping: In its comment, NADA states that burden estimates in the September 2005 **Federal Register** Notice do not account for recordkeeping of ''dead deals'' (*i.e.*, customer inquiries that do not result in a vehicle sale, for example, where the customer submits a credit application at one dealership but purchases elsewhere) because these records would not be retained in the ordinary course of business. However, it is unclear that the auto dealers, or any particular auto transaction, would be covered by the aforementioned definition of ''creditor'' under Regulation B; a factual assessment would be necessary regarding the dealers' activities. Nonetheless, although auto dealers may or may not be covered, depending on the facts in any given situation, as discussed below, staff has increased its burden estimates to account for the possibility of additional recordkeeping costs for these items.

FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per firm, for a total of 1,250,000 hours.[9] Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each for approximately eleven million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 183,333 hours.[10] Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 2,500 firms, with an average annual burden of one hour per firm, for a total of 2,500 hours, and that recordkeeping of any corrective action for self-testing would affect 250 firms in a given year, with an average annual burden of four hours per firm, for a total of 1,000 hours. The total estimated recordkeeping burden is 1,436,833 hours.

Disclosure: Regulation B requires that creditors (*i.e.*, entities that regularly participate in a credit decision, including setting the terms of the credit) provide notices whenever they take adverse action. NADA asserts that burden estimates are understated, in view of recent developments, including case law, which necessitates additional specialized compliance training. Although staff believes its estimates encompassed these matters—and such regulatory compliance training tends to involve multiple topics under Federal and state law—staff has increased its adverse action disclosure estimates to account for these issues.

Regulation B also requires entities that extend various types of mortgage credit to provide a copy of the appraisal report to applicants or to notify them of their right to a copy of the report (and thereafter provide a copy of the report, upon the applicant's request). It also requires that for accounts which spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that providing the information is optional, that the creditor will not take the information into account in any aspect of the credit transactions, and, if applicable, that the information will be noted by visual observation or surname if the applicant chooses not to provide it.[11]

Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, Internet businesses, and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

Disclosure	Setup/Monitoring [1]			Transaction-related [2]			Total Burden
	Respondents	Average Burden per Respondent	Total Setup/Monitoring Burden	Number of Transactions	Average Burden per Transaction	Total Transaction Burden	
Credit history reporting	250,000	.25	62,500	125,000,000	.25	520,833	583,333
Adverse action notices [3]	1,000,000	.75	750,000	200,000,000	.25	833,333	1,583,333

[6] Employee training for these regulations often addresses far more than the notices and recordkeeping required for the regulations. Regulatory compliance is one subset of employee business training and the regulatory compliance encompasses a wide variety of issues extending beyond those for Regulations B, E, M, and Z (*e.g.*, privacy and security, tax, and contract and other state law issues).

[7] For many industries (including auto dealers), contractual obligations and financial disclosures are often merged into a single document, such as the ''retail installment contract'' (for credit) or ''lease agreement'' (for leases). This document provides contractual terms as well as various state and federal disclosures; in many instances, the terms meet federal and state contract and other state law purposes. Thus, printing and copying costs are attributable to multiple purposes, including establishing the contractual obligation of the parties, and generally occur in the ordinary course of business, rather than being solely attributable to federal disclosure mandates. Moreover, streamlined model forms are also provided for notices under the regulations, which minimizes compliance costs, including any for printing and copying.

[8] Under Regulation B, for the requirements at issue, ''creditor'' means a person who ''in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit.'' *See* 12 CFR 202.2(l).

[9] As aforementioned, in light of NADA's comment, staff has increased its previous estimate.

[10] Regulation B contains model forms that creditors may use to gather and retain the required information.

[11] The disclosure may be provided orally or in writing. Regulation B provides a model form to assist creditors in providing the disclosure. The FRB added this disclosure requirement in 2003. *See* 52 FR 13144, 13163–64 (Mar. 18, 2003).

Disclosure	Setup/Monitoring [1]			Transaction-related [2]			Total Burden
	Respondents	Average Burden per Respondent	Total Setup/ Monitoring Burden	Number of Transactions	Average Burden per Transaction	Total Transaction Burden	
Appraisal notices	25,000	.5	12,500	7,000,000	.25	29,167	41,667
Appraisal reports	25,000	.5	12,500	7,000,000	.25	29,167	41,667
Self-test disclosures	2,500	.5	1,250	125,000	.25	521	1,771
Total							2,251,771

[1] With respect to appraisal notices and appraisal reports, the above figures reflect an increase in applicable mortgage entities. The figures assume that approximately half of those entities (.5 × 50,000, or 25,000 businesses) would not otherwise provide this information and thus would be affected. The figures also assume that all applicable entities would provide notices first and thereafter provide the reports upon request.

[2] The above figures reflect an increase in mortgage transactions. They assume that half of applicable mortgage transactions (.5 × 14,000,000 or 7,000,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

[3] These figures include the fact that for incomplete applications, creditors may initially provide the adverse action notice or a notice of incompleteness.

Estimated annual cost burden: $74,754,000, rounded to the nearest thousand ($22,298,493 recordkeeping cost + $52,455,799 disclosure cost).

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($32 for managerial or professional time,[12] $21 for skilled time, and $14 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.

Recordkeeping: Staff estimates that the general recordkeeping responsibility of 1.25 hours per creditor would involve approximately 90 percent clerical time and 10 percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. Keeping records of the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time. As shown below, the total recordkeeping cost is $22,298,493.

Disclosure: For each notice or information item listed, staff estimates that the burden hours consist of 10 percent managerial or professional time and 90 percent skilled technical time. As shown below, the total disclosure cost is $52,455,799.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($32/hr.)[1]	Time (hours)	Cost ($21/hr.)	Time (hours)	Cost ($14/hr.)	
General recordkeeping	0	$0	125,000	$2,625,000	1,125,000	$15,750,000	$18,375,000
Other recordkeeping	0	0	183,333	3,849,993	0	0	3,849,993
Recordkeeping of test	0	0	2,500	52,500	0	0	52,500
Recordkeeping of corrective action	0	0	1,000	21,000	0	0	21,000
Total Recordkeeping							22,298,493
Credit history reporting	58,333	1,866,656	525,000	11,025,000	0	0	12,891,656
Adverse action notices	158,333	7,758,317	1,425,000	29,925,000	0	0	37,683,317
Appraisal notices	4,167	133,344	37,500	787,500	0	0	920,844
Appraisal reports	4,167	133,344	37,500	787,500	0	0	920,844
Self-test disclosure	177	5,664	1,594	133,474	0	0	39,138
Total Disclosure							52,455,799
Total Recordkeeping and Disclosure							74,754,292

[1] The above figures reflect that for adverse action, hourly rates of $49 for attorney/professional time were used due to specialized training.

2. Regulation E

The EFTA requires accurate disclosure of the costs, terms, and rights relating to EFT services to consumers. Regulation E, 12 CFR part 205, promulgated by the FRB, establishes both recordkeeping and disclosure requirements applicable to entities providing EFT services to consumers. The FTC enforces the EFTA as to all entities providing EFT services except those that are subject to the regulatory authority of another Federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 3,580,000 hours (500,000 recordkeeping hours + approximately 3,080,000 disclosure hours).

Recordkeeping: Staff estimates that Regulation E's recordkeeping requirements affect 500,000 firms offering EFT services to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 500,000 hours.

Disclosure: Regulation E applies to financial institutions (including certain retailers and electronic commerce entities), service providers, various Federal and state agencies offering EFTs, and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

[12] In view of NADA's comment, staff has utilized higher hourly rates of $49 for "attorney or professional time" for specialized training in adverse action requirements, as part of the cost of compliance.

Disclosure	Setup/monitoring			Transaction-related			Total burden
	Respondents	Average burden per respondent	Total setup/ monitoring burden	Number of transactions	Average burden per transaction	Total transaction burden	
Initial terms	100,000	.5	50,000	1,000,000	.02	333	50,333
Change in terms	25,000	.5	12,500	33,000,000	.02	11,000	23,500
Periodic statements	100,000	.5	50,000	1,200,000,000	.02	400,000	450,000
Error resolution	100,000	.5	50,000	1,000,000	5	83,333	133,333
Transaction receipts	100,000	.5	50,000	5,000,000,000	.02	1,666,667	1,716,667
Preauthorized transfers	500,000	.5	250,000	1,000,000	.25	4,167	254,167
Service provider notices	100,000	.25	25,000	1,000,000	.25	4,167	29,167
Govt. benefit notices	10,000	.5	5,000	100,000,000	.25	416,667	421,667
ATM notices	500	.25	125	250,000	.25	1,041	1,166
Total							3,080,000

Estimated annual cost burden: $75,418,000, rounded to the nearest thousand ($7,350,000 recordkeeping cost + $68,068,000 disclosure cost).

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($32 for managerial time, $21 for skilled technical time, and $14 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.

Recordkeeping: For the 500,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $7,350,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $68,068,000.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($32/hr.)	Time (hours)	Cost ($21/hr.)	Time (hours)	Cost ($14/hr.)	
Recordkeeping	0	$0	50,000	$1,050,000	450,000	$6,300,000	$7,350,000
Disclosure:							
Initial terms	5,033	161,056	45,300	951,300	0	0	1,112,356
Change in terms	2,350	75,200	21,150	444,150	0	0	519,350
Periodic statements	45,000	1,440,000	405,000	8,505,000	0	0	9,945,000
Error resolution	13,333	426,650	120,000	2,520,000	0	0	2,946,656
Transaction receipts	171,667	5,493,344	1,545,000	32,445,000	0	0	37,938,344
Preauthorized transfers	25,417	813,344	228,750	4,803,750	0	0	5,617,094
Service provider notices	2,917	93,344	26,250	551,250	0	0	644,594
Govt. benefit notices	42,167	1,349,344	379,500	7,969,500	0	0	9,318,844
ATM Notices	116	3,712	1,050	22,050	0	0	25,762
Total Disclosure							68,068,000
Total Recordkeeping and Disclosures							75,418,000

3. Regulation M

The CLA requires accurate disclosure of the costs and terms of leases to consumers. Regulation M, 12 CFR part 213, promulgated by the FRB, establishes disclosure requirements that assist consumers in comparison shopping and in understanding the terms of leases and recordkeeping requirements that assist enforcement of the CLA. The FTC enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 292,000 hours, rounded to the nearest thousand (150,000 recordkeeping hours + 141,667 disclosure hours).

Recordkeeping: Staff estimates that Regulation M's recordkeeping requirements affect approximately 150,000 firms leasing products to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 150,000 hours.

Disclosure: Regulation M applies to automobile lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, and diverse types of lease advertisers, and others.

As aforementioned, NADA asserts that burden estimates are understated, in view of recent developments, including case law, which necessitates additional specialized compliance training. Although staff believes its estimates encompassed these matters—and, as noted above, such regulatory compliance training tends to involve multiple topics under Federal and state law—staff has increased its burden estimates pertaining to auto leases to account for these issues. Additionally, NADA asserts that estimates are understated due to printing and copying costs associated with providing Regulation M disclosures on lease agreements and retention of paper records. However, these contracts, and the specific lease terms, serve a dual purpose of providing contractual provisions as well as regulatory information; the material is generally part of the agreement under state law. Moreover, Regulation M does not mandate paper record retention: it permits companies to use electronic and other nonpaper forms of record retention. As more dealers shift to such other formats, any such costs should decrease or be eliminated. Staff believes, therefore, that additional increases based on this consideration are not appropriate. Accordingly, below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			Total burden
	Respondents	Average burden per respondent	Total setup/monitoring burden	Number of transactions	Average burden per transaction	Total transaction burden	
Auto Leases [1]	50,000	1	50,000	2,500,000	.50	20,833	70,833
Other Leases [2]	100,000	.50	50,000	1,000,000	.25	4,167	54,167
Advertising	25,000	.50	12,500	1,000,000	.25	4,167	16,667
Total							141,667

[1] This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1).

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumers leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1).

Estimated annual cost burden: $5,456,000, rounded to the nearest thousand ($2,205,000 recordkeeping cost + $3,251,255 disclosure cost).

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($32 for managerial or professional time,[13] $21 for skilled technical time, and $14 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.

Recordkeeping: For the 150,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $2,205,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial or professional time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $3,251,255.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($32/hr.) [1]	Time (hours)	Cost ($21/hr.)	Time (hours)	Cost ($14/hr.)	
Recordkeeping	0	$0	15,000	$315,000	135,000	$1,890,000	$2,205,000
Disclosures:							
Auto Leases	7,083	347,067	63,750	1,338,750	0	0	1,685,817
Other Leases	5,417	173,344	48,750	1,023,750	0	0	1,197,094
Advertising	1,667	53,344	15,000	315,000	0	0	368,344
Total Disclosures							3,251,255
Total Recordkeeping and Disclosures							5,456,255

[1] The above figures reflect that for auto leases, hourly rates of $49 for attorney/professional time were used due to specialized training.

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Regulation Z, 12 CFR part 226, promulgated by the FRB, establishes both recordkeeping and disclosure requirements to assist consumers and the enforcement of the TILA. The FTC enforces the TILA as to all creditors and advertisers except those that are subject to the regulatory authority of another Federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 17,639,000 hours, rounded to the nearest thousand (1,000,000 recordkeeping hours + 16,639,165 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 1,000,000 firms offering credit and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours.

Disclosure: Regulation Z disclosure requirements pertain to open-end and closed-end credit. The Regulation applies to retailers (such as department stores, appliance stores, discount retailers, medical-dental service providers, home improvement sellers, and electronic commerce retail operators); mortgage companies; finance companies; credit advertisers; auto dealerships; student loan companies; home fuel or power services (for furnaces, stoves, microwaves, and other heating, cooling or residential power equipment); credit advertisers; and others.

NADA asserts that the burden estimates for closed end credit disclosures are understated in view of recent developments including case law, which necessitates additional

[13] In view of NADA's comment, staff has utilized higher hourly rates of $49 for "attorney or professional time" to reflect the need for specialized training in lease requirements, as part of the cost of compliance.

specialized compliance training. As noted, although staff believes its estimates encompassed these matters—and such regulatory compliance training tends to involve multiple topics under federal and state law—staff has increased its estimates pertaining to closed-end credit disclosures to account for these issues. Additionally, NADA asserts that estimates are understated due to printing and copying costs associated with providing Regulation Z disclosures on retail installment contracts. However, these contracts, and the specific credit terms, serve a dual purpose of providing contractual provisions as well as regulatory information; the material is generally part of the agreement under state law. Staff believes, therefore, that additional increases based on this consideration are, therefore, not appropriate. Accordingly, below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

Disclosure [1]	Setup/Monitoring			Transaction-related			Total burden
	Respondents	Average burden per respondent	Total setup/monitoring burden	Number of transactions	Average burden per transaction	Total transaction burden	
Open-end credit:							
Initial terms	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Rescission notices	10,000	.5	5,000	500,000	.25	2,083	7,083
Change in terms	25,000	.5	12,500	136,000,000	.125	283,333	295,833
Periodic statements	100,000	.5	50,000	4,800,000,000	.0625	5,000,000	5,050,000
Error resolution	100,000	.5	50,000	10,000,000	.5	833,333	883,333
Credit and charge card accounts	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Home equity lines of credit	10,000	.5	5,000	5,000,000	.25	20,833	25,833
Advertising	250,000	.25	62,500	700,000	.5	5,833	68,333
Closed-end credit:							
Credit disclosures	800,000	.75	600,000	330,000,000	1.5	8,250,000	8,850,000
Rescission notices	100,000	.50	50,000	34,000,000	1	566,667	616,667
Variable rate mortgages	75,000	.50	37,500	3,000,000	1.5	75,000	112,500
High rate/high-fee mortgages	50,000	.50	25,000	750,000	1.5	18,750	43,750
Reverse mortgages	50,000	.50	25,000	150,000	1	2,500	27,500
Advertising	500,000	.25	125,000	1,000,000	1	16,667	141,667
Total open-end credit							6,847,081
Total closed-end credit							9,792,084
Total credit							16,639,165

[1] Open-end transactions with rescission notices (where the notices may not be otherwise provided) have increased. Closed-end variable rate mortgages have increased. Computer technology use has expanded in some closed-end areas with lengthy disclosures that previously involved more manual efforts, *i.e.*, credit, variable rate, and high rate/high fee disclosures.

Estimated annual cost burden: $397,471,000, rounded to the nearest thousand ($14,700,000 recordkeeping cost + $382,770,530 disclosure cost).

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($32 for managerial or professional time,[14] $21 for skilled technical time, and $14 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.

Recordkeeping: For the 1,000,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $14,700,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial or professional time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $382,770,530.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($32/hr.) [1]	Time (hours)	Cost ($21/hr.)	Time (hours)	Cost ($14/hr.)	
Recordkeeping	0	$0	100,000	$2,1000,000	900,000	$12,600,000	$14,700,000
Open-end credit Disclosures:							
Initial terms	25,833	826,656	232,500	4,882,500	0	0	5,709,156
Rescission notices	708	22,656	6,375	133,875	0	0	156,531
Change in terms	29,583	946,656	266,250	5,591,250	0	0	6,537,906
Periodic statements	505,000	16,160,000	4,545,000	95,445,000	0	0	111,605,000
Error resolution	88,333	2,826,656	795,000	16,695,000	0	0	19,521,656
Credit and charge card accounts	25,833	826,656	232,500	4,882,500	0	0	5,709,156
Home equity lines of credit	2,583	82,656	23,250	488,250	0	0	570,906
Advertising	6,833	218,656	61,500	1,291,500	0	0	1,510,156
Total open-end credit							151,320,467

[14] In view of NADA's comment, staff has utilized higher hourly rates of $49 for "attorney or professional time" to reflect the need for specialized training in closed-end credit requirements, as part of the cost of compliance.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($32/hr.) [1]	Time (hours)	Cost ($21/hr.)	Time (hours)	Cost ($14/hr.)	
Closed-end credit Disclosures:							
Credit disclosures	885,000	43,365,000	7,965,000	167,265,000	0	0	210,630,000
Rescission notices	61,667	1,973,344	555,000	11,655,000	0	0	13,628,344
Variable rate mortgages	11,250	360,000	101,250	2,126,250	0	0	2,486,250
High-rate/high-fee mortgages	4,375	140,000	39,375	826,875	0	0	966,875
Reverse mortgages	2,750	88,000	24,750	519,750	0	0	607,750
Advertising	14,167	453,344	127,500	2,677,500	0	0	3,130,844
Total closed-end credit							231,450,063
Total Disclosures							382,770,530
Total Recordkeeping and Disclosures							397,470,530

[1] The above figures reflect that for credit disclosures, hourly rates of $49 for attorney/professional time were used due to specialized training.

John D. Graubert,
Acting General Counsel.
[FR Doc. E6–626 Filed 1–19–06; 8:45 am]
BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

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

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through February 28, 2009 the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Telemarketing Sales Rule, 16 CFR part 435 (''TSR'' or ''Rule''). That clearance expires on February 28, 2006.

DATES: Comments must be received on or before March 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Telemarketing Sales Rule: FTC File No. P994414'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H 135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *paperworkcomment@ftc.gov.* However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Catherine Harrington-McBride, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2452.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before March 21, 2006.

The TSR implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 (''Act''), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (''USA PATRIOT Act''), Pub. L. 107056 (Oct. 25, 2001). The Act seeks to prevent deceptive or abusive telemarketing practices in telemarketing, which, pursuant to the USA PATRIOT Act,

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

includes calls made to solicit charitable contributions. It mandates certain disclosures by telemarketers, and directs the Commission to consider including recordkeeping requirements in promulgating a telemarketing rule to address such practices. As required by the Act, the TSR mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The disclosures provide consumers with information necessary to make informed purchasing decisions. The records are available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

The Supporting Statement for Information Collection Provisions of the Telemarketing Sales Rule (OMB Control No. 3084–0097) (''2003 Supporting Statement''), submitted to OMB following the 2003 amendment of the TSR, includes substantial analysis in support of the burden estimates included in that document.[2] Those estimates differ, in some ways significantly, from previous burden estimates for two reasons: (1) The amended TSR has increased scope and application to new entities; and (2) industry members provided, for the first time, statistical information on the telemarketing industry pursuant to the request for comments in the rulemaking proceeding.

The figures used in this notice are based on those from the 2003 Supporting Statement, updated when necessary and when newer figures are available.

Burden Statement

Estimated annual hours burden: 2,475,000 hours (rounded to nearest thousand).

The estimated recordkeeping burden is 45,000 hours for all industry members affected by the Rule. The estimated burden related to the disclosures that the Rule requires is 2,430,000 hours (rounded to nearest thousand) for all affected industry members, for a total of 2,475,000 burden hours.

Recordkeeping: Following the publication of the amended TSR in 2003, the Commission estimated that there were 7,400 telemarketing firms that were potentially subject to the Rule. This estimate was based on the limited input the Commission received in response to the Original User Fee NPRM, 67 FR 37,362 (May 29, 2002), regarding the number of firms that would likely access the National Do Not Call Registry as well as further staff assumptions applied to the information received. Since that time, the Commission has begun operation of the National Do Not Call Registry, and, in calendar year 2004, 60,611 entities accessed the registry. Of these, 552 were ''exempt'' entities obtaining access to data for more than one state.[3] By definition, none of the ''exempt'' entities are subject to the TSR. Additionally, 46,113 were non-exempt entities obtaining data for only a single state. Staff assumes that these entities are operating solely intrastate, and thus are exempt from the TSR.[4] Thus, staff estimates that 14,000 entities, rounded to the nearest thousand, [60,611 − 552 − 46,113 = 13,946] are currently subject to the TSR.

The staff estimates that these 14,000 telemarketing entities subject to the Rule each require approximately 2.3 hours per year to file and store records required by the TSR for an annual total of 32,000 burden hours (rounded to the nearest thousand). The Commission also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the Rule for an annual total of 7,500 burden hours. These figures, based on prior estimates, are not contradicted by further research conducted by Commission staff. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities is 40,000 hours (rounded to the nearest thousand).

In the 2003 Supporting Statement, the Commission estimated that 2,500 telefunder firms—professional telefunders soliciting on behalf of charities—would also be subject to the Rule, which was amended to include calls to solicit charitable contributions pursuant to the USA PATRIOT Act. Staff estimated that the recordkeeping burden per entity per year would be no more than one hour for a cumulative total of approximately 2,500 hours. Staff also estimated that 25 new telefunding entrants per year would require 100 hours each to set up recordkeeping systems that would comply with the TSR. Thus, the cumulative recordkeeping burden for telefunder firms was 5,000 hours. No new data suggests that these estimates have changed; therefore, the Commission retains these estimates.

The cumulative annual recordkeeping burden for all entities subject to the TSR—both telefunder and telemarketing firms alike—is 45,000 hours.

Disclosure: Staff believes that a substantial majority of telemarketers now make in the ordinary course of business the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute ''burden.'' 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the Commission last sought OMB clearance, staff estimates that the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule.

Accordingly, staff determined that the hours burden estimate for the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires. Staff estimates the portion attributable to the Rule to be 2,430,000 (rounded to the nearest thousand). The components of this total are detailed in the immediately following paragraphs that address hours burden.

Staff estimates that the 14,000 telemarketing entities subject to the Rule make 6.2 billion calls per year, or 443,000 calls per year per company (rounded to the nearest thousand). The TSR provides that if an industry member chooses to solicit inbound calls from consumers by advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures (providing for an inbound telephone call as a possible response), that member is exempted from complying with the Rule's oral disclosures. Based on previous estimates, staff estimates that of the 14,000 telemarketing entities, 11,800 firms conduct inbound telemarketing, and that of these, 4,000 will choose to adopt marketing methods that exempt them from complying with the Rule's verbal disclosure requirements.

The Commission staff retains its estimate that, in a telemarketing call involving the sale of goods or services,

[2] The 2003 Supporting Statement is available at *http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/tsrss2003.pdf.*

[3] An exempt entity is one that, although not subject to the TSR, chooses to voluntarily scrub its calling lists against the data in the National Do Not Call Registry.

[4] These entities would nonetheless likely be subject to the Federal Communication Commission's Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the National Do Not Call Registry.

it takes 7 seconds for telemarketers to disclose the required outbound call information orally plus 3 additional seconds to disclose the information required in the case of an upsell. Staff also retains its estimate that at least 60 percent of sale calls result in ''hang-ups'' before the telemarketer can make all the required disclosures and that ''hang-up'' calls consume only 2 seconds. Accordingly, staff estimates that the total time associated with these disclosure requirements is approximately 1.1 million hours per year [((1.2 billion non-hangup calls [2.9 billion outbound calls x 40%] × 7 seconds) + (1.7 billion hangup calls [2.9 billion × 60%] × 2 seconds) + (570 million calls × 40% [estimated upsell conversion] × 3 seconds) + (3.3 billion inbound calls × 40% [estimated upsell conversion] × 3 seconds)) × 25% burden] or 79 hours per firm [1.1 million hours/14,000 firms].

The TSR also requires further disclosures in telemarketing sales calls before the customer pays for goods or services. These disclosures include the total costs of the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). Additional specific disclosures are required if the call involves a prize promotion, the sale of credit card loss protection products or an offer with a negative option feature.

Staff estimates that the general sales disclosures require 499,000 hours annually. This figure includes the burden for written disclosures [(4,000 firms [estimated using direct mail] × 10 hours per year × 25% burden) = 10,000 hours, as well as the figure for oral disclosures [(570 million calls × 8 seconds × 25% burden) + (570 million outbound calls × 40% (upsell conversion) × 20% sales conversion × 25% burden × 8 seconds) + (3.3 billion inbound calls × 40% upsell conversion × 20% sales conversion + 25% burden × 8 seconds)].

Staff also estimates that the specific sales disclosures require 53,000 hours annually [(570 million calls × 5% [estimated involving prize promotion] × 3 seconds × 25% burden) + (570 million calls × .1% [estimated involving credit card loss protection (''CCLP'')] × 4 seconds) + (570 million calls × 40% upsell conversions × 20% sales conversions × .1% [estimated involving CCLP] × 4 seconds) + (3.3 billion inbound calls × 40% upsell conversion × 20% sales conversion × .1% [estimated involving CCLP] × 4 seconds) + (570 million calls × 10% [estimated involving negative options] × 4 seconds × 25% burden) + (570 million calls × 40% upsell conversion × 20% sales conversions × 10% [estimated involving negative options] × 4 seconds × 25% burden) + (3.3 billion inbound calls × 40% upsell conversions × 20% sales conversions × 10% [estimated involving negative options] × 4 seconds × 25% burden)] + (3.3 billion inbound calls × .3% [estimated business opportunity] × 8 seconds). The total burden for all of the sales disclosures is 552,000 hours annually or 39 hours annually per firm.

The Commission staff also retains its prior estimate that 2,500 telefunder firms are subject to the Rule. The only disclosure that the TSR requires in solicitations for charitable contributions is the disclosure in § 310.4(e). The total burden for disclosures made in solicitations for charitable contributions is 778,000 hours (rounded to the nearest thousand) [(1.6 billion calls with no early hang up × 4 seconds × 25% burden) + (2.4 billion calls with early hang-up × 2 seconds × 25% burden].

Thus, the cumulative annual disclosure burden for all entities subject to the TSR—both telefunder and telemarketing firms alike—is 2,430,000 hours.

Estimated annual labor cost burden: $20,315,000.

The estimated labor cost for recordkeeping for all entities, both telefunders and telemarketing firms, is $20,315,000. Assuming a cumulative burden of 7,500 hours/year to set up compliant recordkeeping systems for telemarketing entities, and applying to that a skilled labor rate of $20/hour, start-up costs would approximate $150,000 yearly for all new telemarketing entities. Staff also estimates that existing telemarketing industry members require 14,000 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical cost rate of $10/hour, cumulative recordkeeping maintenance would cost approximately $140,000 annually. The estimated labor cost for sales disclosures is $8,280,000 based on staff's estimate of 552,000 telemarketing disclosure burden hours and a wage rate of $15/hour. Thus, total labor cost, rounded to the nearest thousand, for sales entities is $8,570,000.

Based on the estimated cumulative burden of 2,500 hours/year to set up compliant recordkeeping systems for telefunder entities, and applying to that a skilled labor rate of $20/hour, start-up costs would be approximately $50,000. In addition, the estimated labor cost for maintaining records relating to solicitations for charitable contributions annually would be $25,000 (2,500 burden hours × $10/hour). The estimated labor cost relating to charitable solicitation disclosures is $11,670,000 (778,000 burden hours × $15/hour). Thus, the total labor cost for telefunder entities is $11,745,000.

Thus, the total cumulative labor costs for telefunder and telemarketing entities combined is $20,315,000.

Estimated annual non-labor cost burden: $5,613,000 (rounded to the nearest thousand).

Total capital and start-up costs: Staff estimates that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life. The Rule's disclosure requirements require no capital expenditures.

Other non-labor costs: Affected entities need some storage media such as file folders, computer diskettes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the approximately 14,000 outbound telemarketers subject to the Rule spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $700,000. Verbal disclosure estimates, discussed above, applied to a retained estimated commercial calling rate of 6 cents per minute ($3.60 per hour), totals $1,987,200 (552,000 disclosure hours × $3.60 per hour) in phone-related costs. Office supplies for an estimated 14,000 outbound telemarketers @ $50 each = $700,000. Accordingly, the non-labor costs for telemarketing entities associated with the Rule's information collection provisions is $2,687,200 ($1,987,200 in phone related costs + $700,000 for office supplies). Non-labor costs incurred by telefunders for telefunder organizations are estimated to be $2,926,000 (rounded to the nearest thousand) (778,000 estimated hours @ $3.60 per hour + $125,000 in office supply-related costs (2500 telefunders @ $50 each)). Thus, the total non-labor costs for all entities subject to the TSR is $5,613,200.[5]

Finally, staff believes that the estimated 4,000 inbound telemarketing entities choosing to comply with the Rule through written disclosures incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business. Adding the required disclosures to that written information likely requires no supplemental non-labor expenditures.

John D. Graubert,

Acting General Counsel.

[FR Doc. E6–627 Filed 1–19–06; 8:45 am]

BILLING CODE 6750–01–P

[5] Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

Authority: 42 U.S.C. 300aa–5, Section 2105 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The National Vaccine Program Office (NVPO), a program office within the Office of Public Health and Science, U.S. Department of Health and Human Services (HHS), is soliciting nominations of qualified candidates to be considered for appointment as voting representative members to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA).

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his/her capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. e.s.t. on March 3, 2006, at the address below.

ADDRESSES: All nomination should be mailed or delivered to: Bruce G. Gellin, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5566; *nvac@osophs.dhhs.gov.*

A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. English or by accessing the NVAC Web site at: *http://www.hhs.gov/nvpo/nvac.*

SUPPLEMENTARY INFORMATION: *Committee Function: Qualifications and Information Required:* As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee. The individual selected for appointment to the Committee will serve as a voting representative member. Voting representative members are official representatives of the vaccine manufacturing industry who are engaged in vaccine research or the manufacture of vaccines. Individuals selected for appointment to the Committee can be invited to serve terms with periods of up to four years.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Dated: January 13, 2006.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E6–595 Filed 1–19–06; 8:45 am]

BILLING CODE 4510–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AV]

Agency Forms Undergoing Paperwork Reduction Act Review

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) 639–4766 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

Hemophilia Treatment Center Laboratory Survey—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Up to 2 million women in the United States may have an inherited bleeding disorder and not know it. Many women learn to live with the problems their bleeding causes, such as heavy periods, and do not realize that they may have a bleeding disorder. Other women may have more serious bleeding problems such as hemorrhages after childbirth or surgery, and some have hysterectomies to end their heavy periods. With proper diagnosis, women with bleeding disorders could avoid these complications and surgeries. Management of bleeding in these women can decrease heavy periods and can improve quality of life.

The most common bleeding disorder is called Von Willebrand disease (VWD). VWD is caused by a deficiency or defect in the body's ability to make a protein, Von Willebrand factor, which helps blood clot. The symptoms of VWD can range in severity; however, 90 percent of people who have this disease have the mild form. VWD occurs in men and women equally, but women are more likely to notice the symptoms of VWD due to heavy or abnormal bleeding during their menstrual periods and after childbirth. There are many gynecological and physical causes for heavy periods, such as endometriosis, thyroid problems and cancer; however, the cause is not identified in half the cases. A CDC-Emory University survey found that gynecologists rarely considered bleeding disorders as a cause of heavy menstrual bleeding. However, recent research from Europe and CDC has shown that 15–20% of women with heavy periods have inherited bleeding disorders. Women with VWD interviewed by CDC reported an average of 16 years between the onset of bleeding symptoms and diagnosis of a bleeding disorder. CDC and the National Hemophilia Foundation have been working to encourage gynecologists to consider bleeding disorders in women who have heavy menstrual bleeding, also called menorrhagia. As a result, the American College of Obstetricians and Gynecologists has recently recommended screening for VWD in these women.

An important part of increasing the awareness among physicians and their patients with heavy periods who may have an underlying bleeding disorder is referral for appropriate diagnosis. Federally funded Hemophilia Treatment Centers (HTCs) are thought to be the best source for appropriate laboratory diagnosis, however, the following concerns have been raised: (1) Anecdotal reports from HTC providers describe reduced capacity of in-house laboratory support and access to specialty coagulation laboratory tests that are essential for appropriate diagnosis of bleeding disorders; (2) A CDC Public Health Practice Program Office (PHPPO) study demonstrated reduced capacity to perform specific coagulation tests through their survey of hospital laboratories; but it is impossible to know if HTCs have higher capacity than the hospitals studied; (3) HTCs report that changes in third party payer policies, especially health maintenance organizations, are dictating the source of laboratory testing requiring shipment of laboratory specimens to sites away from the hospital that reduce the quality of the sample and affect the reliability of the results. It is important to assess the HTCs and determine their capabilities and barriers to delivering comprehensive care to patients with bleeding disorders.

The setting for the proposed study is the 135 federally funded HTCs, and the Directors and Lab Directors of these 135 HTCs will be the potential respondents. A survey will be distributed to the above personnel to ascertain their perceptions of lab capabilities and procedures.

The data received from this survey will allow CDC to evaluate the functional status of HTC labs, describe the services available, and make programmatic decisions that will best serve the medical needs of this population.

There will be no cost to the respondents other than their time. The total estimated annualized burden hours are 90.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Response per respondent	Burden per response (in hours)
HTC Directors	135	1	20/60
Lab Directors	135	1	20/60

Dated: January 11, 2006.

Betsey S. Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–617 Filed 1–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0213]

Agency Forms Undergoing Paperwork Reduction Act Review

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) 639–4766 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

National Vital Statistics Report Forms—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Vital Statistics Report Forms project (0920–0213) is an approved collection and compilation of national vital statistics. This collection dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events.

Respondents for the National Vital Statistics Report form (CDC 64.146) are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 33 local (county) officials in New Mexico who record marriages occurring in each county of New Mexico will use this form. The data are routinely available in each reporting office as a by-product of ongoing activities. This form is designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence.

The Annual Marriage and Divorce Occurrence Report form (CDC 64.147) collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the National Vital Statistics Report form in that they represent complete and final counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution.

Respondents for the Annual Marriage and Divorce Occurrence Report form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. The data are routinely available in each reporting office as a by-product of ongoing activities.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 208.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
CDC64.146: State and Territory registration officials	58	12	12/60
CDC64.146: New Mexico County marriage registrars	33	12	6/60
CDC64.147: State/Territory/City registration officials	58	1	30/60

Dated: January 11, 2006.

Betsey S. Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–621 Filed 1–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

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: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5 p.m., February 8, 2006; 8:30 a.m.–3 p.m., February 9, 2006.

Place: Doubletree Hotel (Atlanta/Buckhead), 3342 Peachtree Road NE., Atlanta, Georgia 30326, Telephone: (404) 231–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from the Food and Drug Administration, the Centers for Medicare & Medicaid Services, and CDC; reports on national cytology proficiency testing status and Coordinating Council on the Clinical Laboratory Workforce activities addressing laboratory personnel shortages; and the role of the public health laboratory, including scope of services, customers, connectivity, and preparedness.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. *Written Comments:* For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting(s Summary Report.

Contact Person for Additional Information: Devery Howerton, Acting Chief, Laboratory Practice Standards Branch, Division Public Health Partnerships—Laboratory Systems, National Center for Health Marketing, Coordinating Center for Health Information and Service, CDC, 4770 Buford Highway NE., Mailstop G–23, Atlanta, Georgia 30341–3717; telephone (770) 488–8155; fax (770) 488–8279; or via e-mail at *DHowerton@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 10, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 06–518 Filed 1–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee (HICPAC).

Times and Dates: 8:30 a.m.–5 p.m., February 9, 2006. 8:30 a.m.–4 p.m., February 10, 2006.

Place: CDC Roybal Campus, Bldg 19, Auditorium B3, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID) regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include informatics and healthcare-associated infections, updates on public reporting, updates on pandemic flu, updates on antimicrobial resistance, and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Harriette Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, l600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone (404)639–4035.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 12, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–615 Filed 1–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS 10171, CMS–250–254, and CMS–R–305]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Coordination of Benefits between Part D Plans and Other Prescription Coverage Providers; *Form Number:* CMS 10171 (OMB#: 0938–0978); *Use:* Section 1860D–23 and 1860D–24 of the Social Security Act requires the Secretary to establish requirements for prescription drug plans to ensure the effective coordination between Part D plans, State pharmaceutical assistance programs and other payers. The requirements must relate to the following elements: (1) enrollment file sharing; (2) claims processing and payment; (3) claims reconciliation reports; (4) application of the protections against high out-of-pocket expenditures by tracking True out-of-pocket (TrOOP) expenditures; and (5) other processes that the Secretary determines. This information will be used by Part D plans, other health insurers or payers, pharmacies and CMS to coordinate prescription drug benefits provided to the Medicare beneficiary.; *Frequency:* Reporting—Monthly; *Affected Public:* Business or other for-profit, Federal, State, Local and or Tribal Government; *Number of Respondents:* 56,320; *Total Annual Responses:* 2,153,767,270; *Total Annual Hours:* 1,017,914.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS 250–254 (OMB#: 0938–0214); *Use:* Medicare Secondary Payer Information (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. Medicare Fiscal Intermediaries, Carriers, and now Part D plans, need information about primary payers in order to perform various tasks to detect and process MSP cases and make recoveries. MSP information is collected at various times and from numerous parties during a beneficiary's membership in the Medicare Program. Collecting MSP information in a timely manner means that claims are processed correctly the first time, decreasing the costs associated with adjusting claims and recovering mistaken payments.; *Frequency:* Reporting—On Occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 134,553,682; *Total Annual Responses:* 134,553,682; *Total Annual Hours:* 1,611,303.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* External Quality Review for Medicaid Managed Care Organizations (MCOs); *Form Number:* CMS–R–305 (OMB#: 0938–0786); *Use:* The results of Medicare reviews, Medicare accreditation surveys, and Medicaid external quality reviews will be used by States in assessing the quality of care provided to Medicaid beneficiaries provided by MCOs and to provide information on the quality of the care provided to the general public upon request; *Frequency:* Annually; *Affected Public:* Business or other for-profit, State, Local and or Tribal Government; *Number of Respondents:* 542; *Total Annual Responses:* 14,266; *Total Annual Hours:* 648,877.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on March 21, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 12, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–628 Filed 1–19–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; National Survey of Primary Care Physicians' Recommendations and Practice for Breast, Cervical, Colorectal, and Lung Cancer Screening

SUMMARY: In compliance with the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: National Survey of Primary Care Physicians' Recommendations and Practice for Breast, Cervical, Colorectal, and Lung Cancer Screening. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will obtain current, national data on primary care physicians' knowledge, attitudes, recommendations, and practices related to screening for breast, cervical, colorectal, and lung cancer. There have been substantial changes in guidelines and/or technologies for these types of cancer screening in recent years. The data collected in this study will support and further NCI work in monitoring and evaluating providers' cancer control knowledge, attitudes, and practices and their impact on population health, as well as enable monitoring of progress toward major cancer control goals. Two questionnaires, one covering breast and cervical cancer screening and the other colorectal and lung cancer screening, will be administered by mail or telephone to a randomly-selected national sample of primary care physicians. *Frequency of Response:* One Time. *Affected Public:* Medical practices, clinics, or other health care organizations. *Type of Respondents:* Primary Care Physicians. *Burden estimates* are as follows:

Questionnaire	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Breast and cervical cancer screening	1250	1	0.333	416.25
Colorectal and lung cancer screening	1250	1	0.333	416.25
Total				832.5

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the 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.

FOR FURTHER INFORMATION CONTACT: Send comments to Carrie N. Klabunde, Ph.D., Epidemiologist, Division of Cancer Control and Population Sciences, National Cancer Institute, Executive Plaza North 4005, 6130 Executive Boulevard, Bethesda, Maryland 20892–7344 or call non-toll-free (301) 402–3362 or E-mail: *klabundc@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 11, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 06–512 Filed 1–19–06; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Laboratory of Pulmonary Pathobiology; Submission for OMB Review; Comment Request; Use of In-Home Test Kits in Dust Mite Allergen Reduction

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 21, 2004, pages 61853–61854, and allowed 60 days for public comment. No public comments were received although one person sent an e-mail expressing interest in the study and asking if she could participate. She was told this was a pilot study to be carried out in a specific location in North Carolina. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Use of In-home Test Kits in Dust Mite Allergen Reduction. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6). Asthmatics and others with dust mite allergies often implement strategies to avoid dust mite exposure, but have little objective evidence that their interventions are successful in reducing dust mite populations. Recently developed in-home test kits have introduced the capability to monitor the effectiveness of allergen reduction strategies by providing an affordable, simple way to measure dust mite allergens on a regular basis. The primary objective of this study is to determine if use of in-home test kits results in decreased dust mite allergen levels in home of children sensitive or allergic to dust mites. A secondary objective is to determine if use of in-home test kits result in additudinal and behavioral changes related to implementing and maintaining dust mite reduction strategies. This study is a randomized intervention trial designed to test the efficacy of an in-home test kit in influencing behaviors to reduce dust mite allergen levels. Households will be recruited through flyers and will be screened for eligibility through a recruitment call line and a home visit to determine baseline dust mite levels in the household. Study participants will be randomly assigned to a treatment or control group. The treatment group will receive educational materials and an in-home test kit at set intervals, while the control group will receive educational materials alone. Vacuumed dust samples will be collected and delivered to the NIEHS laboratory for ELISA-based measurements of the dust mite allergens Der f2 and Der p 2. A questionnaire will be used to collect information on home characteristics and on dust mite reduction attitudes and behaviors. Data will be collected at baseline, 6 months and 12 months. The results from this study will be used by NIEHS to plan future primary and secondary asthma prevention trials. *Frequency of Response:* After the two stages of eligibility screening, data will be collected at baseline, 6-months, and 12-months. *Type of Respondents:* Parents of children with dust-mite allergies. The annual reporting burden is as follows: *Estimated Number of Respondents:* See table below; *Estimated Number of Responses per Respondent:* See table below; *Average Burden Hours Per Response:* 0.25 hour for initial screening, 0.5 hour for dust mite eligibility screening, 1.5 hours for each baseline visit, and 1 hour for each follow-up home visit (6- and 12-month); and *Estimated Total Annual Burden Hours Requested:* 690.5. The annualized cost to respondents is estimated at: $13,810 (assuming $20 hourly wage × 690.5 hours). There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

CALCULATION FOR DATA BURDEN OF DUST MITE ALLERGEN REDUCTION STUDY

Type of data collection	Number of respondents	Hours per response	Total hours
Eligibility Screening	450	0.25	112.5
Dust Mite Level Eligibility Screening	280	0.5	140.0
Baseline Visit	144	1.5	216.0
6-month follow-up	122	1.0	122.0
12-month follow-up	100	1.0	100.0
Total hours			690.5

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Darryl Zeldin, NIEHS, Laboratory of Pulmonary Pathobiology, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–1169 or e-mail your request, including your address to *dz20a@niehs.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 11, 2006.

Richard A. Freed,

Associate Director for Management, NIEHS, National Institutes of Health.

[FR Doc. 06–513 Filed 1–19–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Proposed Collection; Comment Request; Environmental Factors in the Development of Polycystic Ovary Syndrome

SUMMARY: 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 National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Environmental Factors in the Development of Polycystic Ovary Syndrome. *Type of Information Collection Request:* Revision of OMB No. 0925–0483 and expiration date 3/31/2006. *Need and Use of Information Collection:* The purpose of this study is to identify a cohort of living female twin pairs in which at least one member is likely to have Polycystic Ovary Syndrome (PCOS) for future study. Potential participants (~3,700) will come from the Mid-Atlantic Twin Registry (MATR) and were chosen based on their answers to several questions (in a preliminary MATR survey) concerning irregular periods and a history of cystic ovaries. The instrument to be used here will be administered by telephone by professional interviewers at the MATR. It contains 17 simple and direct questions and will take about 10 minutes to complete. Its contents deal with the frequency of menstrual periods, a history of polycystic ovaries, obesity, excess facial hair and other evidence of hyperandrogenism. Since this is such a short telephone survey, participants will receive no prior notification. Informed consent will be asked for verbally over the phone at the time of the interview. All participants will be asked about their willingness to participate in future studies if their answers meet certain criteria. The major objectives of future studies using this cohort are to determine more reliable concordance rates for PCOS in monozygotic and dizygotic twins, establish baseline heritability estimates, and develop hypotheses concerning possible pathogenetic and/or environmental factors. The findings from this study will aid in developing: (1) Genetic tests to identify high risk women; (2) preventative strategies; and (3) more effective therapies for PCOS and related syndromes such as type 2 diabetes, obesity, idiopathic hyperandrogenism, and male pattern baldness. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Adult women. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,700; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.167; and *Estimated Total Annual Burden Hours Requested:* 206 per year for 3 years. The annualized cost to respondents is estimated at $6,179.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Patricia C. Chulada, Health Scientist Administrator, Program in Clinical Research, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–7736 or e-mail your request, including your address to: *chulada@niehs.nih.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 11, 2006.

Richard A. Freed,

Associate Director for Management, NIEHS, National Institutes of Health.

[FR Doc. 06–515 Filed 1–19–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Survey of Non-Federal Funding Sources for Cancer CAM Research

SUMMARY: 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 National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Survey of Non-Federal Funding Sources for Cancer Complementary and Alternative Medicine (CAM) Research. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The goal of this study is to collect information that will allow the NCI Office of Cancer Complementary and Alternative Medicine (OCCAM) to develop a directory of organizations external to the Federal Government that offer funding for cancer CAM research. This study will assist OCCAM in its mission to increase the quality of cancer CAM research supported by the NCI. One of the hurdles that many cancer CAM researchers encounter is the difficulty of obtaining research funding—and in particular, the difficulty of obtaining Federal funding for foundational or exploratory research. Often, researchers must obtain their initial funding through non-Federal sources, so that they can demonstrate proof of concept, which can be a pre-condition of obtaining Federal funds. The funding directory that is developed through this study will provide cancer CAM researchers with a resource that they can use to identify non-Federal funding sources, and target the funding sources that are most closely aligned with their research objectives. *Frequency of Response:* Semiannual. *Affected Public:* Nonprofit organizations; Businesses or other for-profit organizations; *Type of Respondents:* Organizations (other than Federal Government) that offer funding for cancer CAM research and have an open grant application process. The annual reporting burden is as follows: *Estimated Number of Respondents:* 200; *Estimated Number of Responses per Respondent:* 2 per year; *Average Burden Hours Per Response:* .25; and *Estimated Total Annual Burden Hours Requested:* 100. The annualized cost to respondents is estimated at: $2000 (assumes $20 hourly rate × 100 hours). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent (annual estimate)	Average burden hours per response	Estimated total annual burden hours requested
Nonprofit organizations	150	2	.25	75
Businesses or other for-profit organizations	50	2	.25	25

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent (annual estimate)	Average burden hours per response	Estimated total annual burden hours requested
Total	....	....	....	100

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Jeffrey White, Director, OCCAM, NCI, NIH, 6116 Executive Plaza North, Suite 600, MSC 8339, Bethesda, MD 20852, or call non-toll-free number (301) 435–7980 or E-mail your request, including your address to: *jeffreyw@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 12, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–591 Filed 1–19–06; 8:45 am]

BILLING CODE 4167–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; ActiGraph Accelerometer Validation Study

SUMMARY: 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 National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Actigraph Accelerometer Validation Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NCI is collaborating with other NIH Institutes on a proposed longitudinal study of Hispanic subpopulations in the United States referred to as the Hispanic Community Health Study. The Hispanic population is now the largest minority population in the U.S. with a projected three-fold growth by 2050. Hispanic subgroups are influenced by a number of chronic disease risk factors associated with immigration from different cultural settings and environments. These factors include diet, physical activity, community support, working conditions, and access to health care. Hispanic groups have higher rates of obesity and diabetes than non-Hispanic groups, but have lower coronary disease and cancer (all sites) mortality. There are also observed differences in health outcomes between Hispanic subgroups. For example, Puerto Ricans have a four-fold higher asthma prevalence than Mexican-Americans. Hispanic populations are understudied with respect to many diseases and risk factors. Their projected population growth underscores the need for accurate evaluation of their disease burden and risk. A vast amount of research suggests that the level of physical activity influences many of the chronic diseases and conditions of interest, including obesity, diabetes, cardiovascular disease, and cancer. To better understand the relationship between physical activity and chronic disease, and to make specific activity prescriptions, it is necessary to be able to accurately assess levels and types of activity. In particular, better methods are needed to improve the validity and reliability of physical activity assessment instruments to better assess the frequency, duration, and intensity of physical activity. For that reason, NCI plans to evaluate the use of a new type of accelerometer, a small device worn on a belt at the waist that measures and records movement, capturing movement intensity and duration and associating it with clock-time. This new accelerometer will be used in the Hispanic Community Health Study and will allow examination of levels as well as patterns of activity. Physical activity was measured with accelerometers in the nationally representative 2003–2006 National Health and Nutrition Examination Survey (NHANES) (OMB#: 0920–0237, October 15, 2004, Vol 69, pp. 61253–61254). NHANES provides estimates for Mexican-American, but not other Hispanic subgroups. Between the time of the NHANES and the Hispanic Community Health Study, there has been a change in the technology of the accelerometer used in NHANES. To allow comparison of the physical activity data that will be collected from the four Hispanic subgroups in the Hispanic Community Study to the data collected with the previous technology used in NHANES, a cross-validation study is needed. The proposed study, the ActiGraph Accelerometer Validation Study, will serve this purpose. It is a cross-validation study comparing the two ActiGraph accelerometer models under different circumstances of walking or jogging in differing age groups and for both genders. *Frequency of response*: One-time study. *Affected Public*: Individuals. *Type of Respondents*: Healthy adults between the ages of 18–74 years. The annual reporting burden is as follows: *Estimated Number of Respondents*: 144; *Estimated Number of Responses per Respondent*: 1; *Average Burden Hours per Response*: 1.5; and *Estimated Total Annual Burden Hours Requested*: 186. The annualized cost to respondents is estimated at: $3,288.

Data collection task	Number of participants	Frequency of response	Average time per response	Annual hour burden	Hourly wage rate	Cost to respond
Screener	144	1	0.25	36	$17.68	$636.48
Height and weight	120	1	0.25	30	17.68	530.40
Accelerometer fitting	120	1	0.5	60	17.68	1,060.80
Walking track	120	1	0.5	60	17.68	1,060.80
	....	....	1.5	186	....	3,288.48

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility, (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Richard Troiano, CDR, U.S. Public Health Service, Risk Factor Monitoring and Methods Branch, Applied Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute, EPN 4005, 6130 Executive Blvd, MSC 7344, Bethesda, MD 20892–7344, or call non-toll-free number (301) 435–6822, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to: *troianor@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 11, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–592 Filed 1–19–06; 8:45 am]

BILLING CODE 4167–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Collection of Demographic and Smoking/Tobacco Use Information From NCI Cancer Information Service Clients

SUMMARY: 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 National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Collection of Demographic and Smoking/Tobacco Use Information from NCI Cancer Information Service Clients. *Type of Information Collection Request:* Revision of OMB no. 0925–0208 expiration date 11/30/2006. *Need and Use of Information Collection:* The NCI's Cancer Information Service (CIS) provides accurate and up-to-date cancer information to the public through a toll-free telephone number (1–800–4–CANCER) and LiveHelp, an online instant messaging service. In addition, CIS provides smoking cessation assistance through a telephone quitline (accessed through 1–800–44U–QUIT or 1–800–QUITNOW). Characterizing CIS clients is essential to customer service, program planning, and promotion. Currently CIS conducts a brief survey of a sample of telephone and LiveHelp clients at the end of usual service (OMB no. 0925–0208 expiration date 11/30/2006); the survey includes three customer service and five demographic questions (age, sex, race, ethnicity, education). This request is to supplement the current data collection activity by adding (1) four demographic questions related to income, health insurance coverage, and regular source of health care; and (2) a set of 20 smoking/tobacco use questions for individuals seeking smoking cessation assistance. The demographic questions will allow CIS to better measure the program's reach to underserved populations and program impacts on these populations. The smoking/tobacco use questions are necessary as part of the intake and needs assessment process for smoking cessation clients. The information collected about clients' smoking history, previous quit attempts, and motivations to quit smoking will enable Information Specialists to provide effective individualized counseling. Consistent with the current data collection, the proposed demographic and smoking intake questions will be asked of clients who are cancer patients, family members and friends of patients, and the general public. Also consistent with the current data collection, 25% of telephone and quitline clients will be sampled for the proposed demographic questions. If the call is the result of a special promotion, 50% of callers will be surveyed. Overall, it is estimated that 36% of telephone and quitline clients will be sampled for the demographic questions for an estimated annual total of 40,700 telephone clients and 2,400 quitline clients. Also consistent with the current data collection, the demographic questions will be asked of 50% of LiveHelp clients for an estimated annual total of 2,000 online clients. The higher sampling rate for LiveHelp clients is necessary due to the lower response rate among online clients. The proposed smoking intake questions will be asked of 100% of quitline clients for an annual total of approximately 6,700 clients. The combined total to be surveyed each year is approximately 49,400 CIS clients for a total of 2,478 annual burden hours. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Cancer patients, family members and friends of cancer patients, and general public who contact CIS via telephone or online. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATES

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Telephone Clients (36% sampled):				
Demographic questions only	40,700	1	.0178	724
Quitline Clients (36% sampled for demographic questions and 100% for smoking questions):				
Demographic and smoking questions	2,400	1	.2678	643
Smoking questions only	4,300	1	.25	1,075
Subtotal Quitline Clients	6,700			
LiveHelp Clients (50% sampled):				
Demographic questions	2,000	1	.0178	36
Total	49,400			2,478

The annualized cost to respondents is estimated at approximately: $44,827. There are no Capital Costs, Operating Costs, or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Linda Squiers, PhD., Project Officer for Research, Cancer Information Service Branch, National Cancer Institute, NIH, 6116 Executive Blvd, MSC 8322, Rockville, MD, 20892–8322, or call non-toll-free number (301) 594–9075 or E-mail your request, including your address, to: *squiersl@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 8, 2006.

Rachelle Ragland-Greene,

National Institutes of Health, NCI Project Clearance Liaison.

[FR Doc. E6–593 Filed 1–19–06; 8:45 am]

BILLING CODE 4167–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: FDA Approvable Human Diagnostic for Osteoarthritis

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in U.S. Patent Application Number 60/602,334 filed August 18, 2005, entitled ''Biomarkers for Osteoarthritis,'' to PeptiFarma, Inc., having a place of business in San Diego, CA 92191. The contemplated exclusive license may be limited to an FDA approvable human diagnostic for osteoarthritis. The United States of America is an assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which is received by the NIH Office of Technology Transfer on or before March 21, 2006 will be considered.

ADDRESSES: Request for a copy of the patent, inquires, comments, and other materials relating to the contemplated license should be directed to: Marlene Astor, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4426; Facsimile: 301–402–0220; e-mail: *ms482m@nih.gov.*

SUPPLEMENTARY INFORMATION: Osteoarthritis is a chronic, often progressive and substantially disabling condition that becomes more common with advanced age. Osteoarthritis commonly involves the knees, hands, hips, neck and back resulting in pain and limitations of movement.

Unfortunately clinically available tests are neither capable of detecting osteoarthritis early in its development, nor sensitive enough to adequately assess disease progression. A better means of diagnosing early osteoarthritis and its progression that can be used to assess the response to therapeutic treatments is needed. The currently available laboratory techniques are highly sensitive but either lack specificity or require large volumes of sample. Rolling Circle Amplification (RCA) is a new technology that precisely localizes unique signals arising from single reporter molecules. RCA has been incorporated into antibody-based microarray system protein chips that enable testing with high sensitivity and specificity for hundreds of proteins simultaneously, using small sample volumes.

This invention describes a method of using RCA technology for detecting the expression of serum proteins that are perturbed in osteoarthritis patients. The results of this testing can be used to identify proteins associated with osteoarthritis presence, prediction of osteoarthritis development and prognosis, predict response to osteoarthritis treatment and potentially also identify future anti-osteoarthritic drugs.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 10, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer National Institutes of Health.

[FR Doc. E6–590 Filed 1–19–06; 8:45 am]

BILLING CODE 4167–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[USCBP–2006–0017]

Automated Commercial Environment (ACE): National Customs Automation Program Test of Periodic Monthly Payment Statement Process

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces a modification in the Bureau of Customs and Border Protection's (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly deposit of estimated duties and fees. CBP will no longer require Automated Clearing House (ACH) credit participants to initiate payment earlier than the 15th working day of the month as was required by a **Federal Register** notice published on August 8, 2005. CBP, however, must receive the settlement for the credit by the 15th working day in order to have the periodic monthly statement marked paid and treated as a timely payment.

DATES: The changes announced in this Notice are effective immediately.

FOR FURTHER INFORMATION CONTACT: For questions regarding periodic monthly statement payments: Mr. Michael Maricich via e-mail at *Michael.Maricich@dhs.gov*, or by telephone at (703) 921–7520.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004, the Bureau of Customs and Border Protection (CBP) published a General Notice in the **Federal Register** (69 FR 5362) announcing the National Customs Automation Program (NCAP) test for Periodic Monthly Payment Statement Process. The test, which is part of CBP's Automated Commercial Environment (ACE), benefits participants by giving them access to operational data through the ACE Secured Data Portal (''ACE Portal''), which provides them the capability to interact electronically with CBP, and by allowing them to deposit estimated duties and fees on a monthly basis based on a Periodic Monthly Statement issued by CBP.

When the test started, only importers were eligible to apply for the test. Eligibility was later expanded to allow brokers to apply if they were specifically designated by an ACE importer.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) which invited customs brokers, regardless of whether they were designated by participating importers to make Periodic Monthly Statement payments on their behalf, to apply to participate in the test. That notice set forth eligibility requirements for both importers and brokers.

On February 1, 2005, CBP published a General Notice in the **Federal Register** (70 FR 5199) announcing that applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any ACE test (including the test for Periodic Monthly Payment Statement Process), are no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C–TPAT).

As provided in the February 4, 2004 General Notice announcing the test, participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as was the case with existing daily statements in the Automated Commercial System (ACS) (ACE is the successor to ACS). The Periodic Monthly Statement can be created on a national basis by an Automated Broker Interface (ABI) filer. If an importer chooses to file the Periodic Monthly Statement on a national basis he must use his filer code and schedule and pay the monthly statements. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view/receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI if that statement lists information filed by another broker.

On August 8, 2005, CBP published a General Notice in the **Federal Register** (70 FR 45736) changing the time period allowed for the periodic monthly deposit of estimated duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. That change was made in order to comply with the provisions of section 2004 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, which extended the time of deposit of those estimated duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. The document also advised that entries containing Census errors will be eligible to be placed on a Periodic Daily Statement and designated for monthly payment. Finally, the document announced that a participant would be subject to a claim for liquidated damages if the participant removed an entry from a Periodic Daily Statement after expiration of a 10-working-day period after release.

On September 22, 2005, CBP published a General Notice in the **Federal Register** (70 FR 55623) eliminating the requirement that participants in the Periodic Monthly Statement test provide a bond rider covering the periodic payment of estimated duties and fees. The Notice indicated that nonpayment or untimely payment of estimated duties and fees, however, may result in action by CBP to impose sanctions on the delinquent importer of record or to allow the surety to terminate its basic importation bond. If the bond principal is a participant in the Periodic Monthly Statement test, sureties will now be allowed, under certain conditions, to terminate bonds with 3 business days notice to the bond principal and CBP.

Modification of the Monthly Payment Statement Process

This Notice modifies the payment procedure set forth in the August 8, 2005 Notice (70 FR 45736) by specifically eliminating the requirement that ''*ACH credit participants must initiate payment no later than the 14th working day of the month.*'' CBP did not intend to dictate the time in which payment must be initiated. CBP must receive the settlement for the credit by the 15th working day in order to have the periodic monthly statement marked paid and treated as a timely payment.

The August 8, 2005 Notice (70 FR 45736) established monthly payment processing procedures that incorporated the changes regarding the extended time for payment of duties and fees, and the removal of entries from the Periodic Daily Statement after expiration of the 10-working-day period after release.

The process for entries scheduled for monthly payment, as of this date including the modifications made by this Notice, is as follows:

a. As entries are filed with CBP, the importer or its designated broker schedules them for monthly payment;

b. Those entries scheduled for monthly payment will appear on the Preliminary Periodic Daily Statement;

c. The importer or its designated broker processes entry summary presentation transactions for Periodic Daily Statements within 10 working days of the date of entry;

d. After summary information has been filed, the scheduled entries will appear on the Final Periodic Daily Statement;

e. Periodic Daily Statements scheduled for monthly payment will appear on the Preliminary Periodic Monthly Statement; CBP will generate the Preliminary Periodic Monthly Statement on the 11th working day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or designated broker selects an earlier date;

f. On the 15th working day of the month, for Automated Clearing House (ACH) debit participants, CBP will transmit the debit authorizations for the periodic daily statements to the financial institution and the periodic monthly statement will be marked paid. The Final Periodic Monthly Statement will be generated by CBP and be transmitted to the importer or his designated broker. ACH Debit participants must ensure that the money amount identified on the Preliminary Monthly Statement is, in fact, available in their bank account by the 15th working day of the month.

g. CBP must receive the settlement for the credit by the 15th working day of the month in order to have the periodic monthly statement marked paid and treated as a timely payment. The Final Periodic Monthly Statement will be generated by CBP and be transmitted to the importer or his designated broker.

For both ACH Credit and ACH Debit participants, CBP will generate the Final Periodic Monthly Statement on the night that payment is processed.

Participants should note that if they voluntarily remove an entry from a Periodic Daily Statement before expiration of the 10-working-day period after release, that entry may be placed on another Periodic Daily Statement falling within the same 10-working-day period. If, however, participants remove an entry from a Periodic Daily Statement after expiration of the 10-working-day period after release, the entry may be the subject of a claim for liquidated damages for late payment of estimated duties.

Suspension of Regulations

During the testing of the Periodic Monthly Statement process, CBP is suspending provisions in Parts 24, 141, 142, and 143 of the CBP Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, and deposit of estimated duties and fees. Absent any specified alternate procedure, the current regulations apply. All of the terms of the test and criteria for participation therein, as announced in the previous notices identified above, continue to be applicable unless changed by this notice.

Dated: January 12, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 06–529 Filed 1–19–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–03]

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: January 20, 2006.

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: January 12, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–439 Filed 1–19–06; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Roanoke River National Wildlife Refuge, Bertie County, NC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of record of decision for final comprehensive conservation plan and environmental impact statement.

SUMMARY: The Fish and Wildlife Service announces a notice of decision and availability of record of decision (ROD) for Roanoke River National Wildlife Refuge Final Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS). The refuge is in Bertie County, North Carolina. A thorough analysis of the environmental, social, and economic considerations was completed and presented in the Final CCP/EIS. The Final CCP/EIS was released to the public and a notice of availability was published in the **Federal Register** on October 31, 2005 (70 FR 62322). The ROD documents the selection of Alternative 3 (the Service-perferred alternative). which is represented by the Final CCP/EIS for the refuge. The ROD was signed by the Regional Director, U.S. Fish and Wildlife Service, Southeast Region, on January 12, 2006.

ADDRESSES: A copy of the ROD may be obtained from the Refuge Manager, Roanoke River National Wildlife Refuge, 114 West Water Street, Windsor, North Carolina 27983, or you may call the Refuge Manager at 252–794–3808. A copy of the Final CCP/EIS is available at the following Web site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Roanoke River national Wildlife Refuge, 114 West Water Street, Windsor, North Carolina 27983; Telephone (252) 794–3808.

SUPPLEMENTARY INFORMATION: The following is a summary of the ROD, which selects Final CCP/EIS Alternative 3, for Roanoke river National Wildlife Refuge. The CCP/EIS provides management guidance that conserves refuge resources and facilitates compatible wildlife-dependent public use activities during the next 15 years.

The Service has selected as the preferred alternative, Alternative 3, which addresses key issues and conflicts identified during the planning process, and will best achieve the purposes and goals of the refuge, as well as the mission of the National Wildlife Refuge System. This decision includes the management goals, objectives, and strategies identified in the CCP/EIS Chapter III, the adoption of stipulations and mitigation measures identified in Chapter IV, and compatibility determinations in Appendix IX. The implementation of the CCP will occur over the next 15 years, depending on future staffing levels, funding, and willing sellers of land.

Factors Considered in Making the Decision

The decision was based on a thorough analysis of the environmental, social, and economic considerations presented in the Final CCP/EIS. During the decision-making phase of the CCP process, the Service reviewed and considered: The impacts identified in Chapter IV of the Draft and Final CCP/EIS; the results of various studies and surveys conducted in conjunction with the Draft and Final CCP/EIS; relevant issues, concerns, and opportunities; comments on the Draft and Final CCP/EIS; and other relevant factors, including the purposes for which the refuge was established and statutory and regulatory guidance.

Alternative 3 incorporates several components addressing a variety of needs, including fish and wildlife surveys, habitat restoration and protection, acquisition of lands within the approved acquisition boundary, and the six priority public uses of the National Wildlife Refuge System Improvement Act of 1997.

It is, however, the unique combination of these components that contributes the most to achieving the refuge's purposes and goals. Alternative 3 strengthens the monitoring of fish, wildlife, habitat, and public uses that will provide the means to better respond to rapidly changing conditions on the refuge. Alternative 3 was selected for implementation because it provides the greatest number of opportunities for the refuge to contribute to the fish, wildlife, and habitat needs of the Roanoke River watershed.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1977, Public Law 105–57.

Dated: November 30, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–521 Filed 1–19–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for St. Marks National Wildlife Refuge in Wakulla, Jefferson and Taylor Counties, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for St. Marks National Wildlife Refuge are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

DATES: Public meetings will be held in each county to present the plan to the public. Mailings, media releases, and Web site postings will be the avenues to inform the public of the dates and times for the meetings. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for St. Marks National Wildlife Refuge should do so no later than March 21, 2006.

ADDRESSES: Requests for copies of the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to Mary Morris, Natural Resource Planner, St. Marks National Wildlife Refuge, P.O. Box 68, St. Marks, Florida 32355; Telephone (850) 925–6121. The plan and environmental assessment may also be accessed and downloaded from the Service's Internet Web site *http://southeast.fws.gov/planning/* or the refuge's Web site *http://saintmarks.fws.gov.* Comments on the draft plan may be submitted to the above address (attention: Mary Morris, Natural Resource Planner) or via electronic mail to *Mary_Morris@fws.gov.* Please include your name and return address in your Internet message. Our practice is to make comments, including names and home addressed of respondents, available for pubic review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: Priority issues addressed in the draft plan include: habitat protection and land conservation; migratory birds; partnerships; fire and forest management; exotic, invasive and nuisance species; wildlife inventory and monitoring; imperiled species management; visitor services; funding and staffing; and wilderness and cultural resources protection.

The Service developed three alternatives for managing the refuge and chose Alternative 2 as the preferred alternative.

Alternatives

Alternative 1 represents no change from current management of the refuge. The most recent approved acquisition boundary expansion (2000) would allow for the acquisition and protection of 3,764 acres of land adjacent to the refuge. Habitat planning documents would be revised as staff resources allow. Currently, the State of Florida provides funding for the majority of exotic plant species control and supplies, but staff resources are used for an aggressive control program. Exotic animals are removed through the hunt program. A series of impoundments are managed for waterfowl and these habitats are dependent on the upper basin outside of the refuge, which is experiencing hydrologic change.

Most research work on the refuge is conducted with outside funding and partnering agencies. Monitoring work is focused to the highest priority species, such as red-cockaded woodpeckers. The refuge has a need for basic inventories of threatened, endangered, and imperiled species and plant and animal species. The habitat and life requirement needs of many species are unknown and the presence or absence of rare or imperiled species has not been fully addressed.

Visitor services would remain with existing programs, facilities, and staff addressing the priority public uses—hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. Environmental education and interpretation programs would continue and be conducted mainly onsite, with staff participation in a few offsite outreach festivals yearly.

Protection of cultural resources would continue to rely on patrols by the law enforcement officer. A comprehensive inventory of resources is needed. The St. Marks Lighthouse would remain an unimproved structure without public access. Maintenance would be performed, as required for a national historic site to the extent funding is available.

The Wilderness Area would remain a Class I airshed and monitoring of ozone would continue. Patrols in the Wilderness Areas would also continue to be performed by the law enforcement officer.

All refuge functions would be conducted in existing administrative, visitor service, fire, and maintenance facilities. The existing staff would be maintained.

The preferred alternative, Alternative 2, is considered the most effective management action for meeting the purposes of the refuge. The proposed management plan outlines the enhancement of wildlife populations and related habitats over the next 15 years. It also improves refuge safety and protection of resources, and may provide visitors with more opportunities for wildlife viewing and wildlife-dependent recreation. Environmental education and outreach would be expanded under this proposed option.

In support of habitat and wildlife conservation, the most notable proposal is to emphasize and encourage the protection of additional conservation lands, outside the current acquisition boundary, that are critical to the protection of refuge resources. This conservation focus area includes lands south of U.S. Highway 98, southeast of Panacea, south of the Ochlockonee river, and the East and Wacissa Rivers drainage basins. The State of Florida is actively pursuing the acquisition of lands adjacent to the refuge and seeking partnerships with the Service for management. A conservation buffer area around the refuge would help ensure the integrity of the refuge's land and water resources and enhance the connectivity of wildlands critical for species, such as the Florida black bear, by providing a conservation corridor. Many objectives and strategies focus on maintaining and restoring native communities, particularly longleaf pine. The development of the refuge as a Land Management Research and Demonstration Area would help the refuge to become a leader in longleaf pine research and conservation and would enable the sharing of that knowledge with other to benefit both private and publicly owned lands. Programs to control or eradicate terrestrial and aquatic non-indigenous and invasive plants are proposed, as is nuisance animal control. Hydrologic studies and land conservation are proposed to maintain the integrity of refuge resources and to manage the impoundments to benefit migratory birds.

Many ongoing and proposed programs and effort focus on threatened, endangered, rare, and imperiled species of plants and animals. The need for extensive inventorying and monitoring for baseline data is addressed in this management plan, particularly for red-cockaded woodpeckers, bald eagles, wood storks, least terns and flatwood salamanders.

Since a primary purpose for refuge establishment is to provide habitat for migratory birds, the improvement of the impoundments to provide high quality for waterfowl, shorebirds and marsh birds is proposed. So, too, are strategies to improve forested habitat, such as pine flatwoods, pine-cabbage palmetto hammocks, mesic and hydric pine hardwood, and hardwood hammocks.

A primary focus of the visitor services program, as proposed, is to enhance environmental education and outreach efforts substantially. This plan may offer increased opportunity for wildlife-dependent recreation, such as photography, hiking and wildlife observation. Fishing improvements and angler awareness programs are proposed. The feasibility of conducting youth hunt programs and clinics will be explored. The restoration of the St. Marks Lighthouse would provide an opportunity to present the refuge's rich cultural and historic heritage.

Sensitive areas and rich resources, such as the refuge's designated Wilderness Area and cultural resources, would receive more protection through increased law enforcement. A major provision of this alternative is a comprehensive study of all refuge archaeological and historical resources.

Meeting basic refuge operation needs has been addressed. Essential new office space, staffing, and equipment needs are proposed.

Alternative 3 incorporates and builds-upon all the habitat improvements listed under Alternative 2. Protection of the East River drainage basin would occur. Exotic plant and animal species would be controlled or eradicated. Hardwood habitat management would be improved.

The biological programs of the refuge would be greatly enhanced with the addition of three biologist and/or biological technician positions to expand the Land Management Research and Demonstration Area program, to add additional projects, and to improve outreach and coordination with other conservation agencies and the public. Monitoring and inventorying of rare and imperiled species would be enhanced, especially for reptiles, amphibians, mammals, and those bird species not considered highest priority. A herpetologist would be employed to study reptiles and amphibians, to conduct literature reviews, and to share data with partners. Wood-duck banding would be increased. The impoundments would be actively managed for rails, and life-history studies would be conducted. Point counts of priority species would be undertaken for regional and national trend analysis. With additional staff, refuge personnel could more effectively monitor and respond to wildlife disturbance and habitat management issues.

Visitor services would be improved with the addition of a ranger position to operate the expanded Visitor Center and to assist with both on- and off-site outreach opportunities. Two additional environmental education specialists would maintain the environmental education classroom, laboratory outdoor classrooms and overnight facility, providing maximum opportunity to the public and groups 7 days a week. They would assist the lead environmental education specialist in program development and training of staff, volunteers, and educators. In addition to needed facilities proposed under Alternative 2, a research center to house the Land Management Research and

Demonstration Area program staff would be constructed in order to provide laboratory and housing facilities for partnering researchers and educators.

Cultural and wilderness resources would be further protected through the addition of a law enforcement officer who would also serve as a community police liaison in an effort to educate the public about refuge resources and to deter and prevent crime. All step-down plans, except for the Land Protection Plan, would be completed within 5 years of plan adoption.

The refuge, established in 1931 as a breeding ground for wild animals and birds, is situated along the Gulf coast of northwest Florida, about 25 miles south of Tallahassee. It currently covers about 68,931 acres with an approved acquisition boundary of 74,469 acres. Refuge personnel also manage 947 acres of State land and 334 acres of USDA Forest Service land within the approved acquisition boundary. The Wilderness Act designated 17,446 acres as the St. Marks Wilderness. The refuge aims to provide habitat for a natural diversity of plants and animals with a primary purpose of wildlife habitat conservation. The refuge is also being managed to provide opportunity for compatible wildlife-dependent recreation.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: October 31, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–523 Filed 1–19–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Request for Information and Recommendations on Species Proposals, Resolutions, Decisions, and Agenda Items for Consideration at the Fourteenth Regular Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; U.S. Approach for the Meeting of the Conference of the Parties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for information.

SUMMARY: In order to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention), the Parties to the Convention meet periodically to review which species in international trade should be regulated and other aspects of the implementation of CITES. The fourteenth regular meeting of the Conference of the Parties to CITES (CoP14) is tentatively scheduled to be held June 3–15, 2007, in The Hague, Netherlands. Therefore, with this notice we are soliciting recommendations for amending Appendices I and II of CITES at CoP14. We are also soliciting recommendations for resolutions, decisions, and agenda items for discussion at CoP14. We invite you to provide us with information and recommendations on animal and plant species that should be considered as candidates for U.S. proposals to amend CITES Appendices I and II. Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendix II. We also invite you to provide us with information and recommendations on possible resolutions, decisions, and agenda items for discussion at the upcoming meeting. Finally, with this notice we also describe the U.S. approach to preparations for CoP14.

DATES: We will consider all information and comments received by March 20, 2006.

ADDRESSES: Send correspondence pertaining to species proposals to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, Virginia 22203, or via E-mail to: *scientificauthority@fws.gov.* Comments and materials received pertaining to species proposals will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Scientific Authority.

Send correspondence pertaining to resolutions, decisions, and agenda items to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, Virginia 22203, or via E-mail at: *CoP14@fws.gov.* Comments and materials received pertaining to resolutions, decisions, and agenda items will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Management Authority.

FOR FURTHER INFORMATION CONTACT: For information pertaining to species proposals: Robert R. Gabel, Chief, Division of Scientific Authority, phone 703–358–1708, fax 703–358–2276, E-mail: *scientificauthority@fws.gov.*

For information pertaining to resolutions, decisions, and agenda items: Peter O. Thomas, Chief, Division of Management Authority, phone 703–358–2095, fax 703–358–2298, E-mail: *CoP14@fws.gov.*

SUPPLEMENTARY INFORMATION

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in the Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/app/index.shtml.* Currently, 169 countries, including the United States, are Parties to CITES. The Convention calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and/or agenda items for consideration by all the Parties.

This is our first in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the U.S. negotiating positions for the fourteenth regular meeting of the Conference of the Parties to CITES (CoP14). Our regulations governing this public process are found in 50 CFR 23.31–23.39.

Announcement of the Fourteenth Meeting of the Conference of the Parties

We hereby notify you of the convening of CoP14, which is tentatively scheduled to be held June 3–15, 2007, in The Hague, Netherlands.

U.S. Approach for CoP14

What Are the Priorities for U.S. Submissions to CoP14?

Priorities for U.S. submissions to CoP14 continue to be consistent with the overall objective of U.S. participation in the Convention: to maximize the effectiveness of the Convention in the conservation and sustainable use of species subject to international trade. With this in mind, we plan to consider the following factors in determining which issues to submit for inclusion in the agenda at CoP14:

(1) *Does the proposed action address a serious wildlife trade issue that the United States is experiencing as a range country for species in trade?* Since our primary responsibility is the conservation of our domestic wildlife resources, we will give native species our highest priority. We will place particular emphasis on terrestrial and freshwater species with the majority of their range in the United States and its territories that are or may be in significant trade; marine species that occur in U.S. waters or for which the United States is a major exporter; and threatened and endangered species for which we and other Federal and State agencies already have statutory responsibility for protection and recovery. We also consider CITES listings as a proactive measure to monitor and manage trade in native species to preclude the need for the application of stricter measures, such as listing under the Endangered Species Act and/or inclusion in CITES Appendix I.

(2) *Does the proposed action address a serious wildlife trade issue for species not native to the United States?* As a major importer of wildlife and wildlife products, the United States has taken responsibility, by working in close consultation with range countries, for addressing cases of potential over-exploitation of foreign species in the wild. In some cases, the United States may not be a range country or a significant trading country for a species, but we will work closely with other countries to conserve species being threatened by unsustainable exploitation for international trade. We will consider CITES listings for species not native to the United States if that listing will assist in addressing cases of potential over-exploitation of foreign species in the wild, and in preventing illegal, unregulated trade, especially if the United States is a major importer. These species will be prioritized based on the extent of trade and status of the species, and also the role the species play in the ecosystem, with emphasis on those species for which a CITES listing would offer the greatest conservation benefits to the species, associated species, and their habitats.

(3) *Does the proposed action address difficulties in implementing or interpreting the Convention by the United States as an importing or exporting country, and would the proposed action contribute to the effective implementation of the Convention by all Parties?* Differences in interpretation of the Convention by 169 Party nations can result in inconsistencies in the way it is implemented. In addition, wildlife trade is dynamic and ever-changing, thus presenting problems when established procedures are not readily applicable to new situations. The United States experiences some of these problems and inconsistencies directly through its own imports and exports, but we also learn of these difficulties through our participation in various fora, such as the CITES Standing Committee and the technical committees, and through discussions with other countries, non-governmental organizations, and the Secretariat. When the United States cannot resolve these difficulties unilaterally or through one-on-one discussions with trading partners, it may propose resolutions or decisions, usually in collaboration with other Parties, or have these topics placed on the agenda of the meeting of the Conference of the Parties for discussion by all of the Parties.

(4) *Does the proposed action improve implementation of the Convention by increasing the quality of information and expertise used to support decisions by the Parties?* With increased complexity, sophistication, and specialization in the biological sciences and other disciplines, it is critical that the CITES Parties have the best available information upon which to base decisions that affect the conservation of wildlife resources. Where appropriate, the United States will recommend actions to ensure the availability of up-to-date and accurate information to the Parties, including through the establishment of relationships with relevant international bodies, including other conventions, interjurisdictional resource management agencies, and international non-governmental organizations with relevant expertise.

Request for Information and Recommendations for Amending Appendices I or II

One of the purposes of this notice is to solicit information and recommendations that will help us identify species that the United States should propose as candidates for addition to, removal from, or reclassification in the CITES Appendices, or to identify issues warranting attention by the CITES Nomenclature Committee. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning animal or plant species occurring in the wild anywhere in the world. We encourage the submission of information on species for possible inclusion in the Appendices if these species are subject to international trade that may be detrimental to the survival of the species. We also encourage you to keep in mind the U.S. approach to CoP14, described above in this notice, when determining which species the United States should propose for possible inclusion in the Appendices.

Complete proposals are not being requested at this time, but are always welcome. Rather, we are asking you to submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of domestic as well as international trade in the species, especially trend information. You may also provide any other relevant information. References are appreciated.

The term ''species'' is defined in CITES as ''any species, sub-species, or geographically separate population thereof.'' Each species for which trade is controlled under CITES is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other CITES-listed species may be brought under effective control. Such listings frequently are necessary because of difficulty inspectors have at ports of entry or exit in distinguishing specimens of currently or potentially threatened species from other species. As Appendix III only includes species that any Parties list unilaterally, we are not seeking input on possible U.S. Appendix-III listings with this notice, and we will not consider or respond to comments received concerning Appendix-III listings.

CITES specifies that international trade in any readily recognizable parts or derivatives of animals listed in Appendices I or II, or plants listed in Appendix I, is subject to the same conditions that apply to trade in the whole organisms. With certain standard exclusions formally approved by the Parties, the same applies to the readily recognizable parts and derivatives of most plant species listed in Appendix II. Parts and derivatives usually not included (i.e., not regulated) for Appendix-II plants are: seeds, spores, pollen (including pollinia), and seedlings or tissue cultures obtained in vitro and transported in sterile containers. You may refer to 50 CFR 23.23(d); and the October 6, 1995, **Federal Register** (60 FR 52450) and February 22, 1996, **Federal Register** (61 FR 6793) for further exceptions and limitations.

In 1994, the CITES Parties adopted criteria for inclusion of species in Appendices I and II, which were revised at CoP13 (in Resolution Conf. 9.24 (Rev. CoP13)) in October 2004. These criteria apply to all listing proposals and are available from the CITES Secretariat's Web site at *http://www.cites.org*, or upon request from the Division of Scientific Authority at the above address. Resolution Conf. 9.24 (Rev. CoP13) also provides a format for complete proposals.

What Information Should Be Submitted?

In response to this notice, to provide us with information and recommendations on species subject to international trade for possible proposals to amend the Appendices, please include as much of the following information as possible in your submission:

(1) Scientific name and common name;

(2) Population size estimates (including references if available);

(3) Population trend information;

(4) Threats to the species (other than trade);

(5) Level/trend of international trade (as specific as possible but without a request for new searches of our records);

(6) Level/trend in total take from the wild (as specific as reasonable); and

(7) Short summary statement clearly presenting the rationale for inclusion in or removal or transfer from one of the Appendices, including which of the criteria in Resolution Conf. 9.24 (Rev. CoP13) are met.

If you wish to submit more complete proposals for us to consider, please consult Resolution Conf. 9.24 (Rev. CoP13) for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from Appendix II, must also be in accordance with the precautionary measures described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP13). If you have information on species that are potential candidates for CITES proposals, we encourage you to contact the Division of Scientific Authority.

What Will We Do With the Information We Receive?

One important function of the CITES Scientific Authority of each Party country is the monitoring of international trade in plant and animal species, and ongoing scientific assessments of the impact of that trade on species. For native U.S. species listed in Appendix I and II, we monitor trade and export permits we authorize, so that we can prevent over-utilization and restrict exports if necessary. We also work closely with our States, to ensure that species are correctly listed in the CITES Appendices (or not listed, if a listing is not warranted). We actively seek information about U.S. and foreign species subject to international trade. The information submitted will help us monitor trade and its impact, as well as help us decide if we should submit or co-sponsor a proposal to amend the CITES Appendices. However, there may be species that qualify for CITES listing but for which we decide not to submit a proposal to CoP14. Our decision will be based on a number of factors, including scientific and trade information, whether or not the species is native to the United States, and for foreign species, whether or not a proposal is supported or co-sponsored by at least one range country for the species. These factors and others are included in the U.S. approach to CoP14, described above in this notice. We intend to carefully consider all factors of the U.S. approach when deciding which species the United States should propose for possible inclusion in the Appendices.

We will consult range countries for foreign species, and for species we share with other countries, subsequent to receiving and analyzing the information provided by the public.

Request for Information and Recommendations on Resolutions, Decisions, and Agenda Items

Although we have not yet received formal notice of the provisional agenda for CoP14, we invite your input on possible agenda items that the United States could recommend for inclusion, or on possible resolutions and/or decisions of the Conference of the Parties that the United States could submit for consideration. Copies of the agenda and the results of the last meeting of the Conference of the Parties (CoP13) in Bangkok, Thailand, in October 2004, as well as copies of all resolutions and decisions of the Conference of the Parties currently in effect, are available from the CITES Secretariat's Web site (*http://www.cites.org/*) or the Division of Management Authority at the above address. Copies of a list of species proposals adopted at CoP13 are also available from the Division of Scientific Authority at the above address.

Observers

Article XI, paragraph 7 of CITES provides: ''Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.''

National agencies or organizations within the United States must obtain our approval to participate in CoP14, whereas international agencies or organizations must obtain approval directly from the CITES Secretariat. We will publish information in a future **Federal Register** notice on how to request approved observer status. A fact sheet on the process is posted on our Web site at: *http://www.fws.gov/international/pdf/ob.pdf.*

Future Actions

The next regular meeting of the Conference of the Parties (CoP14) is tentatively scheduled to be held June 3–15, 2007, in The Hague, Netherlands. We have developed a tentative U.S. schedule to prepare for that meeting. The United States must submit any proposals to amend Appendix I or II, or any draft resolutions, decisions, and/or agenda items for discussion at CoP14, to the CITES Secretariat 150 days prior to the start of the meeting. In order to accommodate this deadline, we plan to publish a **Federal Register** notice approximately 10 months prior to CoP14 announcing tentative species proposals, draft resolutions, draft decisions, and agenda items to be submitted by the United States, and to solicit further information and comments on them.

Approximately 9 months prior to CoP14, we will tentatively hold a public meeting to allow for additional public input. Approximately 4 months prior to CoP14, we will post on our Web site an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP14. The deadline for submission of the proposals, draft resolutions, draft decisions, and agenda items to the Secretariat will be 150 days prior to the start of the meeting (tentatively early January 2007).

Through a series of additional notices and Web site postings in advance of CoP14, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP14, and about how to obtain observer status from us. We will also publish announcements of public meetings tentatively to be held approximately 9 months prior to CoP14, and approximately 2 months prior to CoP14, to receive public input on our positions regarding CoP14 issues.

Author: The primary authors of this notice are Frank Kohn and Clifton Horton, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: December 21, 2005.

Marshall Jones,

Director, Fish and Wildlife Service.

(Notice: Request for information and recommendations on species proposals, resolutions, decisions, and agenda items for consideration at the fourteenth regular meeting of the Conference of the Parties to CITES; U.S. approach for the meeting of the Conference of the Parties.)

[FR Doc. E6–594 Filed 1–19–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act and 36 CFR Part 65 that a telephonic conference call of the Landmarks Committee of the National Park System Advisory Board will be held beginning at 1 p.m. on March 20, 2006.

DATES: March 20, 2006.

To Participate in Conference Call: Call 866–772–1693, and use password 9667678.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Program, National Park Service, 1849 C Street, NW., (2280), Washington, DC 20240; Telephone (202) 354–2216.

SUPPLEMENTARY INFORMATION: The purpose of this conference call of the Landmarks Committee of the National Park System Advisory Board is to evaluate a draft Statement of Significance relating to the proposed Captain John Smith Chesapeake National Historic Watertrail, and to render an opinion about the proposed watertrail's historical significance for consideration by the National Park System Advisory Board at their subsequent meeting, March 21–22, 2006, in Jacksonville, Florida. The members of the National Landmarks Committee are:

Mr. Larry E. Rivers, Ph.D., Chair
Mr. James M. Allan, Ph.D.
Mr. Cary Carson, Ph.D.
Ms. Mary Werner DeNadai, FAIA
Ms. Alferdteen Brown Harrison, Ph.D.
Mr. E.L. Roy Hunt, J.D., Professor Emeritus
Mr. Ronald James
Mr. William J. Murtagh, Ph.D.
Mr. William D. Seale, Ph.D.
Ms. Jo Anne Van Tilburg, Ph.D.

The meeting will be open to the public. Pursuant to 36 CFR Part 65, any member of the public may file for consideration by the National Park System Advisory Board and its Landmarks Committee written comments concerning National Historic Landmarks nominations, amendments to existing designations, proposals for withdrawal of designation, or National Historic Trail Statements of Significance.

Comments should be submitted to John W. Roberts, Acting Chief, National Historic Landmarks Program, National Park Service, 1849 C Street, NW., (2280); Washington, DC 20240.

Dated: January 17, 2006.

John W. Roberts,

Acting Chief, National Historic Landmarks Program; National Park Service.

[FR Doc. 06–581 Filed 1–19–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed National Natural Landmark Designation for Ashfall Fossil Beds, Antelope County, NE

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed National Natural Landmark designation.

SUMMARY: The National Park Service Director has determined that Ashfall Fossil Beds, located near Orchard in Antelope County, Nebraska, appears to meet the criteria for national significance and proposes to recommend the site for designation as a National Natural Landmark. The public is invited to comment on this recommendation. This proposal will be considered by the National Park System Advisory Board at a meeting to be held on March 21 and 22, 2006, at Timucuan Ecological and Historic Preserve, in the Ribault Club, 11241 Fort George Rd., Jacksonville, Florida.

DATES: Written comments will be accepted by the National Park Service until March 21, 2006.

ADDRESSES: Written comments should be sent to Dr. Margaret Brooks, National Natural Landmarks Program Manager, National Park Service, 255 N. Commerce Park Loop, Tucson, Arizona 85745, or Internet address: *Margi_Brooks@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Brooks at 520–670–6501, extension 232.

SUPPLEMENTARY INFORMATION: Ashfall Fossil Beds is the only location on earth where large numbers of fossil mammals have been found as whole, three-dimensionally preserved skeletons. A thick bed of volcanic ash contains hundreds of complete skeletons of extinct rhinos, camels, three-toed horses and many other vertebrates lying in their death poses in an ancient waterhole. The animals were killed and buried by ash from an enormous volcanic eruption some 10 million years ago. This site is a Nebraska State Historical Park and is open to the public. Information on the National Natural Landmarks Program can be found in 36 CFR part 62 or on the Internet at *http://www.nature.nps.gov/nnl.*

Dated: January 17, 2006.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 06–546 Filed 1–19–06; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed National Natural Landmark Designation for Garden Canyon at Fort Huachuca, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed National Natural Landmark designation.

SUMMARY: The National Park Service Director has determined that Garden Canyon, located within Fort Huachuca, Cochise County, Arizona, appears to meet the criteria for national significance and proposes to recommend the site for designation as a National Natural Landmark. The public is invited to comment on this recommendation. This proposal will be considered by the National Park System Advisory Board at a meeting to be held on March 21 and 22, 2006, at Timucuan Ecological and Historic Preserve, in the Ribault Club, 11241 Fort George Rd., Jacksonville, Florida.

DATES: Written comments will be accepted by the National Park Service until March 21, 2006.

ADDRESSES: Written comments should be sent to Dr. Margaret Brooks, National Natural Landmarks Program Manager, National Park Service, 255 N. Commerce Park Loop, Tucson, Arizona 85745, Internet address: *Margi_Brooks@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Brooks at 520–670–6501, extension 232.

SUPPLEMENTARY INFORMATION: Garden Canyon represents the best example of Madrean montane evergreen woodland, Madrean montane conifer forest, and semi-desert grassland in the Mohave-Sonoran desert region. This unique assemblage of biotic communities harbors many subtropical species at the northern edges of their range. The relatively natural fire regime has contributed to the retention of ecosystems in Garden Canyon that are representative of pre-settlement conditions. Information on the National Natural Landmarks Program can be found in 36 CFR Part 62 or on the Internet at *http://www.nature.nps.gov/nnl.*

Dated: January 17, 2006.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 06–547 Filed 1–19–06; 8:45 am]

BILLING CODE 4312–52–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES–05–80]

Upper Rio Grande Basin Water Operations Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Meetings for the Draft Environmental Impact Statement for the Upper Rio Grande Basin Water Operations Review.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation), with and on behalf of other joint-lead agencies (U.S. Army Corps of Engineers [Corps], Department of Defense; and the New Mexico Interstate Stream Commission [Commission], State of New Mexico), has prepared a draft environmental impact statement (DEIS) to assess the consequences of proposed changes to water operations in the Rio Grande basin above Fort Quitman, Texas. The DEIS is programmatic and is not intended to authorize specific projects that may also be applied to the upper Rio Grande system. It is anticipated that a plan for water operations at existing Reclamation and Corps facilities will be developed.

The DEIS presents alternatives with respect to water operations and evaluates the environmental, economic, and social effects of these alternatives. Some of the alternatives considered include changing the channel capacity criteria at Albuquerque, storage or non-storage of Rio Grande water in authorized San Juan-Chama space in Abiquiu Reservoir, and operation of the Low Flow Conveyance Channel.

DATES: A 60-day public review period commences with the publication of this notice. Comments on the DEIS should be submitted no later than Tuesday, March 21, 2006, to Ms. Valda Terauds, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102. Comments may also be submitted electronically at: *http://www.spa.usace.army.mil/urgwops/.*

The joint-lead agencies will conduct eight public meetings to obtain public input on the DEIS. All of the meetings will take place from 6 p.m. to 9 p.m. The public meetings schedule is as follows:

- February 21, 2006, 6–9 p.m., International Boundary and Water Commission, 4171 North Mesa, El Paso, Texas;
- February 22, 2006, 6–9 p.m., Mesilla Valley Inn, 901 Avenida de Mesilla, Las Cruces, New Mexico;
- February 23, 2006, 6–9 p.m., Ranchers Steak House, 606 North California Street, Socorro, New Mexico;
- February 28, 2006, 6–9 p.m., Indian Pueblo Cultural Center, 2401 12th Street NW., Albuquerque, New Mexico;
- March 1, 2006, 6–9 p.m., Radisson Hotel, 750 North St. Francis, Santa Fe, New Mexico;
- March 2, 2006, 6–9 p.m., Espanola Public Library, Richard Lucero Center, 313 North Paseo de Onate, Espanola, New Mexico;
- March 8, 2006, 6–9 p.m., Corps Abiquiu Res. Office, 2.5 Mile Highway 95, Abiquiu, New Mexico; and
- March 9, 2006, 6–9 p.m., U.S. Department of Agriculture, Rural Development, 101 South Craft Drive, Alamosa, Colorado.

ADDRESSES: The DEIS is electronically available for viewing and copying at the Corps' Albuquerque District Web site at: *http://www.spa.usace.army.mil/urgwops/*. Alternatively, a compact disc or hard copy is available upon written request to Ms. Valda Terauds, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100 Albuquerque, New Mexico 87102.

Copies of the DEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102;
- Southern Peaks Public Library, 423 4th Street, Alamosa, Colorado 81101;
- Taos Public Library, 402 Camino de la Placita, Taos, New Mexico 87571;
- City of Española Library, 405 Paseo de Onate, Espanola, New Mexico 87532;
- Albuquerque Main Library, 501 Copper NW., Albuquerque, New Mexico 87102;
- Santa Fe Public Library, 145 Washington Street, Santa Fe, New Mexico 87501;
- El Paso Public Library, Clardy Fox Branch, 5515 Robert Alva Avenue, El Paso, Texas 79905;
- Thomas Branigan Memorial Library, 200 East Picacho Avenue, Las Cruces, New Mexico 88001; and
- Socorro Public Library, 401 Park Street, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Ms. Valda Terauds, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102; telephone 505–462–3584; facsimile 505–462–3593; e-mail: *vterauds@uc.usbr.gov.*

Ms. April Sanders, U.S. Army Corps of Engineers Albuquerque District, 4101

Jefferson Plaza NE., Albuquerque, New Mexico, 87109; telephone 505–342–3443; facsimile 505–342–3195; e-mail: *april.f.sanders@usace.army.mil.*

Mr. Nabil Shafike, Ph.D., New Mexico Interstate Stream Commission, 121 Tijeras NE., Suite 2000, Albuquerque, New Mexico 87102; telephone 505–764–3866; facsimile 505–764–3893; e-mail: *nabil.shafike@state.nm.us.*

SUPPLEMENTARY INFORMATION: Pursuant to various legal authorities, and subject to allocation of supplies and priority of water rights under state law, Reclamation and the Corps operate dams, reservoirs, and other facilities in the upper Rio Grande basin to:

(1) Store and deliver water for agricultural, domestic, municipal, industrial, and environmental uses;

(2) Assist the Commission in meeting downstream water delivery obligations mandated by the Rio Grande Compact;

(3) Provide flood protection and sediment control; and

(4) Comply with existing laws, contract obligations, and international treaties.

The Upper Rio Grande Basin Water Operations Review (Review) provides the basis of, and is integral to, preparation of the DEIS. The purpose of the Review and DEIS is to:

(1) Identify flexibilities in operation of federal reservoirs and facilities in the upper Rio Grande basin that are within existing authorities of Reclamation, the Corps, and the Commission, and in compliance with federal and state laws;

(2) Develop a better understanding of how these facilities could be operated more efficiently and effectively as an integrated system;

(3) Formulate a plan for future water operations at these facilities that is within the existing authorities of Reclamation, the Corps, and the Commission; complies with federal, state, and other applicable laws and regulations; and assures continued safe dam operations;

(4) Improve processes for making decisions about water operations through better interagency communication and coordination, and facilitation of public review and input; and

(5) Support compliance by the Corps, Reclamation, and the Commission with applicable law and regulations, including, but not limited to, the National Environmental Policy Act and the Endangered Species Act.

The DEIS addresses water operations at the following facilities with the noted exceptions and limitations:

- Flood control operations at Platoro Reservoir (the Review and EIS will include only flood control operations at Platoro that are under Corps authority; water supply operations at Platoro are under local control)
- Closed Basin Division—San Luis Valley Project
- Heron Dam and Reservoir
- Abiquiu Dam and Reservoir
- Cochiti Dam and Reservoir
- Low Flow Conveyance Channel
- Flood control operations at Elephant Butte Dam and Reservoir (because of current litigation, water supply operations at Elephant Butte are not included in the Review or DEIS)
- Flood control operations at Caballo Dam and Reservoir (because of current litigation, water supply operations at Caballo are not included in the Review or DEIS).

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: January 10, 2006.

Rick L. Gold,

Regional Director—Bureau of Reclamation, Upper Colorado Region.

[FR Doc. 06–470 Filed 1–19–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1092–1093 (Final)]

Diamond Sawblades and Parts Thereof From China and Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1092–1093 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and Korea of diamond sawblades and parts thereof, provided for in subheading 8202.39 of the Harmonized Tariff Schedule of the United States (HTSUS).[1] When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206 of the HTSUS.

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 29, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski (202–205–3188),

[1] 1 For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope (of these investigations) are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process)." *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 70 FR 77121, 77123 (December 29, 2005) and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof form the Republic of Korea*, 70 FR 77135, 77138 (December 29, 2005).

In addition, Commerce excluded these products from its scope: sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment; diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches; circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished; diamond sawblade cores with a Rockwell C hardness of less than 25; and diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260). Ibid.

Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of diamond sawblades and parts thereof from China and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on May 3, 2005, by the Diamond Sawblade Manufacturers' Coalition and its individual members: Blackhawk Diamond, Inc, Fullerton, CA; Diamond B, Inc., Santa Fe Springs, CA; Diamond Products, Elyria, OH; Dixie Diamond, Lilburn, GA; Hoffman Diamond, Punxsutawney, PA; Hyde Manufacturing, Southbridge, MA; Sanders Saws, Honey Brook, PA; Terra Diamond, Salt Lake City, UT; and Western Saw, Inc., Oxnard, CA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of these investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 2, 2006, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 16, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 10, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 12, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 9, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 23, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 23, 2006. On June 9, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 13, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 17, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–644 Filed 1–19–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–C (Second Review)]

Uranium From Russia

AGENCY: International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the suspended antidumping investigation on Uranium from Russia.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether termination of the suspended antidumping investigation on Uranium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 11, 2006.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2005, the Commission determined that circumstances were such that a full review pursuant to section 751(c)(5) of the Act should proceed (70 FR 60368, October 17, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on May 3, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 23, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 17, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 12, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 2, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before June 2, 2006. On July 7, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 11, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 17, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–641 Filed 1–19–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 30, 2005, a proposed Consent Decree in the lead case *Lyondell Chemical Co., et al.* v. *Albemarle Corp. et al.,* Civil Action No. 01CV890, consolidated with *United States* v. *EPEC Polymers, Inc.,* 02CV003, and *El Paso Tennessee Pipeline Co., et al.* v. *Chevron USA, Inc., et al.,* 03CV0225, was lodged with the United States District Court for the Eastern District of Texas.

This settlement relates to the Petro-Chemical Systems, Inc. Superfunded Site located in Liberty County, Texas (''the Site''). On December 6, 2001, ARCO and Lyondell Chemical Company (successor to ACC) (hereinafter ''ARCO/Lyondell'') sued a number of parties, including the Settling Defendants (Celanese, Ltd. and CNA Holdings f/k/a Hoechst Celanese Corporation; Cook Composites and Polymers Co.; E.R. Carpenter, L.P., Successor in Interest to Carpenter Chemical Company; Hercules Incorporated; Texaco, Inc., as predecessor to Huntsman Petrochemical Corporation; NL Industries, f/k/a National Lead Company; Rexene Corporation, n/k/a Huntsman Polymers Corporation; and Vacuum Tanks, Inc.) to this Consent Decree, for cost recovery and contribution under CERCLA Sections 107 and 113, 42 U.S.C. 9607 and 9613, on the grounds that these parties were liable under CERCLA for the remediation of the Site. On January 3, 2002, the United States filed a complaint against EPEC Polymers, Inc. pursuant to CERCLA Section 107, 42 U.S.C. 9607, seeking, *inter alia:* (1) Reimbursement of response costs and (2) a declaratory judgment of liability for any future response costs incurred by the United States at the Site. EPEC Polymers, Inc., as well as other El Paso Corporation entities (together hereinafter ''El Paso'') were also named in the ARCO/Lyondell matter and ultimately brought contribution claims against various parties including the Settling Defendants to this Consent Decree.

Under the proposed Consent Decree, the United States provides covenants not to sue settling defendants under CERCLA Sections 106 and 107, 42 U.S.C. 9606 and 9607, in connection with the site. The proposed Consent Decree resolves the contribution claims brought by ARCO/Lyondell and El Paso against Settling Defendants and Settling Defendants shall pay the United States $37,000 for response costs incurred by the Environment Protection Agency at the Site and $369,000 to the contribution plaintiffs.

The Department of Justice will receive for a period of third (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 *United States* v. *EPEC Polymers, Inc.,* D.J. Ref. 90–11–3–709/1.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Texas, 350 Magnolia Avenue, Suite 350, Beaumont, Texas 77657, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period, the Consent Decree, may also 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 by mail, from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariana, Jr.,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–509 Filed 1–19–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States, State of Illinois, State of New York, and Commonwealth of Massachusetts v. Marquee Holdings, Inc. and LCE Holdings, Inc.; Complaint, Proposed Final Judgment, and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a Complaint, proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States of America, State of Illinois, State of New York, and Commonwealth of Massachusetts* v. *Marquee Holdings, Inc. and LCE Holdings, Inc.,* Civil Action No. 05–10722. On December 22, 2005, the United States filed a Complaint alleging that the proposed merger of Marquee Holdings, Inc. and LCE Holdings, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by lessening competition for theatrical exhibition of first-run films in five cities: Boston, MA, New York, NY, Chicago, IL, Dallas, TX, and Seattle, WA. The proposed Final Judgment, filed at the same time as the Complaint, requires the defendants to divest first-run, commercial theatres, along with certain tangible and intangible assets, in those five cities in order to proceed with the proposed $4 billion transaction. A Competitive Impact Statement filed by the United States on December 22, 2005 describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the Southern District of New York, New York, New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: 202–307–0468). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the Southern District of New York may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Illinois and New York, and the Commonwealth of Massachusetts, acting through their Attorneys General, bring this civil antitrust action to prevent the proposed merger of Marquee Holdings, Inc. and LCE Holdings, Inc. If the merger is permitted to proceed, it would combine the two leading, and in some cases only, operators of first-run, commercial movie theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. The merger would substantially lessen competition and tend to create a monopoly in the theatrical exhibition of commercial, first-run movies in the above listed markets in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

I. Jurisdiction and Venue

1. This action is filed by the United States pursuant to section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to obtain equitable relief to prevent a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The States of Illinois and New York, and the Commonwealth of Massachusetts bring this action under section 16 of the Clayton Act, 15 U.S.C. 26, to prevent the defendants from violating section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

2. Both defendants operate theatres in this District. The distribution and exhibition of commercial, first-run films is a commercial activity that substantially affects, and is in the flow of, interstate trade and commerce. The defendants purchase substantial quantities of equipment, services, and supplies from sources located outside of New York. In particular, most of the distributors from whom the defendants license films are located outside of New York. The defendants also acquire funding for their New York operations from outside of New York. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 22, 25, and 26, and 28 U.S.C. 1331 and 1337.

3. Venue in this District is proper under 15 U.S.C. 22 and 28 U.S.C. § 1391(c).

II. Defendants and the Proposed Merger

4. Defendant Marquee Holdings, Inc. (''Marquee'') is a Delaware corporation with its headquarters in Kansas City, Missouri. It is the holding company of AMC Entertainment Inc. (''AMC''). AMC owns or operates 216 theatres containing 3,300 screens at locations throughout the United States.

5. Defendant LCE Holdings, Inc. (''LCE'') is a Delaware corporation with its headquarters in New York City, New York. It is the holding company of Loews Cineplex Entertainment Corporation (''Loews''). Loews owns or operates 128 theatres containing 1,424 screens at locations throughout the United States. Loews operates theatres under the Loews Theatres, Cineplex Odeon, Star Theatres, and Magic Johnson Theatres brands.

6. On June 30, 2005, Marquee and LCE entered into a merger agreement. Under the merger agreement, LCE would merge into Marquee and Loews will merge into AMC. The current shareholders of LCE would control 40% of the combined company's outstanding common stock while the current shareholders of Marquee would control 60% of the combined company's outstanding common stock.

III. Background of the Movie Industry

7. Theatrical exhibition of feature length motion picture films (''movies'') provides a major source of out-of-home entertainment in the United States. Although they vary, ticket prices for movies tend to be significantly less expensive than many other forms of out-of-home entertainment, particularly live entertainment such as sporting events and live theatre. Movies have retained their appeal as mass entertainment: Over 1.5 billion movie tickets were sold in the United States in 2004. Total box office revenue for 2004 exceeded $9.5 billion.

8. ''Exhibitors'' are companies that operate movie theatres. Some exhibitors own a single theatre, whereas others own a circuit of theatres within one or more regions of the United States. AMC and Loews are exhibitors and each operates one of the largest theatre circuits in the United States.

9. ''Distributors'' are companies that engage in the business of renting and licensing movies to exhibitors. Distributors arrange for the promotion and marketing of films and contract with exhibitors to exhibit films at theatres throughout the country. Established distributors include Sony, Paramount, Twentieth Century Fox, Universal, Disney, Warner Bros., Dreamworks, Metro-Goldwyn-Meyer, and Buena Vista.

10. Distributors negotiate with exhibitors to exhibit films. Exhibitors compete to obtain films to show at their theatres that they believe will result in high ticket sales, and distributors choose theatres to exhibit their films based on the quality, location, and grossing potential of the theatres and the particular terms offered by the exhibitors.

11. Distributors license movies by ''zones'' that reflect specific local areas. Typically, only one theatre within a zone will play a particular movie. There are two types of zones: ''free zones'' (or ''non-competitive zones'') and ''competitive zones.'' Free zones contain only a single theatre. Competitive zones contain two or sometimes more theatres competing for the exclusive license to exhibit a movie within the zone.

12. The terms of the agreement pursuant to which distributors license films to exhibitors vary and are individually negotiated. Each agreement, however, typically specifies a formula pursuant to which box office revenues are divided between the exhibitor and the distributor. The agreements often provide that the exhibitor will keep a certain dollar amount from the box office revenues to compensate for ''overhead,'' as well as a specified percentage of what remains after the overhead is deducted.

13. Exhibitors set ticket prices for each theatre based on a number of factors, including the competitive situation facing each theatre, the prices of nearby, comparable theatres, the number and type of amenities each theatre offers, such as stadium seating, and the age of the theatre.

IV. Relevant Market

A. Product Market

14. Movies are a unique form of entertainment. The experience of viewing a movie in a theatre is an inherently different experience from a live show, a sporting event, or viewing a DVD or videotape of a movie in the home. Typically, viewing a DVD or videotape in the home lacks several characteristics of viewing movies in theatres, including the size of screen, the sophistication of sound systems, and the social experience of viewing a movie with other patrons. Ticket prices for movies are generally very different than prices for other forms of entertainment: Live entertainment is typically significantly more expensive than a movie ticket, whereas renting a DVD or

videotape is usually significantly cheaper than viewing a first-run movie in a theatre. Because going to the movies is a different experience from other forms of entertainment and because movie prices are significantly different from other forms of entertainment, small but significant price increases for movie tickets generally do not cause a sufficient number of movie-goers to shift to other forms of entertainment to make the increase unprofitable.

15. A movie is considered to be in its ''first-run'' during the initial weeks following its release in a given locality. If successful, a movie may be exhibited at other theatres after the first-run as part of a second or subsequent run (often called a sub-run). Tickets at theatres exhibiting sub-run movies usually cost significantly less than tickets at first-run theatres. Because the films exhibited at sub-run theatres are no longer new releases, most movie-goers do not regard sub-run films as an adequate substitute for first-run films and would not switch to sub-run films if the price of first-run films was increased by a small but significant amount.

16. Commercial movies typically appeal to different patrons than other types of movies, such as art movies or foreign language movies. For example, art films tend to appeal more universally to mature audiences and art film patrons tend to purchase fewer concessions. Theatres that primarily exhibit art films often contain auditoriums with fewer seats than theatres that primarily play commercial films. Typically, art films are released less widely than commercial films. Also, exhibitors consider art theatre operations as distinct from the operations of theatres that exhibit commercial films. Because art movies appeal to different patrons and are often exhibited in different types of theatres than commercial theatres, most movie-goers do not regard art films as an adequate substitute for commercial films and would not switch to them if the price of commercial films was increased by a small, but significant amount.

17. Similarly, foreign language films do not widely appeal to U.S. audiences. As a result, movie-goers do not regard foreign language films as adequate substitutes for commercial films and would not switch to them if the price of commercial films was increased by a small, but significant amount.

18. Movie-goers prefer stadium seating theatres, in which each row of seats is set on a tier that is higher than the tier on which the row in front of it is set. Movie-goers will often bypass older, slope floor theatres to view a movie at a stadium seating theatre and are willing to pay more to view movies in stadium seating theatres. Exhibitors also view stadium seating theatres as superior to slope floor theatres. Exhibitors will often look to build new stadium seating theatres in areas where only slope floor theatres, but no stadium seating theatres, exist. Almost all new theatres are stadium seating theatres.

19. From the perspective of distributors selecting locations at which to exhibit their movies, there is no adequate substitute for theatres that exhibit first-run, commercial films. Distributors seek to have their newly released movies exhibited widely in high-quality theatres. A small but significant reduction in the rental fees paid to distributors by exhibitors would not cause the distributors to exhibit their films in anything other than first-run, commercial theatres.

20. The relevant product market within which to assess the competitive effects of this merger is the exhibition of first-run, commercial films: From the movie-goer's perspective, the market is first-run, commercial films and from the distributors' perspective, the market is first-run, commercial theatres in which to exhibit first-run, commercial films.

B. Geographic Markets

21. Movie-goers typically do not want to travel very far from their homes to attend a movie, particularly in urban areas. Accordingly, geographic markets for the exhibition of first-run, commercial movies are predominantly local.

22. Most movie-goers in Chicago North typically are reluctant to travel significant distances out of that area to attend a movie. A small but significant price increase for movie tickets in Chicago North would not cause a sufficient number of movie-goers to travel out of Chicago North to make the increase unprofitable. Chicago North constitutes a relevant geographic market in which to assess some of the competitive effects of this merger. AMC and Loews are the two largest exhibitors in Chicago North.

23. Most movie-goers attending movies in Midtown Manhattan are reluctant to travel to other parts of Manhattan or off the island of Manhattan to view a movie. A small but significant price increase for movie tickets in Midtown Manhattan would not cause a sufficient number of movie-goers to travel to other areas of Manhattan or out of the borough to make the increase unprofitable. Midtown Manhattan constitutes a relevant geographic market in which to assess some of the competitive effects of this merger. AMC and Loews are the two largest exhibitors in Midtown Manhattan.

24. Like movie-goers in Chicago North and Midtown Manhattan, most movie-goers in downtown Seattle typically are reluctant to travel significant distances out of downtown to attend a movie. A small but significant price increase for movie tickets in downtown Seattle would not cause a sufficient number of movie-goers to travel out of downtown to make the increase unprofitable. Downtown Seattle constitutes a relevant geographic market in which to assess some of the competitive effects of this merger. AMC and Loews are the two largest exhibitors in downtown Seattle.

25. Most movie-goers in downtown Boston typically are reluctant to travel significant distances out of downtown to attend a movie. A small but significant price increase for movie tickets in downtown Boston would not cause a sufficient number of movie-goers to travel out of the city to make the increase unprofitable. Downtown Boston constitutes a relevant geographic market in which to assess some of the competitive effects of this merger. AMC and Loews are the only two exhibitors in downtown Boston.

26. Similarly, in north Dallas, most movie-goers typically are reluctant to travel significant distances out of the city to attend a movie. A small but significant price increase for movie tickets in north Dallas would not cause a sufficient number of movie-goers to travel out of the city to make the increase unprofitable. North Dallas constitutes a relevant geographic market in which to assess some of the competitive effects of this merger. AMC and Loews are the two largest exhibitors in north Dallas.

27. The exhibition of first-run films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas each constitutes a relevant market (*i.e.,* a line of commerce and a section of the country) within the meaning of section 7 of the Clayton Act, 15 U.S.C. 18.

V. Competitive Effects

A. Chicago North

28. In Chicago North, the proposed merger would give the newly merged entity control of all four major first-run, commercial theatres with 55 screens and a 2004 box office revenue of approximately $24 million. AMC and Loews each operate theatres in two different zones in Chicago North. The combined entity will control nearly 100% of the revenues from the two

zones in Chicago North and overall would have a market share of approximately 100%. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), explained in Appendix A, the merger would yield a post-merger HHI of approximately 10,000, representing an increase of roughly 4,814.

B. Midtown Manhattan

29. In Midtown Manhattan, the proposed merger would give the newly merged entity control of the only first-run, commercial stadium seating theatres along with 71 total screens and 2004 box office revenue of approximately $54.6 million. The combined entity would have a market share of approximately 88%. The merger would yield a post-merger HHI of roughly 7,779, representing an increase of around 3,633. In the Times Square zone, a zone in Midtown Manhattan, AMC and Loews operate theatres in the same zone. The combined entity would control 100% of the revenue from that film zone, the highest grossing zone in the United States.

C. Downtown Seattle

30. In downtown Seattle, the proposed merger would give the newly merged entity control of all three first-run, commercial theatres with 31 screens and a 2004 box office revenue of approximately $14.1 million. The combined entity would control nearly 100% of the revenues from the zone in downtown Seattle and a market share of 100%. The merger would yield a post-merger HHI of 10,000, representing an increase of around 4,921.

D. Downtown Boston

31. In downtown Boston, the proposed merger would give the newly merged entity control of the only first-run, commercial theatres with 32 screens and a 2004 box office revenue of approximately $20.8 million. The combined entity would have a market share of 100%. The merger would yield a post-merger HHI of 10,000, representing an increase of approximately 4,635.

E. North Dallas

32. In north Dallas, the proposed merger would give the newly merged entity control of three of the first-run, commercial theatres with stadium seating, including the only two in north central Dallas. It would control all three commercial, first-run stadium seating theatres in north central Dallas once the new AMC theatre opens in Spring 2006. Overall, the combined entity would control five of seven first-run, commercial theatres with 78 screens and 2004 box office revenues of approximately $22 million. The combined entity would have a market share of approximately 78%. The merger would yield a post-merger HHI of roughly 6,393, representing an increase of around 2,976.

F. Consumer Effects

33. The proposed merger would likely lessen competition significantly in the relevant markets by further enhancing the ability of the remaining theatre circuits, particularly the AMC-Loews circuit, to increase prices.

(a) AMC and Loews directly compete in all the relevant geographic markets. The prices their theatres charge are constrained by the prices charged by the other; in particular, they are constrained by the risk that the other will not follow an attempted price increase. If AMC or Loews were to increase prices and the other were not to follow, the firm that increased price might suffer financially if a substantial number of its patrons decided that the increased price was unreasonable and opted to patronize the other circuit.

(b) The proposed merger would eliminate this pricing constraint and is therefore likely to lead to higher prices for ticket buyers.

(c) These higher prices could take the form of a higher adult evening ticket price or reduced discounting, e.g., for matinees, children, seniors, and students.

34. The proposed merger would also eliminate non-price competition between AMC and Loews and is therefore likely to lead to lower quality theatres for movie-goers.

(a) In order to persuade distributors to exhibit top films in their respective theatres that share the same zones and, more importantly, to attract movie-goers, AMC and Loews strive to maintain high quality theatres.

(b) The loss of each other's theatres as competitors would reduce the incentive of AMC and Loews to maintain, upgrade, and renovate theatres and to improve amenities and services at theatres in the relevant markets, thus reducing the quality of the viewing experience for a movie-goer.

VI. Entry

35. Entry by first-run, commercial theatres is difficult in the relevant markets. Exhibitors are often reluctant to locate new theatres near existing stadium theatres. Those who typically build new theatres, exhibitors and real estate developers, often seek to avoid building new theatres in the same zones with existing theatres. Also, exhibitors and real estate developers often seek to build new stadium theatres in conjunction with projects that contain other retail establishments, such as shops and restaurants that will be another draw for customers. As a result, real estate developers often look at the customer demand for other retail in areas in which they consider locating a theatre, along with the customer demand for a new theatre.

36. Entry by first-run, commercial theatres in Chicago North is time-consuming and difficult and is not likely to reduce significantly the market strength of the combined entity in the near future. Suitable, available sites are scarce, real estate and construction costs are among the highest in the nation, and acquiring the necessary permits and approvals can be difficult and time-consuming. Identifying a site, planning the development, and constructing a theatre in Chicago North takes several years. No new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years.

37. In Manhattan, entry by first-run, commercial theatres, particularly in Midtown, is time-consuming and difficult and is not likely to reduce significantly the market strength of the combined entity in the near future. Suitable, available sites are scarce, and real estate and construction costs are among the highest in the nation. Identifying a site, planning the development, and constructing a theatre in Midtown Manhattan takes several years. No new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years.

38. Entry by first-run, commercial theatres in downtown Seattle is time-consuming and difficult and is not likely to reduce significantly the market strength of the combined entity in the near future. Suitable, available sites are scarce and acquiring the necessary permits and approvals for the construction of new theatres can be difficult and time-consuming. No new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years.

39. Entry by first-run, commercial theatres in downtown Boston is time-consuming and difficult and is not likely to reduce significantly the market strength of the combined entity in the near future. Suitable, available sites are scarce and necessary permits and approvals for the construction of new

theatres can be difficult and time-consuming. No new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years.

40. Entry by first-run, commercial theatres in north Dallas is difficult and is not likely to reduce significantly the market strength of the combined entity in the near future. Suitable, available sites are scarce in north central Dallas, where the combined entity's market strength would be the strongest, and no new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years.

VII. Violation Alleged

41. The United States and plaintiff states hereby reincorporate 1 through 40.

42. On June 30, 2005, Marquee and LCE entered into a merger agreement. Under the merger agreement, LCE intends to merge into Marquee and Loews intends to merge into AMC.

43. The effect of the proposed merger would be to lessen competition substantially in interstate trade and commerce for first-run, commercial theatres in which to exhibit first-run, commercial films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

44. The transaction would likely have the following effects, among others:

(a) Competition for first-run, commercial theatres in which to exhibit first-run, commercial films in numerous geographic markets would be eliminated or substantially lessened; and

(b) Prices for first-run, commercial film tickets would likely increase to levels above those that would prevail absent the merger.

VIII. Requested Relief

45. The plaintiffs request: (a) Adjudication that the proposed merger would violate section 7 of the Clayton Act; (b) permanent injunctive relief to prevent the consummation of the proposed merger and to prevent the defendants from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of defendants; (c) an award of each plaintiff of its costs in this action; and (d) such other relief as is proper.

For Plaintiff United States of America

Dated: December 20, 2005.

Thomas O. Barnett (TB 1317),

Acting Assistant Attorney General, Antitrust Division.

J. Robert Kramer II (RK 3921),

Director of Operations.

John R. Read (JR 8964),

Chief, Litigation III.

Nina B. Hale (NH 7828),

Assistant Chief, Litigation III.

William H. Jones II (WJ 2563),

Allen P. Grunes (AG 4775),

Gregg I. Malawer (GM 6467),

Avery W. Gardiner (AG 2011),

Joan Hogan (JH 5666),

Attorneys for the United States, United States Department of Justice, Antitrust Division, Litigation III, 325 7th Street, NW., Suite 300, Washington, DC 20530.

Bernard M. Hollander (BH 0818),

Senior Trial Attorney.

For Plaintiff State of New York

Eliot Spitzer,

Attorney General.

By: Jay L. Himes (JH 7714),

Chief, Antitrust Bureau.

Richard E. Grimm (RG 6891),

Assistant Attorney General, Antitrust Bureau, Office of the Attorney General, 120 Broadway, Room 26C62, New York, New York 10271–0332. Tel: (212) 416–8282, (212) 416–8280. Fax: (212) 416–6015.

For Plaintiff State of Illinois

Lisa Madigan,

Attorney General.

By: Robert W. Pratt (RP 7924),

Chief, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601. (312) 814–3722.

Kavita Puri,

Assistant Attorney General, of Counsel.

For Plaintiff State of Massachusetts

Thomas F. Reilly,

Attorney General.

By: Mary Freely (MF 1359),

Jeffrey Shapiro (JS 5521),

Assistant Attorney General, Office of the Attorney General of Massachusetts, One Ashburton Place, 19th Floor, Boston, MA 02108. (617) 727–2200 ext. 2985.

Exhibit A; Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

Final Judgment

Whereas, plaintiffs, United States of America, the State of Illinois, the State of New York, and the Commonwealth of Massachusetts filed their Complaint on December 22, 2005, plaintiffs and defendants, Marquee Holdings, Inc. (''AMC'') and LCE Holdings, Inc. (''Loews''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture[s] of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiffs require defendants to make certain divestiture[s] for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestiture[s] required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Theatre Assets.

B. ''AMC'' means defendant Marquee Holdings, Inc., a Delaware corporation with its headquarters in Kansas City, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Loews'' means defendant LCE Holdings, Inc., a Delaware corporation with its headquarters in New York City, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Landlord Consent'' means any contractual approval or consent that the landlord or owner of one or more of the Theatre Assets, or the property on which one or more of the Theatre Assets is situated, must grant prior to the transfer of one of the Theatre Assets to an Acquirer.

E. ''Theatre Assets'' means the first-run, commercial motion picture theatre businesses operated by AMC or Loews, under the following names and at the following locations:

Theatre name	Theatre address
i. City North 14	2600 N. Western Ave. Chicago, IL.
ii. Webster Place 11 ..	1471 W. Webster Avenue Chicago, IL.
iii. E-Walk 13	247 W. 42nd St. New York, NY.
iv. Meridian 16	1501 7th Ave. Seattle, WA.
v. Fenway 13	201 Brookline Ave. Boston, MA.
vi. Keystone Park 16	13933 N. Central Expressway Dallas, TX.

The term ''Theatre Assets'' includes:

1. All tangible assets that comprise the first-run, commercial motion picture theatre business including all equipment, fixed assets and fixtures, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Theatre Assets; all licenses, permits and authorizations issued by any governmental organization relating to the Theatre Assets; all contracts, agreements, leases, commitments, certifications, and understandings, relating to the Theatre Assets, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Theater Assets;

2. All intangible assets used in the development, production, servicing and sale of Theatre Assets, including, but not limited to all licenses and sublicenses, intellectual property, technical information, computer software (except defendants' proprietary software) and related documentation, know-how, drawings, blueprints, designs, specifications for materials, specifications for parts and devices, quality assurance and control procedures, all technical manuals and information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data relating to the Theatre Assets. Provided however, that this term does not include (a) any right to use or interest in defendants' copyrights, trademarks, trade names, service marks or service names, or (b) assets that the defendants do not own and are not legally able to transfer.

III. Applicability

A. This Final Judgment applies to AMC and Loews, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Theatre Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer[s].

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter, of five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Theatre Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 days in total, and shall notify the Court in such circumstances, Defendants agree to use their best efforts to divest the Theatre Assets as expeditiously as possible.

B. In accomplishing the divestiture[s] ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Theatre Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Theatre Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Theater Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer[s] and the United States information relating to the personnel involved in the operation of the Theatre Assets to enable the Acquirer[s] to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer[s] to employ any defendant employee whose primary responsibility is the operation of the Theater Assets.

D. Defendants shall permit prospective Acquirers of the Theatre Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Theater Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to all Acquirers of the Theatre Assets that each asset will be operated on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture[s] of the Theatre Assets.

G. At the option of the Acquirer[s], defendants shall enter into an agreement for products and services, such as computer support services, that are reasonably necessary for the Acquirer[s] to effectively operate the Theatre Assets during a transition period. The terms and conditions of any contractual arrangements meant to satisfy this provision must be commercially reasonable for those products and services for which the agreement is entered and shall remain in effect for no more than three months, absent approval of the United States, in its sole discretion, after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate.

H. Defendants shall warrant to the Acquirer[s] of the Theatre Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Theatre Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Theatre Assets.

I. Unless the United States otherwise consents in writing, the divestiture[s] pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Theatre Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate) that the Theatre Assets can and will be used by the Acquirer[s] as part of a viable, ongoing business of first-run, commercial motion picture theatres. Divestiture[s] of the Theatre Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Theatre Assets will remain viable and the divestiture[s] of such assets will remedy the competitive harm alleged in the Complaint. The divestiture[s], whether pursuant to section IV or section V of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers) that, in the United State's sole judgment (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate), has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of first-run, commercial motion picture theatres; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate), that none of the terms of any agreement between an Acquirer (or Acquirers) and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Theatre Assets within the time period specified in section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture[s] of the Theatre Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Theatre Assets. The trustee shall have the power and authority to accomplish the divestiture[s] to an Acquirer[s] acceptable to the United States (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate) at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provision of section, IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture[s].

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VII.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Theatre Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture[s] and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture[s]. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture[s].

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture[s] ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Theatre Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Theatre Assets.

G. If the trustee has not accomplished such divestiture[s] within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture[s], (2) the reasons, in the trustee's judgment, why the required divestiture[s] has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States and, as appropriate, the State of Illinois, State of New York, and Commonwealth of Massachusetts who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purposes of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Landlord Consent

A. If defendants are unable to effect the divestiture[s] required herein due to the inability to obtain the Landlord Consent for any of the Theatre Assets, defendants shall divest alternative Theatre Assets that complete effectively with the theatre for which Landlord Consent was not obtained. The United

States shall in its sole discretion (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate), determine whether such theatre competes effectively with the theatre for which landlord consent was not obtained.

B. Within five (5) business days following a determination that Landlord Consent cannot be obtained for one of the Theatre Assets, defendants shall notify the United States and propose an alternative divestiture pursuant to section VI(A). The United States shall have then ten (10) business days in which to determine whether such theatre is a suitable alternative pursuant to section VI(A). If the defendants' selection is deemed not to be a suitable alternative, the United States shall in its sole discretion select the theatre to be divested (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate).

C. If the trustee is responsible for effecting the divestiture[s], it shall notify both the United States and the defendants within five (5) business days following a determination that Landlord Consent can not be obtained for one of the Theatre Assets. Defendants shall thereafter have five (5) business days to propose an alternative divestiture pursuant to section VI(a). The United States shall have then ten (10) business days in which to determine whether such theatre is suitable alternative pursuant to section VI(a). If the defendants' selection is deemed not to be a suitable competitive alternative, the United States shall in its sole discretion select the theatre to be divested (after consultation with the State of Illinois, State of New York, and Commonwealth of Massachusetts, as appropriate).

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture[s] required herein, shall notify the United States and, as appropriate, the State of Illinois, State of New York, and Commonwealth of Massachusetts of any proposed divestiture[s] required by sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture[s] and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Theatre Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture[s], the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture[s]. If the United States provides written notice that it does not object, the divestiture[s] may be consummated, subject only to defendants' limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer[s] or upon objection by the United States, the divestiture[s] proposed under section IV or section V shall not be consummated. Upon objection by defendants under section V(C), the divestiture[s] proposed under section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase to section IV or V of this Final Judgment.

IX. Hold Separate

Until the divestiture[s] required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture[s] ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture[s] has/have been completed under section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Theatre Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Theatre Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Theatre Assets until one year after such divestiture[s] has/have been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, the State of Illinois, State of New York, or Commonwealth of Massachusetts, including consultants and other persons retained by either of them, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of Antitrust Division, the Attorney General for Illinois, Attorney General for New York, or Attorney General for Massachusetts, and on reasonable notice to defendants, be permitted.

(1) Access during defendants' office hours to inspect and copy, or at plantiff's option, to require defendants provide copies of, all

books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the Attorney General of Illinois, Attorney General for New York, or Attorney General for Massachusetts, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States, the State of Illinois, State of New York, or Commonwealth of Massachusetts, to any person other than an authorized representative of the executive branch of the United States, or of each state government, except in the course of legal proceedings to which at least one of the plaintiffs is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the plaintiffs, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the plaintiffs shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants, without providing advance notification to the United States, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in the business of first-run, commercial theatres in Cook County, Illinois; New York County, New York (Manhattan); King County, Washington; Suffolk County, Massachusetts; and Dallas County, Texas during a 10-year period. This notification requirement shall apply only to the acquisition of any assets or any interest in the business of first-run, commercial motion picture theatres at the time of the acquisition and shall not be construed to require notification of acquisition of interest in new theatre developments or of assets not being operated as first-run commercial motion picture theatre businesses, provided, that this notification requirement shall apply to first-run, commercial theatres under construction at the time of the entering of this Final Judgment.

Such notification shall be provided to the United States in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about first-run, commercial theatres. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of require make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This section shall be broadly construed and any ambiguity or uncertainly regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

Defendants may not reacquire any part of the Theatre Assets during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: __________

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Respectfully submitted,

____

United States District Judge.

For Plaintiff United States of America

Dated: December 20, 2005.

William H. Jones II (WJ 2563),

Allen P. Grunes (AG 475),

Gregg I. Malawer (GM 6467),

Avery W. Gardiner (AG 2011),

Joan Hogan (JH 5666),

Attorneys.

Bernard M. Hollander (BH 0818),

Senior Trial Attorney, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 Seventh Street, NW., Suite 300, Washington, DC 20530. Tel: (202) 514–0230. Fax: (202) 307–9952.

For Plaintiff State of New York

Eliot Spitzer,

Attorney General.

By: Jay L. Himes (JH 7714),

Chief, Antitrust Bureau.

Richard E. Grimm (RG 6891),

Assistant Attorney General, Antitrust Bureau, Office of the Attorney General, 120 Broadway, room 26C62, New York, New York 10271–0332. Tel: (212) 416–8282, (212) 416–8280. Fax: (212) 416–6015.

For Plaintiff State of Illinois

Lisa Madigan,

Attorney General.

By: Robert W. Pratt (RP 7924),

Chief, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601. (312) 814–3722.

Kavita Puri,

Assistant Attorney General, of Counsel.

For Plaintiff Comonwealth of Massachusetts

Thomas F. Reilly,

Attorney General.

By: Jeffrey S. Shapiro (JS 5521),

Mary B. Freeley (MF 1359),

Assistant Attorney General, Office of the Attorney General, Commonwealth of Massachusetts, One Ashburton Place, Boston, MA 02108. (617) 727–2200.

For Defendant AMC

Ilene K. Gotts,

Damian Didden,

Wachell, Lipton, Rosen & Katz,

51 West 52nd Street, New York, NY 10019, Tel: (212) 403–1113. Fax: (212) 403–2113.

For Defendant Loews

Deborah L. Feinstein,

Arnold & Porter,

555 Twelfth Street, NW., Washington, DC 20004. Tel: (202) 942–5015. Fax: (202) 942–5999.

William H. Jones II (WJ 2563),

United States Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530. (202) 514–0230. Attorney for Plaintiff United States of America.

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiffs the United States, the State of Illinois, the State of New York, and the Commonwealth of Massachusetts filed a civil antitrust Complaint on December __, 2005, alleging that a proposed merger of Marquee Holdings, Inc. (''AMC'') and LCE Holdings, Inc. (''Loews'') would violate section 7 of the Clayton Act, 15 U.S.C 18. The Complaint alleges that AMC and Loews both operate motion picture theatres throughout the United States, and that they each operate first-run, commercial motion picture theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. The merger would combine the two leading theatre circuits in the above listed markets and give the newly merged firm a dominant position in those localities: In Chicago North the newly merged firm would have a 100% market share (by revenue); in Midtown Manhattan, the newly merged firm would have a 88% market share (by revenue); in downtown Seattle the newly merged firm would have a 100% market share (by revenue); in downtown Boston, the newly merged firm would have a 100% market share (by revenue); and in north Dallas the newly merged firm would have a 78% market share (by revenue). As a result, the combination would substantially lessen competition and tend to create a monopoly in the markets for theatrical exhibition of first-run, commercial films in the above listed local markets.

The prayer for relief seeks: (a) An adjudication that the proposed merger described in the Complaint would violate section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the transaction; (c) an award to each plaintiff of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits AMC to complete its merger with Loews, yet preserves competition in the markets in which the transactions would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment, which is explained more fully below, requires AMC and Loews to divest one theatre to acquirers acceptable to the United States in each of the listed markets, except Chicago, where it orders AMC and Loews to divest two theatres. Unless the United States grants a time extension, the divestitures must be completed within sixty (60) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, the defendants must maintain and operate the six theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future motion picture theatre acquisitions in Cook County, Illinois; New York County, New York (Manhattan); King County, Washington; Suffolk County, Massachusetts; and Dallas County, Texas.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Marquee Holdings, Inc. is a Delaware corporation with its headquarters in Kansas City, Missouri. It is the holding company of AMC Entertainment Inc. AMC owns or operates 216 theatres containing 3,300 screens at locations throughout the United States. AMC had revenues of approximately $1.8 billion during 2004. JP Morgan Partners and Apollo Management LP are the controlling shareholders of AMC.

LCE Holdings, Inc. is a Delaware corporation with its headquarters in New York City, New York. It is the holding company of Loews Cineplex Entertainment Corporation. Loews owns or operates 128 theatres containing 1,424 screens at locations throughout the United States. Loews operates theatres under the Loews Theatres, Cineplex Odeon, Star Theatres, and Magic Johnson Theatres brands. Loews had revenues of approximately $1 billion during 2004. Bain Capital Partners, Carlyle Group, and Spectrum Equity Investors are the controlling shareholders of Loews.

B. Description of the Events Giving Rise to the Alleged Violations

On June 30, 2005, Marquee and LCE entered into a merger agreement. Under the merger agreement, LCE would merge into Marquee and Loews would merge into AMC. The current shareholders of LCE would control 40% of the combined company's outstanding common stock while the current shareholders of Marquee would control 60% of the combined company's outstanding common stock. The merger is a $4.1 billion transaction.

AMC and Loews compete in the theatrical exhibition of first-run, commercial films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas; they compete to attract movie-goers to their theatres and the exclusive right to show films in Chicago North, Midtown Manhattan, and downtown Seattle. The proposed merger, and the threatened loss of competition that would be caused by it, precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the theatrical exhibition of first-run, commercial films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas each constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. First-run, commercial films differ significantly from other forms of entertainment. The experience of viewing a film in a theatre is an inherently different experience from a live show, a sporting event, or viewing a DVD or videotape in the home. Ticket prices for first-run, commercial films are also generally very different than for other forms of entertainment. A small but significant increase in the price of tickets for first-run films would not cause a sufficient shift to other forms of entertainment so as to make the increase unprofitable.

Movie-goers typically do not want to travel very far from their homes to attend a movie. From a moviegoer's standpoint, theatres outside Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas are not acceptable substitutes for theatres within those areas. A small but significant increase in the price of tickets for first-run films in those areas would not cause a sufficient shift to theatres outside those areas to make the increase unprofitable.

From a distributor's standpoint, there is no alternative to screening its first-run, commercial films in first-run, commercial theatres. From the distributor standpoint as well, a small but significant decrease in prices (*i.e.,* a decrease in film rental fees) would not cause a sufficient shift by distributors to other locations outside of these markets to make the decrease unprofitable to exhibitors.

The Complaint alleges that the merger of AMC and Loews would lessen competition substantially and tend to create a monopoly in the markets for exhibition of first-run, commercial films in the relevant markets. The proposed transaction would create further market concentration in already concentrated markets, and the merged firm would control a majority of box office revenues and the majority of first-run, commercial theatres in those markets. In Chicago North, the merged firm would control all four first-run, commercial theatres with a market share position of 100%, as measured by box office revenues. Prior to the merger, AMC had the highest market share in Chicago North, with 60% of box office revenues. In Midtown Manhattan, the merged firm would control the only first-run theatres with stadium seating,[1] with a market share position of approximately 88% of box office revenues. Prior to the merger, Loews had the highest market share in Midtown Manhattan, with 54% of box office revenues. In downtown Seattle, the merged firm would control all three first-run, commercial theatres and with a market share position of 100% of box office revenues. Prior to the merger, AMC had the highest market share in downtown Seattle, with approximately 56% of box office revenues. In downtown Boston, the merged firm would control both first-run, commercial theatres, with a market share position of 100%. Prior to the merger, Loews had the highest market share in downtown Boston, with approximately 64% of box office revenues. In north Dallas, the merged firm would control three of four stadium seating theatres, including the only two in north central Dallas, and five of the seven first-run, commercial theatres. The merged firm would enjoy a market share position of approximately 78%. Prior to the merger, AMC had the highest market share in north Dallas, with approximately 43% of box office revenues.

According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Exhibit A, the merged firm's post-transaction HHI in Chicago North would be 10,000, representing an increase of 4,814 points. In Midtown Manhattan the merged firm's post-transaction HHI would be 7,779, representing an increase of 3,633 points. In downtown Seattle, the merged firm's post-transaction share would be 10,000, representing an increase of 4,921 points. In downtown Boston, the merged firm's HHI would be 10,000, an increase of 4,635. In north Dallas, the merged firm's HHI would be 6,393, an increase of 2,976. These substantial increases in concentration would likely lead the merged firm to raise ticket prices.

Distributors license movies by film ''zones'' that reflect specific local areas. Generally, only one theatre within a zone will play a particular movie. There are two types of zones: ''free zones'' (or ''non-competitive zones'') and ''competitive zones.'' Free zones contain only a single theatre. Competitive zones contain two or sometimes more theatres competing for the exclusive license to exhibit a movie within the zone. The merger would convert four film zones in which AMC and Loews compete with each other for exclusive licenses to exhibit movies into zones in which there would be little or no such competition. In the Times Square zone in Midtown Manhattan, the merged firm would control all of the first-run, commercial theatres. Similarly, the merged firm would control all three first-run, commercial theatres in the film zone in downtown Seattle. In Chicago, the merged firm would control two adjacent film zones as a result of the transaction.

The proposed Final Judgment would leave the merged firm in control of only one film zone in Chicago North. Moviegoers will not be harmed by the merged firm's control of a film zone in Chicago North, as Chicago movie-goers tend to view theatres in an adjoining film zone as good substitutes, and the theatres tend to draw customers from overlapping areas. The proposed Final Judgment will preserve the premerger competitive situation in which movie-goers have two competitive exhibitors from which to choose, with each exhibitor operating both a stadium seating theatre and a slope floor theatre.

By reducing non-price competition, the merger would also likely lead to lower quality theatres by reducing the incentive to maintain, upgrade and renovate theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. Theatres compete on quality and other non-price factors such as sound systems, maintenance and cleanliness, and seat quality. Theatres also compete on quality through the number and range of showtimes. The merger would lessen the incentives that AMC and Loews have to maintain the quality, or potentially upgrade, their theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. As a result, the merger will have the likely effect of reducing the quality of the viewing experience for movie-goers in these markets. It also may allow the merged entity to reduce the number of shows as there no longer would be competitive pressure to continue early and late shows.

New entry into the Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston and north Dallas markets for exhibition of first-run, commercial films would be highly unlikely to eliminate the anticompetitive effects of this transaction. Entry is difficult in these markets because available, suitable land is scarce and new entrants are often reluctant to enter in areas where existing stadium theatres are located. With the exception of the theatre in north Dallas, all of the theatre assets to

[1] Stadium seating theatres are theatres in which each row of seats is set on a tier that is higher than the tier on which the row in front of it is set. Moviegoers prefer stadium seating theatres over sloped floor theatres and are willing to pay more to view movies in stadium seating theatres. Exhibitors also view stadium seating theatres as superior to, and more competitively significant than, sloped floor theatres. For example, exhibitors are more likely to build new theatres in areas where the existing theatres are sloped floor than in areas where the existing theatres are stadium seating. Almost all newly constructed theatres are stadium theatres.

be divested are located in densely-built downtown or central city areas that are characterized by significant regulatory barriers to entry. In north Dallas, the theatre to be divested is located in an area north of downtown in north central Dallas. That area of Dallas has been substantially built out and generally lacks the amount of land that a large scale retail development that contains a theatre would require.[2] No new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years in any of the markets.

For all of these reasons, plaintiff has concluded that the proposed transaction would lessen competition substantially in the exhibition of first-run, commercial films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas, eliminate actual and potential competition between AMC and Loews, and likely result in increased ticket prices and lower quality theatres in those markets. The proposed merger therefore violates section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the theatrical exhibition of first-run films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. It requires the divestiture of a total of six theatres in the five markets: Webster Place 11 (Chicago North); City North 14 (Chicago North); E-Walk 13 (Midtown Manhattan); Meridian 16 (downtown Seattle; Fenway 13 (downtown Boston); and Keystone Park 16 (north Dallas). The divestitures will preserve choices for movie-goers and distributors. The divestitures will make it less likely that ticket prices will increase, theatre quality will decline, the number of theatres to which movie studios distribute their movies will decline, or movies will be distributed to lower quality theatres in the listed markets as a result of the transaction.

Unless the United States grants an extension of time, the divestitures must be completed within 120 calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, AMC and Loews must maintain and operate the six theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations.

The divestitures must be to a purchaser or purchasers acceptable to the United States in its sole discretion, after consultation with the States of Illinois and New York, and the Commonwealth of Massachusetts as appropriate. Unless the United States otherwise consents in writing, the divestitures shall include all the assets of the theatres to be divested, and shall be accomplished in such a way as to satisfy the United States that such assets can and will be used as viable, ongoing first-run theatres.

If defendants fail to divest these theatres within the time periods specified in the Final Judgment, the Court, upon application of the United States, is to appoint a trustee nominated by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that AMC and Loews will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. Under section V(d) of the proposed Final Judgment, the compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the theatres remaining to be divested, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. Timeliness is paramount. After appointment, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. Section V(g) of the proposed Final Judgment provides that if the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiffs and defendants, who will each have the right to be heard and to make additional recommendations.

If the defendants or trustee are not able to obtain a landlord's consent to sell one of the theatres to be divested, section VI of the proposed Final Judgment permits the defendants to select an alternative theatre that competes effectively with the theatre for which landlord consent was not obtained to divest. The United States, in its sole discretion, after consultation with the States of Illinois and New York and Commonwealth of Massachusetts as appropriate, shall determine whether the theatres offered are actually competing with those that could not be divested due to a failure to obtain landlord consent. This provision will ensure that any failure by the defendants to obtain landlord consent by the defendants does not thwart the relief obtained in the proposed Final Judgment.

The proposed Final Judgment also prohibits the defendants from acquiring any other theatres in Cook County, Illinois; New York County, New York (Manhattan); King County, Washington; Suffolk County, Massachusetts; and Dallas County, Texas without providing at least thirty (30) days' notice to the U.S. Department of Justice. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino (''HSR'') premerger notification statute.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16 (a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final

[2] In recent years, most new theatres are built as part of broader commercial developments that include other retail establishments. The new commercial developments that include theatres are often malls, shopping centers, or so-called lifestyle centers. As a result, the land required for a new theatre would also need to contain space for other elements of the commercial development as well.

Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry judgment. The comments and the response of plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Litigation III, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against AMC's merger with Loews. Plaintiff is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the exhibition of first-run, commercial films in the relevant markets identified in the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;
>
> (B) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the DC Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (DC Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Diarymen, Inc.,* 1977–1 Trade Cas. ¶61,508 at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that:

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *quoting Gillette Co.,* 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the

---

[3] 119 Cong. Rec. 24598 (1973) (statement of Senator Tunney). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[4] *Cf. BNS,* 858 F.2d at 464; 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

plaintiff in formulating the proposed Final Judgment.

Dated: December 20, 2005.

Respectfully submitted,

William H. Jones II (WJ 2563),

Allen P. Grunes (AG 4775),

Gregg I. Malawer (GM 6467),

Avery W. Gardiner (AG 2011),

Joan Hogan (JH 5666),

U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530. (202) 514–0230. Attorneys for Plaintiff the United States.

Bernard Hollander (BH 0818),

Senior Trial Attorney, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530. Attorney for Plaintiff the United States.

Exhibit A Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

[FR Doc. 06–454 Filed 1–19–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; National Rapid Response Information Network

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of National Response is soliciting comments concerning the proposed information collection request (ICR) for the National Rapid Response Network. A copy of the proposed ICR is available at this site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 21, 2006.

ADDRESSES: Jeff Ryan, U.S. Department of Labor, Employment and Training Administration, Room C–5325, 200 Constitution Avenue, NW., Washington, DC 20210, Phone: (202) 693–3546 (this is not a toll-free number), Fax: (202) 693–3149, e-mail: *ryan.jeff@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As part of its responsibility for the administration and oversight of activities carried out under the Workforce Investment Act of 2000 (WIA), ETA has designed a Rapid Response Information Network (RRIN). This electronic reporting system will allow users to easily input data regarding layoffs and layoff related information through a secure Web site.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Regular.

Agency: Office of National Response.

Title: National Rapid Response Information Network.

OMB Number: 1205–XXX.

Agency Form Numbers: ETA 9119A, B, C.

Recordkeeping: 0.

Affected Public: State, local, or tribal government.

Total Respondents: 53.

Estimated Total Burden Hours: 3274 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request 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: January 11, 2006.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E6–645 Filed 1–19–06; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors will meet on January 28, 2006, and four of its Committees will meet on January 27, 2006 in the order set forth in the following schedule, with each subsequent meeting commencing shortly after adjournment of the prior meeting.

Meeting Schedule

Friday, January 27, 2006—9 a.m.

1. Performance Reviews Committee.
2. Finance Committee.
3. Provision for the Delivery of Legal Services Committee (''Provisions Committee'').

4. Operations and Regulations Committee.

Saturday, January 28, 2006—9 a.m.

1. Board of Directors.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

STATUS OF MEETINGS: Open, except as noted below.

- *Status:* January 27, 2006 Annual Performance Reviews Committee Meeting—Closed. The Performance Reviews Committee meeting may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the performance reviews of the Corporation's President and Inspector General (''IG''). The closing will be authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) and 552b(c)(6)] and the Legal Services Corporation's corresponding regulation, 45 CFR 1622.5(a) and 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.
- *Status:* January 27, 2006 Operations & Regulations Committee Meeting—Open, except that a portion of the meeting of the Committee may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the General Counsel's report on pending litigation regarding LSC's program integrity regulation at 45 CFR Part 1610. The closing will be authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the Legal Services Corporation's corresponding regulation, 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.
- *Status:* January 28, 2006 Board of Directors Meeting—Open, except that a portion of the meeting of the Board of Directors may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Board will consider and may act on the General Counsel's report on litigation to which the Corporation is or may become a party, discuss internal procedures with and receive a report on investigations from the IG,[1] and consider and may act on the report of the Annual Performance Reviews Committee on the performance reviews of the Corporation's President and IG. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10), 552b(c)(2) and 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(h), 1622.5(a) and 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED: Friday, January 27, 2006.

Peformance Reviews Committee

Agenda

Closed Session

1. Approval of agenda.
2. Consider and act on annual performance review of LSC President.
   —Meet with Helaine Barnett.
3. Consider and act on annual performance review of LSC Inspector General.
   —Meet with Kirt West.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

Finance Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of October 28, 2005.
3. Report on the Financial Audit for FY 2005.
4. Report on the final FY 2006 Appropriations.
5. Consider and act on adoption of Consolidated Operating Budget for FY 2006.
6. Presentation on LSC's Financial Reports for the first two months of FY 2006.
7. Report on plan for submitting FY 2007 Budget Request to Congress.
8. Consider and act on other business.
9. Public comment.
10. Consider and act on adjournment of meeting.

Provisions Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of October 28, 2005.
3. Panel discussion on Private Attorney Involvement in LSC-funded programs Moderator: Karen Sarjeant, LSC Vice President for Programs and Compliance.
   - The panel will discuss pro bono efforts and how legal services offices are effectively utilizing private attorney involvement, including a general overview of different approaches and various models, identification of some of the issues, challenges and problems, learning what others are doing, and focusing on what can be done to better facilitate and encourage pro bono involvement in LSC-funded programs.
   - In addition, the panel will focus on what law firms are doing to encourage their attorneys to provide pro bono services. What are the ways in which private law firms allow their attorneys to do this? What are the challenges? What are law firms doing to deal with economic pressures so that they can provide pro bono services while still meeting their economic model?
   - What can LSC and/or its grantees do to further encourage private attorney involvement?
   - Panel Members:
   —Esther Lardent, President, The Pro Bono Institute.
   —Charles T. Lester, Jr., Esq., Sutherland Asbill & Brennan—Atlanta, GA.
   —Neil McBride, General Counsel, Legal Aid Society of Middle Tennessee & the Cumberlands.
   —Jonathan Ross, Chair, ABA Standing Committee on Pro Bono and Public Service.
   —Robert N. Weiner, Esq., Arnold & Porter—Washington, DC.
4. Public comment.
5. Staff update on revision of LSC Performance Criteria.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of October 29, 2005.
3. Consider and act on Draft Final Rule to remove Expenditure of Grant Funds regulation, 45 CFR part 1631.
   a. Staff report.
   b. Public comment.
4. Consider and act on rulemaking to revise Client Grievance Procedure regulation, 45 CFR part 1621.
   a. Staff report.
   b. Public comment.
5. Consider and act on initiation of rulemaking to revise Prohibition Against Discrimination on the Basis

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

of Handicap regulation, 45 CFR part 1624.
a. Staff report.
b. Public comment.
6. Consider and act on Legal Action of Wisconsin's Petition for Rulemaking on LSC's Private Attorney Involvement regulation, 45 CFR part 1614.
a. Staff report.
b. Comments by Robert Henderson, Managing Attorney, LaCrosse Office, Legal Action of Wisconsin.
c. Public Comment.
7. Consider and act on other business.
8. Other public comment.

Closed Session

9. Consider and act on the General Counsel's report on pending litigation regarding LSC's program integrity regulation, 45 CFR part 1610.
10. Consider and act on adjournment of meeting.

Saturday, January 28, 2006

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of October 29, 2005.
3. Approval of minutes of the Executive Session of the Board's meeting of October 29, 2005.
4. Approval of minutes of the Board's Open Session Telephonic meeting of November 28, 2005.
5. Consider and act on nominations for the Chairman of the Board of Directors.
6. Consider and act on nominations for the Vice Chairman of the Board of Directors.
7. Consider and act on delegation to Chairman of authority to make Committee assignments.
8. Consider and act on Strategic Directions for 2006–2010.
9. Chairman's Report.
10. Members' Reports.
11. President's Report.
12. Inspector General's Report.
13. Consider and act on the report of the Provision for the Delivery of Legal Services Committee.
14. Consider and act on the report of the Finance Committee.
15. Consider and act on the report of the Operations & Regulations Committee.
16. Consider and act on other business.
17. Public comment.
18. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

19. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
20. Discussion of internal procedures with OIG.
21. IG report to the Board.
22. Consider and act on the report of the Performance Reviews Committee.
23. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 17, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–549 Filed 1–17–06; 4:19 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced closed meeting **Federal Register**, Vol. 71, No. 10, p. 2571, January 17, 2006) scheduled for Thursday, January 19, 2006.

1. Administrative Action under section 206(h)(1)(A) of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that agency business required that this item be removed from the closed agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Administrative Action under section 206(h)(1)(A) of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).
2. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 06–608 Filed 1–18–06; 3:59 pm]

BILLING CODE 735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1201]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Framatome ANP, Inc., Lynchburg, VA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD, 20555–0001. Telephone: (301) 415–5848; fax number: (301) 415–5955; e-mail: bcg@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) staff has received a license amendment request from Framatome ANP, Inc., Lynchburg, VA (FANP Lynchburg) dated September 1, 2005 (Ref. 1, 2), to amend Special Nuclear Material License (SNM)–1168 (Ref. 3) to use the International Commission on Radiation Protection (ICRP) Publication 68 for Derived Air Concentration (DAC) and the Annual Limit on Intake (ALI) determinations (Ref. 4). In accordance with the requirements of 10 CFR part 51, an Environmental Assessment (EA) was performed by the NRC staff in support of its review of FANP Lynchburg's license amendment request. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action. The amendment will be issued following the publication of this notice.

II. Environmental Assessment

Background

The FANP Lynchburg facility is authorized, under Materials License SNM–1168, to possess nuclear materials for the fabrication and assembly of nuclear power fuel components. Principal activities in the fabrication facility include the processing of low-enriched uranium (< 5.1%), received as UO_2 pellets. Uranium pellets are received and then transported to a pellet vault after the receipt inspection process is completed. The fuel pellets are then inserted into rods, which are then assembled into fuel bundles. Finished fuel bundles are then packaged and loaded onto truck transport for delivery to the receiving utility. Other activities conducted in conjunction with nuclear fuel fabrication include: Fabrication of poison rods; download of finished fuel bundles and rods; repair of returned fuel assemblies; laboratory operations; and waste disposal operations.

Inhalation of dust in radiologically controlled areas poses an internal radiation hazard, and the NRC regulations in 10 CFR part 20 require licensees to implement certain protective measures to minimize that hazard. These measures include taking a variety of air samples, using respirators in certain work areas, posting airborne radioactivity warning signs outside the work areas, and putting the potentially exposed workers on a routine bioassay program to assess their intakes and verify the effectiveness of the protection program. Many of these protective measures are triggered when the air concentrations in the workplace reach specified fractions of the air concentrations tabulated in 10 CFR part 20, Appendix B.

FANP Lynchburg has requested to amend its license to permit the use of values other than those tabulated in 10 CFR part 20 as the basis for triggering protective measures, and for assessing the internal dose to its workers. The basis for the amendment request is the recommendations in ICRP 68. In the amendment application, FANP Lynchburg maintains that the assessment of the radiological hazard based on 10 CFR part 20, Appendix B, requires it to implement monitoring and protection programs at levels that are out of proportion with the true level of hazard, and do not significantly add to worker protection. FANP Lynchburg believes that granting the exemption would enable it to reduce the size of its internal exposure program while, at the same time, providing a level of protection proportional to the actual hazard. FANP Lynchburg references an NRC staff requirements memorandum (SECY–99–077) (Ref. 5), which directs the staff to grant exemptions to 10 CFR part 20 on this modeling issue on a case-by-case basis.

Review Scope

In accordance with 10 CFR part 51, this EA serves to: (1) Present information and analysis for determining whether to issue a FONSI or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

The EA serves to evaluate and document the impacts of the proposed amendment. Activities beyond the proposed changes have previously been evaluated and documented in the 2003 EA as part of the FANP Lynchburg license renewal (Ref. 6). The 2003 document remains the most current EA for activities outside the scope of the proposed amendment.

Proposed Action

The proposed action is to amend the NRC Materials License SNM–1168 to authorize the use of DAC and ALI values based on ICRP 68, entitled Dose Coefficients for Intake of Radionuclides by Worker (Ref. 4).

Affected Environment

The affected environment for the proposed activity is the FANP Lynchburg site. A full description of the site and its characteristics are given in the 2003 EA for the renewal of the NRC license for FANP Lynchburg (Ref. 6).

Effluent Releases and Monitoring

A full description of the effluent monitoring program at the site is provided in the 2003 EA for the renewal of the NRC license for FANP Lynchburg (Ref. 6). Monitoring programs at the FANP Lynchburg facility comprise effluent monitoring of air and water and environmental monitoring of various media (air, soil, vegetation, and groundwater). This program provides a basis for evaluation of public health and safety impacts, for establishing compliance with environmental regulations, and for development of mitigation measures if necessary. The monitoring program is not expected to change as a result of the proposed action. In the 2003 renewal, the NRC reviewed the location of the environmental monitoring program sampling points, the frequency of sample collection, and the trends in the sampling program results. The data, taken in conjunction with the environmental pathway and exposure analysis, leads the NRC to conclude that the monitoring program provides adequate protection of public health and safety.

Environmental Impacts of Proposed Action

Radiological Impacts

The basic limits on radiation exposures, as well as the minimum radiation protection practices required of any NRC licensee, are specified in 10 CFR part 20, "Standards for Protection Against Radiation" (Ref. 7). The models used in 10 CFR part 20 to regulate internal doses are those described in the ICRP Publications 26 and 30, adopted by the ICRP in 1977 and 1978, respectively (Ref. 8, 9). Much of the basic structure of these models were developed in 1966. However, some of its components and parameters were altered somewhat between 1966 and their formal adoption by the ICRP in 1978. In the same year that the Commission approved the final 10 CFR part 20 rule (1991), the ICRP published a major revision of its radiation protection recommendations, ICRP 60 (Ref. 10). During the several years following this revision, the ICRP published a series of reports in which it described the components of an extensively updated and revised internal dosimetry model. Due to the restrictions in 10 CFR part 20, the NRC licensees are not permitted to use the revised and updated internal dosimetry models without receiving an exemption to the regulations.

Although the dose per unit intake calculated, using the new models, does not differ by more than a factor of about two from the values in 10 CFR part 20 for most radionuclides, the differences are substantial for some, particularly for the isotopes of thorium, uranium, and some of the transuranic radionuclides. For example, for inhalation of insoluble thorium-232 (^{232}Th), the dose per unit intake calculated using the revised ICRP lung model, is a factor of about 15 times lower than that in 10 CFR part 20. Because protective measures are based on the hazard, and since the hazard is proportional to dose, 10 CFR part 20 requires significantly more protective measures when using ^{232}Th than would be warranted based on the revised models.

Using the updated ICRP 68 standard would enable FANP Lynchburg to reduce the size of its internal exposure program while, at the same time, providing a level of protection proportional to the actual hazard. This is FANP Lynchburg's primary concern, and it has requested to be allowed to use DAC and ALI values based on the dose coefficients listed in ICRP 68. The NRC staff concluded that FANP Lynchburg has historically maintained worker doses as low as reasonably achievable and is qualified to utilize the ICRP 68 in a manner equivalent to 10 CFR 20.1201(d), (i.e. doses at a level lower than the NRC's regulatory limit of 5 rem, in its Radiation Safety Program). Therefore, FANP Lynchburg's request for an exemption under 10 CFR 20.2301 is acceptable, because it gives its workers equivalent radiological protection as required by 10 CFR part

20. Thus, the exemption is authorized by law and will not result in an undue hazard to life or property.

Nonradiological Impacts

The NRC determined that there are no non-radiological impacts associated with the proposed action.

Cumulative Impacts

The NRC determined that there are no cumulative impacts associated with the proposed action.

Alternatives to the Proposed Action

The NRC considered one alternative to the proposed action, which was to deny the amendment request. This alternative was rejected because the impacts of the proposed action on the health and safety of the workers, the public, and the environment were determined to be insignificant. In addition, the licensee will be able to save time and resources using the updated ICRP 68 models. The new models will maintain doses within the regulatory limit, while allowing the licensee to remove unwarranted protective measures required by the old models.

Agencies and Persons Contacted

The NRC contacted the Virginia Department of Environmental Quality (VDEQ) concerning this request. There were no comments, concerns or objections from VDEQ.

Because the proposed action is entirely within existing facilities, and does not involve new or increased effluents or accident scenarios, the NRC has concluded that there is no potential to affect endangered species or historic resources, and therefore consultation with the State Historic Preservation Society and the U.S. Fish and Wildlife Service was not performed.

III. Finding of No Significant Impact

Based on the EA, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined that preparation of an EIS is not warranted.

IV. Further Information

The following documents are related to the proposed action:

1. C.F. Holman, Framatome ANP, Inc., letter to the U.S. Nuclear Regulatory Commission, ''Amendment Request to Use of ICRP 68 for ALI and DAC Values,'' September 1, 2005 (ML052550120).

2. The NRC administrative review, documented in a letter to Framatome ANP, Inc. dated September 23, 2005 (ML052640365).

3. The U.S. Nuclear Regulatory Commission, Special Nuclear Material License SNM–1168 Amendment 7, October 3, 2005 (ML052840071).

4. International Commission on Radiological Protection, ''Dose Coefficients for Intake of Radionuclides by Worker,'' Publication 68, Elsevier Science, 1995.

5. The U.S. Nuclear Regulatory Commission, ''SRM–SECY–99–0077—To Request Commission Approval to Grant Exemptions from Portions of 10 CFR Part 20,'' April 21, 1999 (ML042750086).

6. The U.S. Nuclear Regulatory Commission, ''Environmental Assessment for the Renewal Framatome ANP, Inc., Lynchburg, Virginia,'' April 2, 2003 (ML030940720).

7. U.S. Code of Federal Regulations, ''Standards for Protection Against Radiation,'' Part 20, Chapter 1, Title 10, Energy.

8. International Commission on Radiological Protection, ''Recommendations of the International Commission on Radiological Protection,'' Publication 26, Elsevier Science, 1977.

9. International Commission on Radiological Protection, ''Limits for the Intake of Radionuclides by Workers,'' Publication 30, Elsevier Science, 1978.

10. International Commission on Radiological Protection, ''1990 Recommendations of the International Commission on Radiological Protection,'' Publication 60, Elsevier Science, 1991.

The NRC documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The accession numbers for documents contained in ADAMS are provided with the reference. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or via e-mail to *pdr@nrc.gov.*

The documents in ADAMS may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD this 13th day of January, 2006.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E6–613 Filed 1–19–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Information and Resource Service All Nuclear Power Plants That Use Hemyc/MT Fire Barriers Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated May 12, 2005, filed by Paul Gunter on behalf of the Nuclear Information and Resource Service, Citizens Awareness Network, Indian Point Safe Coalition, North Carolina Waste Awareness and Reduction Network, Alliance for Affordable Energy, and Blue Ridge Environmental Defense League, hereinafter referred to as the ''petitioners.'' The petition was supplemented on June 1, 2005. The petition concerns the operation of all nuclear power plants that use Hemyc/MT fire barriers.

The petition requested that the U.S. Nuclear Regulatory Commission (NRC) engage in enforcement actions to modify and/or suspend operating licenses for Shearon Harris Nuclear Power Station Unit 1, H. B. Robinson Unit 2, McGuire Units 1 and 2, Catawba Units 1 and 2, Ginna, James A. Fitzpatrick, Indian Point Units 2 and 3, Vermont Yankee, Waterford Unit 3, and Arkansas Nuclear One Units 1 and 2.

As the basis for the requests, the petitioners cited a meeting on April 29, 2005, held by NRC with all stakeholders to discuss the performance of 1-hour (Hemyc) and 3-hour (MT) fire barriers for Electrical Raceways during full scale fire testing. In that meeting the NRC staff informed all stakeholders that the Hemyc/MT electrical raceway fire barrier system (ERFBS) failed to protect electrical cables for 1 hour/3 hours in fire tests that were performed to the American Society of Testing and Materials (ASTM) Standard E119. The petitioners' request was also based on the following conclusions made by the petitioners: (1) The same Hemyc/MT fire barrier wrap systems as installed in the above nuclear plants fail to assure the protection of the control room operations for achieving safe shutdown of the reactor in the event of a significant fire, (2) NRC has not quantified the full extent of the amount of Hemyc/MT fire barrier material in terms of linear and/or square footage deployed per fire protection regulation, and NRC has not determined the safety significance of this deployment for safe shutdown systems that are not currently protected by these fire barriers, and (3) the petitioners believe that the above listed nuclear power stations are operating in violation of NRC fire protection requirements and in an unanalyzed condition resulting in a degradation of defense-in-depth fire protection and safe shut down in the event of a significant fire.

The petitioners requested that the NRC take the following actions:

(1) Collect information through generic communications with nuclear industry and specifically with the named reactor sites to determine the extent of condition of the inoperable fire barriers; including the requirement that the licensees conduct a full inventory of the type Hemyc/MT to include the amount in linear and square footage, its specific applications, and the identification of safe shutdown systems, which are currently unprotected by the noncompliance and an assessment of the safety significance of each application;

(2) The communication should require, at minimum that the above-named sites provide justification for operation in noncompliance with all applicable fire protection regulations; and

(3) With the determination that any and/or all of the above-mentioned sites are operating in unanalyzed condition and/or that assurance of public health and safety is degraded, promptly order a suspension of the license or a power reduction of the affected reactors until such time as it can be demonstrated that the licensees are operating in conformance with all other applicable fire protection regulations.

In a letter dated June 27, 2005, the NRC informed the petitioners that the issues in the petition were accepted for review under Section 2.206 of the Code of Federal Regulations (10 CFR) and had been referred to the Office of Nuclear Reactor Regulation for appropriate action. A copy of the acknowledgment letter is publicly available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML051740562. A copy of the petition is publicly available in ADAMS under Accession No. ML051440209.

The petitioners' representatives held a teleconference with the Petition Review Board to discuss the petition on June 1, 2005. The teleconference transcript was treated as a supplement to the petition and is publicly available in ADAMS under Accession No. ML051640452.

The NRC sent a copy of the proposed Director's Decision to the petitioners for comment on October 20, 2005 (Accession No. ML052630411). The NRC staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that, with regard to Request Nos. 1 and 2, the NRC staff has granted the petitioners' request through the generic communication process. Specifically, the NRC staff is planning to issue a Generic Letter (GL) to all licensees asking them to provide detailed information about the use of Hemyc/MT in their nuclear power plants. In response to Request No. 3, the NRC staff is planning to review all affected plants in detail and will take appropriate actions to resolve the issues with the use of Hemyc/MT material commensurate with the safety significance of the protected systems. The GL will be issued after the NRC's internal review process to consider comments received on the proposed GL is completed.

The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–06–01), the complete text of which is available in ADAMS, and is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 9th day of January 2006.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–625 Filed 1–19–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.152, entitled "Criteria for Use of Computers in Safety Systems of Nuclear Power Plants," describes a method that the staff of the U.S. Nuclear Regulatory Commission (NRC) deems acceptable for complying with the Commission's regulations for promoting high functional reliability, design quality, and cyber-security for the use of digital computers in safety systems of nuclear power plants. In this context, the term "computer" identifies a system that includes computer hardware, software, firmware, and interfaces.

The guidance provided in Revision 2 of Regulatory Guide 1.152 is consistent with General Design Criterion (GDC) 21, "Protection System Reliability and Testability," of Appendix A, "General Design Criteria for Nuclear Power Plants," to title 10, part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR part 50). Among other things, GDC 21 requires that protection systems (or safety systems) must be designed for high functional reliability, commensurate with the safety functions to be performed. In addition, Criterion III, "Design Control," of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR part 50 requires, among other things, that quality standards must be specified, and design control measures must be provided, for verifying or checking the adequacy of design.

Revision 2 of Regulatory Guide 1.152 also contains the staff's regulatory position on IEEE Std 7–4.3.2–2003, ''Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Stations,'' which was prepared by Working Group SC 6.4, ''Application of Programmable Digital Computers to Safety Systems,'' of the Institute of Electrical and Electronics Engineers (IEEE) Nuclear Power Engineering Committee. This standard evolved from IEEE Std 7–4.3.2–1993 and reflects advances in digital technology. It also represents a continued effort by IEEE to support the specification, design, and implementation of computers in safety systems of nuclear power plants. In addition, IEEE Std 7–4.3.2–2003 specifies computer-specific requirements to supplement the criteria and requirements of IEEE Std 603–1998, ''Standard Criteria for Safety Systems for Nuclear Power Generating Stations.''

In Revision 2 of Regulatory Guide 1.152, the staff endorses IEEE Std 7–4.3.2–2003, with certain exceptions, as an acceptable method for satisfying the NRC's regulations with respect to (1) high functional reliability and design requirements for computers used in safety systems of nuclear power plants, and (2) independence between safety software and nonsafety software residing on the same computer.

The NRC previously solicited public comments on this revised guide by publishing a **Federal Register** notice (69 FR 75359) concerning Draft Regulatory Guide DG–1130 on December 16, 2004. Following the closure of the public comment period on March 14, 2005, the staff considered all stakeholder comments in the course of preparing Revision 2 of Regulatory Guide 1.152.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Revision 2 of Regulatory Guide 1.152 may be directed to NRC Senior Program Manager, Satish Aggarwal, at (301) 415–6005 or *SKA@nrc.gov*.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies of Revision 2 of Regulatory Guide 1.152 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML053070150.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of December, 2005.

For the U.S. Nuclear Regulatory Commission,

James T. Wiggins,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. E6–619 Filed 1–19–06; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Survivor Questionnaire; OMB 3220–0032.

Under Section 6 of the Railroad Retirement Act (RRA), benefits that may be due on the death of a railroad employee or a survivor annuitant include (1) a lump-sum death benefit (2) a residual lump-sum payment (3) accrued annuities due but unpaid at death, and (4) monthly survivor insurance payments. The requirements for determining the entitlement of possible beneficiaries to these benefits are prescribed in 20 CFR 234.

When the RRB receives notification of the death of a railroad employee or survivor annuitant, an RRB field office utilizes Form RL–94–F, Survivor Questionnaire, to secure additional information from surviving relatives needed to determine if any further benefits are payable under the RRA. Completion is voluntary. One response is requested of each respondent.

The RRB proposes no changes to Form RL–94–F. The completion time for the RL–94–F is estimated at between 5 to 11 minutes. The RRB estimates that approximately 8,000 responses are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.gov.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.gov.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–629 Filed 1–19–06; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Gross Earnings Report; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, *i.e.*, 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits ''30.'' The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare and Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent(s) to obtain gross earnings information from railroad employers. One response is requested of each railroad employer. Completion is mandatory. No changes are proposed to Form BA–11.

Estimate of Annual Respondent Burden

Gross earnings reports are required annually from all employers reporting railroad service and compensation. There are approximately 635 railroad employers who currently report gross earnings to the RRB. Most large railroad employers include their railroad subsidiaries in their gross earnings reports. This results in the RRB collecting *less* than 637 earnings reports. Also, there are a large number of railroad employers having work forces so small that they do not have employees with social security numbers ending in ''30.'' Currently, there are 338 such employers in this category who file ''negative'' BA–11 responses to the RRB. Overall, on an annual basis, the RRB receives 84 reports consisting of computer prepared tapes or diskettes and 77 by means of manually prepared Form BA–11. The RRB estimates an average preparation time of 5 hours for each gross earnings report submitted by computer tape, 30 minutes for each diskette, 30 minutes for each manually prepared Form BA–11, and 15 minutes for each negative response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.gov.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.gov.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–630 Filed 1–19–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53013A; File No. SR-BSE–2005–49]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Market Opening Procedures of the Boston Options Exchange Facility

January 13, 2006.

Correction

In FR Document No. E5–8045, beginning on page 77218 for Thursday, December 29, 2005, the title of the document incorrectly referenced the National Association of Securities Dealers, Inc. instead of the Boston Stock Exchange, Inc. The correct title is as written above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Nancy M. Morris,

Secretary.

[FR Doc. E6–585 Filed 1–19–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5276]

60-Day Notice of Proposed Information Collection: Reconstruction and Stabilization Volunteer Application and Evaluation, OMB Control Number 1405-XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Reconstruction and Stabilization Volunteer Application and Evaluation.
- *OMB Control Number:* 1405-XXXX.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Coordinator for Reconstruction & Stabilization, S/CRS.
- *Form Numbers:* DS–4096 and SV–2005–0011.

[1] 17 CFR 200.30–3(a)(12).

• *Respondents:* Civilians who have past experience in Reconstruction & Stabilization (R & S) activities and/or wish to volunteer for additional R & S deployments.
• *Estimated Number of Respondents:* 2400 per year.
• *Estimated Number of Responses:* 2400 per year.
• *Average Hours Per Response:* 30 minutes.
• *Total Estimated Burden:* 1200 Hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from January 20, 2006.

ADDRESSES: You may submit comments by any of the following methods:
• E-mail: *StansellJW@state.gov*.
• Mail (paper, disk, or CD–ROM submissions): Suite 7100, 2121 Virginia Avenue, NW., Washington, DC 20520

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

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 James Stansell, Suite 7100, 2121 Virginia Ave., NW., Washington, DC 20520 who may be reached on (202) 663–0850 or at *StansellJW@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 information collected is an important part of the Department's responsibility to coordinate U.S. Government planning, and institutionalize U.S. capacity, to help stabilize and reconstruct societies in transition from conflict or civil strife so they can reach a sustainable path toward peace, democracy and a market economy. The evaluation will be conducted in order to learn from the experiences of those who have been involved in reconstruction and stabilization activities. The application will be used to solicit volunteers who are willing to participate in future operations.

Methodology:

Respondents can access both information collection instruments via the S/CRS Web site (*http://www.crs.state.gov*), and will fill them out and submit them electronically.

Dated: November 8, 2005.

Marcia K. Wong,

Principal Deputy Coordinator, Office of the Coordinator for Reconstruction & Stabilization, Department of State.

Dated: November 8, 2005.

Christopher Hoh,

Director of Response Strategy & Resource Management, Office of the Coordinator for Reconstruction & Stabilization, Department of State.

[FR Doc. E6–632 Filed 1–19–06; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 5277]

Culturally Significant Objects Imported for Exhibition Determinations: ''Without Boundary: Seventeen Ways of Looking''

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 ''Without Boundary: Seventeen Ways of Looking'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, from on or about February 21, 2006, until on or about May 22, 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 Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: January 11, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–631 Filed 1–19–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5265]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice cancels certain previously announced International Telecommunication Advisory Committee meetings originally scheduled to prepare for the International Telecommunication Union World Telecommunication Development Conference.

The International Telecommunication Advisory Committee (ITAC) cancels meetings to prepare for the ITU WTDC–06 previously scheduled for February 2, 9, 16, and 23, 2006.

Dated: January 13, 2006.

Cecily Holiday,

Director, Radiocommunication Affairs, International Communications & Information Policy, Department of State.

[FR Doc. E6–633 Filed 1–19–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5264]

Second Public Meeting of the Advisory Committee on Persons With Disabilities

Summary: The Advisory Committee on Persons with Disabilities will conduct its second public meeting on February 6, 2006 from 9 a.m.–4 p.m. at the Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Please see, *http://www.itcdc.com/index.php.*

Attendees must have valid, government-issued identification in order to enter the building.

The Advisory Committee is made up of the Secretary of State, the Administrator for International Development and an Executive Director (all ex-officio members); and eight members from outside the United States Government: Senda Benaissa, Walter Bollinger, Joni Eareckson Tada, Vail Horton, John Kemp, Albert H. Linden, Jr., Kathleen Martinez, and John Register.

Established on June 23, 2004, the Advisory Committee serves the Secretary and the Administrator in an advisory capacity with respect to the consideration of the interests of persons with disabilities in formulation and implementation of U.S. foreign policy and foreign assistance. The Committee is established under the general authority of the Secretary and the Department of State as set forth in Title 22 of the United States Code, in particular Sections 2656 and 2651a, and in accordance with the Federal Advisory Committee Act, as amended.

Dated: January 13, 2006.

Stephanie Ortoleva,

Foreign Affairs Officer, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. E6–634 Filed 1–19–06; 8:45 am]

BILLING CODE 4710–18–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Submission for OMB Review; comment request.

SUMMARY: The information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Office: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for the Tennessee Valley Authority February 21, 2006.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Economic Assessment of Waterway Docks and Terminals in the Tennessee Valley and Parts of the Surrounding National Inland Waterway Network.

Frequency of Use: Occasional.

Type of Affected Public: Federal, State and Local Governments, and Private Industry.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 450.

Estimated Number of Annual Responses: 567.

Estimated Total Annual Burden Hours: 567 hours.

Estimated Average Burden Hours Per Response: 1 hour.

Need For and Use of Information: The information collection is necessary to assess the service capability of waterway docks and terminals located in the Tennessee Valley and surrounding States. The data will be used to help potential industrial clients with decisions regarding transportation information and the handling capabilities of waterway facilities located on various river segments. This is vital information for industry when deciding where the most economic location is for a new plant site or project. In addition, the data collection surrounding the waterway terminals located on the Tennessee River is necessary for use in updating TVA's river performance indicator.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. E6–614 Filed 1–19–06; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Friendship Airways, Inc. D/B/A Yellow Air Taxi for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2006–1–11), Docket OST–2005–21533.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Friendship Airways, Inc. d/b/a Yellow Air Taxi fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than January 27, 2006.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2005–21533 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–7785.

Dated: January 13, 2006.

Robert S. Goldner,

Special Counsel to Assistant Secretary for Aviation and International Affairs.

[FR Doc. E6–624 Filed 1–19–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34811]

New Amsterdam & Seneca Railroad Company, LLC—Lease and Operation Exemption—Line in Fostoria, OH

New Amsterdam & Seneca Railroad Company (NASR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Sunny Farms Landfill, LLC (Sunny Farms), also a noncarrier, and operate approximately 1.25 miles of rail line in Fostoria, OH.[1] The line does not have any milepost numbers but it connects with CSX Transportation's Fostoria Subdivision line at milepost BI 36.

NASR certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

NASR states that the parties propose to consummate the transaction on or after January 15, 2006.[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34811, must be filed with the Surface Transportation Board, 1925

[1] NASR and Sunny Farms are both wholly owned subsidiaries of Regus Industries, LLC, which is in turn controlled by Gordon Reger. Mr. Reger also has a controlling interest in the New York Cross Harbor Railroad Corporation, a Class III rail carrier.

[2] Prior to consummation, Mr. Reger will require Board authorization to continue in control of NASR upon NASR's becoming a Class III rail carrier.

K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard LLC, One Thompson Square, Suite 201, Charleston, MA 02129.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–477 Filed 1–19–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

DATES: Written comments should be received on or before March 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25,350.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 12,675.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 13, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–620 Filed 1–19–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before March 21, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: New TreasuryDirect.

OMB Number: 1535–0138.

Abstract: The information is requested to establish a new account and process transactions.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 3.47 million.

Estimated Total Annual Burden Hours: 128,246.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 13, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–622 Filed 1–19–06; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Friday,

January 20, 2006

Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–300

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–300

RIN 1215–AB46

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is proposing new regulations to implement the amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (''VEVRAA'') that were made by the Jobs for Veterans Act (''JVA'') enacted in 2002.

JVA amended VEVRAA by: Raising the dollar amount of the Government contracts that are subject to the requirements of VEVRAA; changing the categories of veterans protected under the law; and changing the manner in which the mandatory job listing requirement is to be implemented. The JVA amendments apply to Government contracts entered into on or after December 1, 2003.

For the convenience of contractors, veterans, and other interested parties, OFCCP proposes to publish the regulations implementing the JVA amendments to VEVRAA in a new part. This proposed rule would apply only to Government contracts entered into on or after December 1, 2003. The existing VEVRAA implementing regulations will continue to apply to Government contracts entered into before December 1, 2003. Contractors with Government contracts entered into both before, and on or after December 1, 2003, would be subject to both the requirements found in the existing VEVRAA implementing regulations and the requirements in today's proposal.

DATES: To be assured of consideration, comments must be received on or before March 21, 2006.

ADDRESSES: You may submit comments, identified by RIN number 1215–AB46, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *ofccp-mail@dol-esa.gov.* Include ''RIN number 1215–AB46'' in the subject line of the message.
- Fax: (202) 693–1304 (for comments of 6 pages or less).
- Mail: James C. Pierce, Acting Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room N3422, 200 Constitution Avenue, NW., Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0102 (voice) or (202) 693–1337 (TTY) (these are not a toll-free numbers).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at Room C3325, 200 Constitution Avenue, NW., Washington, DC 20210. People needing assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking will be made available in the following formats: large print; electronic file on computer disk; and audiotape. To schedule an appointment to review the comments and/or to obtain this Notice of Proposed Rulemaking in an alternate format, contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Pierce, Acting Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The Jobs for Veterans Act (''JVA''), (Pub. L. 107–288, 116 Stat. 2033), was signed by President Bush on November 2, 2002. Section 2(b)(1) of JVA amended the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, (''VEVRAA''). Section 2(b)(3) of JVA made the amendments applicable to Government contracts entered into on or after December 1, 2003.

Prior to amendment by JVA, VEVRAA required that contractors and subcontractors with a nonexempt Government contract in the amount of $25,000 or more take affirmative action to employ and advance in employment qualified disabled veterans, veterans of the Vietnam era, recently separated veterans, and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. OFCCP has adopted the term ''other protected veteran'' to refer to ''veterans who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.''

In addition, prior to amendment, VEVRAA required that the Secretary promulgate regulations requiring contractors ''to list immediately with the appropriate local employment service office all of its employment openings except that the contractor may exclude openings for executive and top management positions, positions which are to be filled from within the contractor's organization, and positions lasting three days or less.'' The current regulation implementing VEVRAA at 41 CFR 60–250.5(a) permits contractors to satisfy their job listing obligations by listing employment openings either with the local employment service office or with the U.S. Department of Labor's America's Job Bank.

The JVA amendments made significant changes to the affirmative action provisions of VEVRAA. First, section 2(b)(1) of JVA increased the coverage threshold from a contract of $25,000 or more to a contract of $100,000 or more.

Second, the JVA amendments changed the categories of covered veterans under VEVRAA. JVA eliminated the category of Vietnam era veterans from coverage under VEVRAA. However, many Vietnam era veterans may remain covered in other categories. JVA added as a new category of covered veterans—those ''veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.'' JVA expanded the coverage of veterans with disabilities. Prior to amendment by JVA, VEVRAA covered veterans rated as having 10% to 20% serious employment handicap or a disability rated 30% or more by the Department of Veterans Affairs. The JVA amendments expanded coverage to include all veterans with service-connected disabilities. JVA also expanded the coverage of ''recently separated veterans'' from one to three years after discharge or release from active duty.

Third, JVA modified the mandatory job-listing requirement for covered contractors. Currently, the regulation at 41 CFR 60–250.5 allows contractors to satisfy their job listing obligations by listing employment openings either with the appropriate local employment service office or with America's Job Bank. As a result of the JVA amendments, listing job openings solely with America's Job Bank will no longer comply with the requirements of VEVRAA. Section 2(b)(1) of JVA requires that the Secretary promulgate regulations that obligate each covered contractor to list all of its employment openings with ''the appropriate employment service delivery system (as defined in section 4101(7) of this title).'' Section 5(c)(1) of JVA defines the term ''employment service delivery system'' as ''a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.'' *See* 38 U.S.C. 4101(7). (The Wagner-Peyser Act established the Employment Service, which is a nationwide system of public employment offices.) JVA provides that a contractor also may list employment openings with ''one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor).'' Further, under JVA, as under VEVRAA prior to the JVA amendments, contractors may exclude from the mandatory listing requirement executive and senior management positions, positions that are to be filled with internal candidates, and positions lasting three days or fewer.

The JVA amendments to VEVRAA apply only to contracts entered into on or after December 1, 2003. *See* 38 U.S.C. 4211 Note. Some contractors have Government contracts that were entered into before December 1, 2003. Therefore, it will be necessary for OFCCP to maintain two sets of VEVRAA implementing regulations. OFCCP proposes to publish regulations implementing VEVRAA's affirmative action provisions, as amended by JVA, in a new part 60–300. Part 60–300 will apply to contracts entered into on or after December 1, 2003. The existing VEVRAA requirements in part 60–250 will continue to apply to contracts entered into before December 1, 2003. Contractors with contracts entered into both before, and on or after December 1, 2003, will be subject to both the requirements found in part 60–250 and the requirements proposed for part 60–300.

OFCCP recently published a final rule revising the VEVRAA implementing regulations found in part 60–250 to incorporate changes made by the Veterans Employment Opportunity Act of 1998 (VEOA) and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA), (70 FR 72148, December 1, 2005). VEOA increased the amount of the contract required to establish coverage under VEVRAA from $10,000 to $25,000, and extended VEVRAA protection to ''other protected veterans''—those veterans who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. VBHCIA extended VEVRAA protection to ''recently separated veterans''—those veterans during the one-year period beginning on the date of their discharge or release from active duty.

We discuss specific provisions in the Section-by-Section Analysis below.

Section-by-Section Analysis

This proposed rule is substantially similar to the existing VEVRAA implementing regulations in part 60–250. Indeed, most of the provisions of the proposed rule are identical to the parallel provisions in the existing VEVRAA implementing regulations except where differences are required to implement the amendments made by JVA. The differences between this proposed rule and the existing regulations in part 60–250 are highlighted in the section-by-section analysis. Unless expressly specified, this proposed rule is not intended to create a difference in the substantive meaning between part 60–300 and part 60–250. For a more detailed discussion of provisions in the existing part 60–250 regulations that are incorporated in this proposed rule without substantive change see 61 FR 50080 (September 24, 1996) (**Federal Register** Notice of Proposed Rulemaking for current part 60–250 rule), 63 FR 59630 (November 4, 1998)(**Federal Register** Final Rule for current part 60–250 rule), and 70 FR 72148 (December 1, 2005) (**Federal Register** Final Rule for current part 60–250 rule).

Part 60–300

The title of proposed part 60–300 lists the four categories of veterans protected under JVA—disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–300.1 Purpose, Applicability and Construction

This section discusses the purpose, applicability, and construction of the part 60–300 regulations. As required by the JVA amendments, proposed paragraph (b) states that this part applies to any Government contract or subcontract of $100,000 or more entered into on or after December 1, 2003. In proposed paragraph (b), the singular form of the term ''contract'' is used in order to make clear that a single contract in the amount of $100,000 or more is required to establish coverage under VEVRAA; contracts are not aggregated to reach the coverage threshold. Additionally, paragraph (b) states that a contractor whose only covered Government contract was entered into before December 1, 2003, must comply with the requirements in the existing VEVRAA implementing regulations in part 60–250, and a contractor that has covered contracts entered into both before and on or after December 1, 2003, must comply with the regulations in proposed part 60–300 and existing part 60–250. Proposed paragraphs (a) and (c)(2) refer to the four categories of veterans covered under JVA: (1) Disabled veterans, (2) recently separated veterans, (3) other protected veterans, and (4) Armed Forces service medal veterans.

Section 60–300.2 Definitions

The proposed rule incorporates many of the definitions contained in existing § 60–250.2 without substantive change. Some definitions in the existing § 60–250.2 have been incorporated in the proposed rule with modifications necessitated by the JVA amendments. In addition, new definitions have been added in the proposed rule as a result of the JVA amendments. Accordingly, some definitions in the proposed rule have no parallel definitions in the existing § 60–250.2. Likewise, some definitions in § 60–250.2 have not been adopted in the proposed rule because of the changes JVA made to VEVRAA.

The proposal incorporates, without change, the definitions in the paragraphs (a) through (i), (l), (q), and (v) of § 60–250.2. These paragraphs set forth definitions for the terms: ''Act,'' ''equal opportunity clause,'' ''Secretary,'' ''Deputy Assistant Secretary,'' ''Government,'' ''United States,'' ''Recruiting and training agency,'' ''contract,'' ''Government contract,'' ''subcontract,'' ''other protected veteran,'' and ''qualification standards.''

The definitions in proposed paragraphs (j), (k), and (m) for the terms ''contractor,'' ''prime contractor,'' and ''subcontractor,'' respectively, are substantially similar to the definitions for these terms contained in § 60–250.2, except that the provisions in the proposed rule refer to the coverage threshold of a contract of $100,000 or more established by JVA.

Proposed paragraph (n) sets forth a definition of ''disabled veteran.'' The proposal incorporates the definition of ''disabled veteran'' found in the statute. *See* 38 U.S.C. 4211(3). Thus, proposed paragraph (n) provides that a ''disabled veteran'' is: (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or (2) a person who was discharged or released from active duty because of a service-connected disability. The category of disabled veterans is broader than the category of ''special disabled veterans'' that was protected under VEVRAA prior to the JVA amendments.

Currently, § 60–250.2(o) defines ''qualified special disabled veteran'' as ''a special disabled veteran who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.'' The regulatory definition of qualified special disabled veteran was modeled on the counterpart definition in the Americans with Disabilities Act. The JVA amendments to VEVRAA added a definition for the term ''qualified.'' Section 2(b)(3)(B) of JVA provides that, with respect to an employment position, the term ''qualified'' means ''having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.'' Accordingly, proposed paragraph (o) sets forth a definition for the term ''qualified disabled veteran'' that incorporates the definition of ''qualified'' contained in the statute.

The proposal incorporates the definitions for the terms ''essential functions,'' ''reasonable accommodation,'' and ''direct threat'' contained in paragraphs (s), (t), and (w) of existing § 60–250.2, except that the term ''special disabled veteran'' has been replaced with ''disabled veteran.''

Proposed paragraph (q) sets forth the definition of ''recently separated veteran.'' Under JVA, a recently separated veteran is ''any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.'' The definition of recently separated veteran in proposed paragraph (q) differs from the definition of the term found in existing § 60–250.2(q). Under § 60–250.2(q), a ''recently separated veteran'' is as veteran who has been discharged from military service for one year or less.

Proposed paragraph (r) sets forth the definition for ''Armed Forces service medal veteran.'' JVA amended VEVRAA by adding as a new category of covered veterans—those ''veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).'' Armed Forces service medals are awarded to military personnel who participate in a United States military operation deemed to be significant activity, and who encounter no foreign armed opposition or imminent hostile action. The definition of Armed Forces service medal veterans in the proposed rule is derived from the JVA.

Proposed paragraph (x) sets forth a definition of ''compliance evaluation.''

Proposed paragraph (y) incorporates the definition of the ''employment service delivery system'' that was added to the definitional section of VEVRAA, 38 U.S.C. 4101(7), by Section 5(c)(1) of JVA. Under JVA, ''employment service delivery system'' means a ''service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.''

Section 60–300.4 Coverage and Waivers

This section is identical to § 60–250.4 in the existing VEVRAA regulations, except that proposed paragraphs (a)(1) and (a)(2) implement the JVA amendments and state that contracts of $100,000 or more are covered under VEVRAA.

Section 60–300.5 Equal Opportunity Clause

Proposed paragraph (a) contains the equal opportunity (EO) clause that must be included in all covered Government contracts and subcontracts. The language of the EO clause in proposed paragraph (a) is identical to the language of the EO clause in existing § 60–250.5(a), except that proposed paragraph (a) refers to the categories of veterans protected under JVA. Thus, ''disabled veterans'' and ''Armed Forces service medal veterans'' are mentioned in proposed paragraph (a), while ''special disabled veterans'' and ''veterans of the Vietnam era'' are referenced in existing § 60–250.5(a). Proposed paragraphs (a)(2) and (a)(3) set out the contractor's obligation to list employment openings with the appropriate local employment service delivery system. Existing § 60–250.5(a) requires that contractors list all employment openings at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Existing § 60–250.5(a) also provides that listing employment openings with the Department of Labor's America's Job Bank will satisfy the requirement to list employment openings with the local employment service office.

The JVA amendments eliminated listing employment openings solely with America's Job Bank as an option for complying with the mandatory job-listing requirement. JVA requires that contractors and subcontractors list their employment openings with an ''appropriate employment service delivery system.'' *See* 38 U.S.C. 4212(a)(2)(A). In addition to listing their employment openings with an appropriate employment service delivery system, JVA provides that contractors and subcontractors also may list their employment openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the U.S. Department of Labor). Accordingly, proposed paragraph (a)(2) tracks the JVA provision, and provides that contractors must list employment openings with an appropriate employment service delivery system, and that contractors may also list employment openings with one-stop career centers or America's Job Bank.

JVA also made technical and conforming amendments to VEVRAA. In proposed paragraphs (a)(6)(i) and (ii), which set forth definitions for terms used in the mandatory listing requirement, the term ''senior management'' is used instead of ''top management'' to conform to a technical amendment made by JVA. *See* 38 U.S.C. 4212(a)(2)(A). In addition, the word ''Programs'' has been deleted from the paragraphs (a)(9) and (a)(11) to accurately describe the title of the Deputy Assistant Secretary. Paragraph (a)(11) also states that the subcontract or purchase order threshold amount is $100,000 or more.

Subpart B—Discrimination Prohibited

Section 60–300.21 Prohibitions

This section is identical to existing § 60–250.21, except that the categories of veterans covered under JVA are referenced in the proposal.

Section 60–300.22 Direct Threat Defense

This section is identical to existing § 60–250.22, except that the cross-reference is to proposed § 60–300.2(w).

Section 60–300.23 Medical Examinations and Inquiries

This section is identical to existing § 60–250.23, except that the proposal references the category of ''disabled veteran(s)'' rather than ''special disabled veterans.''

Section 60–300.24 Drugs and Alcohol

This section is identical to existing § 60–250.24 except that this section includes a citation to proposed § 60–300.23(d).

Section 60–300.25 Health Insurance, Life Insurance and Other Benefit Plans

This section is identical to § 60–250.25 in the current VEVRAA implementing regulations, except that ''disabled veteran'' rather than ''special disabled veteran'' is referenced in proposed paragraph (d).

Subpart C—Affirmative Action Program

Section 60–300.40 Applicability of the Affirmative Action Program Requirement

Proposed paragraph (a) sets out contract dollar and employee thresholds for application of the affirmative action program requirements of Subpart C. Because JVA raised the coverage threshold to a contract of $100,000 or more, the threshold for application of the AAP requirements must also increase. Proposed paragraph (a) provides that the AAP requirements are applicable to ''every Government contractor that has 50 employees and a contract of $100,000 or more.'' Thus, under the proposal, any contractor subject to VEVRAA will be required to develop a written AAP.

Section 60–300.42 Invitation to Self-Identify

This section is identical to § 60–250.42, except that the categories of veterans protected under JVA are referenced in this section. Proposed paragraph (a) addresses the obligation of contractors to invite ''disabled veterans'' to self-identify as a veteran covered under VEVRAA who wishes to benefit from the contractor's affirmative action program. Proposed paragraph (b) sets out the obligation to invite ''recently separated veterans, other protected veterans, and Armed Forces service medal veterans.'' In addition, the regulatory citations in this section are to provisions in the proposed rule.

Section 60–300.43 Affirmative Action Policy

This section is identical to § 60–250.43, except that this section specifies the categories of veterans covered under JVA, and contains citations to provisions in the proposed rule.

Section 60–300.44 Required Contents of Affirmative Action Programs

With the exception of changes necessitated by the JVA amendments, this section is identical to § 60–250.44 in the existing VEVRAA implementing regulations. The categories of veterans protected under JVA are referenced throughout this section. In addition, consistent with the technical amendments to VEVRAA, the term ''senior management'' is used in paragraph (h)(2)(i), which sets out the requirement that the contractor assign responsibility for implementation of the AAP. Further, this section contains citations to provisions in the proposed rule.

Subpart D—General Enforcement and Complaint Procedures

Section 60–300.60 Compliance Evaluations

This section is identical to § 60–250.60, except for the differences necessitated by JVA. The categories of veterans protected under JVA are referenced in this section. In addition, proposed paragraph (c) provides that OFCCP may verify whether a contractor has complied with any reporting requirements required under regulations promulgated by the Veterans' Employment and Training Service (VETS). Paragraph (c) of existing § 60–250.60 provides that OFCCP may verify whether a contractor is complying with its obligation to file its Annual VETS–100 Report pursuant to the regulations in 41 CFR part 61–250. The regulations in part 61–250, which were issued by VETS, apply only to contracts entered into before December 1, 2003. When VETS issues regulations establishing reporting requirements for contracts entered into on or after December 1, 2003, proposed paragraph (c) gives OFCCP authority to investigate compliance with such reporting requirements.

Section 60–300.61 Complaint Procedures

This section is identical to § 60–250.61, except for the changes necessary to conform to the amendments made by JVA. This section refers to the categories of veterans protected under JVA. Additionally, paragraph (b)(iii) does not contain references to ''serious employment handicaps'' and level of disability by percentage, as JVA protects all disabled veterans. Further, the regulatory citations in this section are to sections in the proposed rule.

Section 60–300.64 Show Cause Notice

Except for the citations to provisions in the proposed rule, this section is identical to § 60–250.64.

Section 60–300.65 Enforcement Proceedings

Except for the citations to provisions in the proposed rule, this section is identical to § 60–250.65.

Section 60–300.66 Sanctions and Penalties

Except for the citations to provisions in the proposed rule, this section is identical to § 60–250.66.

Section 60–300.69 Intimidation and interference

This section is identical to § 60–250.69, except that this section refers to the categories of veterans protected under VEVRAA.

Subpart E—Ancillary Matters

Section 60–300.84 Responsibilities of Appropriate Employment Service Delivery System

This section is identical to § 60–250.84 in the existing VEVRAA implementing regulations, except for the changes required to implement the JVA amendments. Thus, this section references the categories of veterans protected under JVA. Additionally, consistent with the requirements of JVA, the term ''appropriate employment service delivery system'' is used in the title and in proposed paragraphs (a) and (b).

Appendix A to Part 60–300—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

Except for the references to the categories of veterans covered under JVA and citations to provisions in the proposed rule, proposed Appendix A to part 60–300 is substantially similar to Appendix A to part 60–250 in the existing VEVRAA regulations.

Appendix B to Part 60–300—Sample Invitation To Self-Identify

Except for the references to the categories of veterans covered under JVA and citations to provisions in the proposed rule, proposed Appendix B to part 60–300 is substantially similar to Appendix B to part 60–250 in the existing VEVRAA regulations.

Appendix C to Part 60–300—Review of Personnel Processes

Proposed Appendix C to part 60–300 is substantially similar to Appendix C to part 60–250 in the existing VEVRAA regulations, except for the references to the categories of veterans covered under JVA and citations to provisions in the proposed rule.

Regulatory Procedures

Executive Order 12866

These VEVRAA regulations have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this notice of proposed rulemaking is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, but is not economically significant as defined in section 3(f)(1). Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this proposed rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This proposed 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.''

Regulatory Flexibility Act

This proposed rule, if promulgated in final, will clarify existing requirements for Federal contractors. In view of this fact and because the proposed rule does not substantively change existing obligations for Federal contractors, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Reform

Executive Order 12875—This proposed rule, if promulgated in final, will not create an unfunded Federal mandate upon any State, local, or tribal government.

Unfunded Mandates Reform Act of 1995—This proposed rule, if promulgated in final, will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

The information collection requirements contained in the existing VEVRAA regulations, with the exception of those related to complaint procedures, are currently approved under OMB Control No. 1215–0072 (Recordkeeping and Reporting Requirements-Supply and Service) and OMB Control No. 1215–0163 (Construction Recordkeeping and Reporting). The information collection requirements contained in the existing complaint procedures regulation are currently approved under OMB Control No. 1215–0131. This proposed rule would adopt a new set of VEVRAA implementing regulations that incorporate the changes made by the JVA amendments, and apply to Government contracts entered on or after December 1, 2003. JVA amended VEVRAA by increasing the contract coverage threshold, changing the categories of veterans protected under the law, and changing the manner in which the mandatory job listing requirement is to be implemented. The increase in the contract coverage threshold from $25,000 to $100,000 may result in a decrease in the number of respondents and burden hours. However, this proposed rule would not make any changes to the currently approved information collections. Consequently, this proposed rule 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. 3501 *et seq.*

List of Subjects in 41 CFR Part 60–300

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Signed at Washington, DC, this 12th day of January, 2006.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

Accordingly, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60, Part 60–300, is proposed to be added to read as follows:

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, OTHER PROTECTED VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.

Subpart B—Discrimination Prohibited

Subpart C—Affirmative Action Program

Subpart D—General Enforcement and Complaint Procedures

Subpart E—Ancillary Matters

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–300.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212, or VEVRAA), which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified covered veterans. Disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans are covered veterans under VEVRAA.

(b) *Applicability.* This part applies to any Government contract or subcontract of $100,000 or more, entered into on or after December 1, 2003, for the purchase, sale or use of personal property or nonpersonal services (including construction): *Provided,* that subpart C of this part applies only as described in § 60–300.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part. Any contractor or subcontractor whose only contract(s) for the purchase, sale or use of personal property and nonpersonal services (including construction) was entered into before December 1, 2003, must follow part 60–250. Any contractor or subcontractor who has contracts for the purchase, sale or use of personal property and nonpersonal services (including construction) that were entered into both before December 1, 2003, and on or after December 1, 2003, must follow both parts 60–250 and 60–300.

(c) *Construction*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) set out as an appendix to 29 CFR part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–300.2 Definitions.

For the purpose of this part:

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

(b) *Equal opportunity clause* means the contract provisions set forth in § 60–300.5, ''Equal opportunity clause.''

(c) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(d) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Federal Contract Compliance of the United States Department of Labor, or his or her designee.

(e) *Government* means the Government of the United States of America.

(f) *United States,* as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(g) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(h) *Contract* means any Government contract or subcontract.

(i) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term *Government contract* does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Person*, as used in this paragraph (i) and paragraph (l) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(4) *Nonpersonal services*, as used in this paragraph (i) and paragraph (l) of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Construction*, as used in this paragraph (i) and paragraph (l) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(6) *Personal property*, as used in this paragraph (i) and paragraph (l) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(j) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $100,000 or more.

(k) *Prime contractor* means any person holding a contract of $100,000 or more, and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' includes any person who has held a contract subject to the Act.

(l) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(m) *Subcontractor* means any person holding a subcontract of $100,000 or more and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' any person who has held a subcontract subject to the Act.

(n) *Disabled veteran* means:

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or

(2) A person who was discharged or released from active duty because of a service-connected disability.

(o) *Qualified disabled veteran* means a disabled veteran who has the ability to perform the essential functions of the employment position with or without reasonable accommodation.

(p) *Other protected veteran* means a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.

(q) *Recently separated veteran* means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

(r) *Armed Forces service medal veteran* means any veteran who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(s) *Essential functions*—(1) *In general.* The term *essential functions* means fundamental job duties of the employment position the disabled veteran holds or desires. The term *essential functions* does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(t) *Reasonable accommodation*—(1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a disabled veteran to be considered for the position such applicant desires; [1] or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not disabled veterans.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified disabled veteran in need of the accommodation.[2] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(u) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (u)(2) of this section.

[1] A contractor's duty to provide a reasonable accommodation with respect to applicants who are disabled veterans is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (*e.g.*, if they present themselves at the correct location and time to fill out an application).

[2] Contractors must engage in such an interactive process with a disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(v) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(w) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that a disabled veteran poses a *direct threat* shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

(x) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of the Vietnam Era Veterans' Readjustment Assistance Act.

(y) *Employment service delivery system* means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.

§ 60–300.3 [Reserved]

§ 60–300.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $100,000 or more.* Contracts and subcontracts of $100,000 or more, are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $100,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $100,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term "employment activities within the United States" includes actual employment within the United States, and decisions of the contractor made within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with state or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Deputy Assistant Secretary may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Deputy Assistant Secretary may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Deputy Assistant Secretary may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Deputy Assistant Secretary in writing within 30 days.

(3) *Facilities not connected with contracts.* The Deputy Assistant Secretary may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–300.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

EQUAL OPPORTUNITY FOR DISABLED VETERANS, RECENTLY SEPARATED VETERANS, OTHER PROTECTED VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures;

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. Rates of pay or any other form of compensation and changes in compensation;

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. Leaves of absence, sick leave, or any other leave;

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. Activities sponsored by the contractor including social or recreational programs; and

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system. In addition, the

contractor also may list employment openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the U.S. Department of Labor).

3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever the contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: *Provided*, That this requirement shall not apply to state and local governmental contractors. As long as the contractor is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent contracts. The contractor may advise the state agency when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

6. As used in this clause: i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. *Executive and senior management* means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6.ii.; *Provided*, that (e) of this paragraph 6.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established ''recall'' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans. The contractor must ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (*e.g.*, the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including action for noncompliance.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary that the equal opportunity clause be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR 60–300.5(a).

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Deputy Assistant Secretary and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Deputy Assistant Secretary with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Deputy Assistant Secretary, and taking such actions for noncompliance as are set forth in § 60–300.66 as may be ordered by the Secretary or the Deputy Assistant Secretary.

Subpart B—Discrimination Prohibited

§ 60–300.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–300.21 Prohibitions.

The term *discrimination* includes, but is not limited to, the acts described in this section and § 60–300.23.

(a) *Disparate treatment*. It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran.

(b) *Limiting, segregating and classifying*. Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of that individual's status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran. For example, the contractor may not segregate qualified disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements.*—(1) *In general*. It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase ''contractual or other arrangement or relationship'' includes, but is not limited to, a relationship with: An employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is a disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee who is a disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified disabled veteran.

(g) *Qualification standards, tests and other selection criteria*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status as disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran for an employment opportunity, the contractor may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–300.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–300.2(w) defining *direct threat*.)

§ 60–300.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–300.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–300.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–300.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–300.23(b)(5) and 60–300.23(d)(2).

§ 60–300.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor may not deny a qualified disabled veteran equal access to insurance or subject a qualified disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–300.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $100,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually.

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–300.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–300.42 Invitation to self-identify.

(a) *Disabled veterans.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a disabled veteran who may be covered by the Act and wishes to benefit under the affirmative action program. Such invitation shall be extended after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, except that the contractor may invite disabled veterans to self-identify prior to making a job offer when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for disabled veterans at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for disabled veterans.

(b) *Recently separated veterans, other protected veterans, and Armed Forces service medal veterans.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a recently separated veteran, other protected veteran, or Armed Forces service medal veteran who may be covered by the Act and wishes to benefit under the affirmative action program. Such invitation may be made at any time before the applicant begins his or her employment duties.

(c) The invitations referenced in paragraphs (a) and (b) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitations also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitations shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. (An acceptable form for such an invitation is set forth in Appendix B of this part. Because a contractor usually may not seek advice from a disabled veteran regarding placement and accommodation until after a job offer has been extended, the invitation set forth in Appendix B of this part contains instructions regarding modifications to be made if it is used at the pre-offer stage.)

(d) If an applicant so identifies himself or herself as a disabled veteran, the contractor should also seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The contractor also may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (*e.g.*, in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file in accordance with § 60–300.23(d) on persons who have self-identified as disabled veterans.

(e) The contractor shall keep all information on self identification confidential. The contractor shall provide the information to OFCCP upon request. This information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans.

(g) Nothing in this section shall relieve the contractor from liability for discrimination under the Act.

§ 60–300.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act contractors shall not discriminate because of status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran and shall take affirmative action to employ and advance in employment qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–300.20.

§ 60–300.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are disabled veterans are informed of the contents of the policy statement (for example, the contractor may have the statement read to a visually disabled individual, or may lower the posted notice so that it may be read by a person in a wheelchair). The policy statement should indicate the chief executive officer's attitude on the subject matter, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy should state, among other things, that the contractor will: Recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA) or any other Federal, state or local law requiring equal opportunity for disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans;

(3) Opposing any act or practice made unlawful by VEVRAA or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans; or

(4) Exercising any other right protected by VEVRAA or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, that is relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. (Appendix C of this part is an example of an appropriate set of procedures. The procedures in Appendix C of this part are not required and contractors may develop other procedures appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See § 60–300.2(w) defining *direct threat.*)

(d) *Reasonable accommodation to physical and mental limitations.* As is provided in § 60–300.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran.

(f) *External dissemination of policy, outreach and positive recruitment.* The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraphs (f)(1) through (f)(8) of this section that are reasonably designed to effectively recruit qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraphs (f)(1) through (f)(8) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should enlist the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for, qualified disabled veterans, recently separated veterans,

other protected veterans, and Armed Forces service medal veterans, to fulfill its commitment to provide meaningful employment opportunities to such veterans:

(i) The Local Veterans' Employment Representative in the local employment service office nearest the contractor's establishment;

(ii) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(iii) The veterans' counselors and coordinators (''Vet-Reps'') on college campuses;

(iv) The service officers of the national veterans' groups active in the area of the contractor's establishment; and

(v) Local veterans' groups and veterans' service centers near the contractor's establishment.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(3) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans. An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.

(4) The contractor should establish meaningful contacts with appropriate veterans' service organizations which serve disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(5) Disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(6) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(7) The contractor should take positive steps to attract qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(8) The contractor, in making hiring decisions, should consider applicants who are known disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop internal procedures such as those listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (g)(2) of this section or that its activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate.

(2) The contractor should implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual;

(ii) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans. The contractor should periodically schedule special meetings with all employees to discuss policy and explain individual employee responsibilities;

(iii) Publicize it in the company newspaper, magazine, annual report and other media;

(iv) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude;

(v) Discuss the policy thoroughly in both employee orientation and management training programs;

(vi) Meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(vii) Include articles on accomplishments of disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans in company publications; and

(viii) When employees are featured in employee handbooks or similar publications for employees, include disabled veterans.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities; and

(v) Measure the contractor's compliance with the affirmative action program's specific obligations.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary senior management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

Subpart D—General Enforcement and Complaint Procedures

§ 60–300.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of the Executive Order and regulations;

(3) *Compliance check.* A determination of whether the contractor has maintained records consistent with § 60–300.80; at the contractor's option the documents may be provided either on-site or off-site; or

(4) *Focused review.* An on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–300.62.

(c) *Reporting Requirements.* During a compliance evaluation, OFCCP may verify whether the contractor has complied with any reporting requirement required under regulations promulgated by the Veterans' Employment and Training Service (VETS). If the contractor has not complied with any such reporting requirement, OFCCP will notify VETS.

§ 60–300.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to the OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) at the local employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state employment security agency shall cooperate with the Deputy Assistant Secretary in the investigation of any complaint.

(b) *Contents of complaints.*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's

confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Deputy Assistant Secretary decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–300.65(a)(1), the complainant and contractor shall be so notified. The Deputy Assistant Secretary, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Deputy Assistant Secretary will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Deputy Assistant Secretary decides to reconsider the determination of a Notification of Results of Investigation, the Deputy Assistant Secretary shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–300.62.

§ 60–300.62 Conciliation agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

§ 60–300.63 Violation of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

§ 60–300.64 Show cause notices.

When the Deputy Assistant Secretary has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60–300.65).

§ 60–300.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Deputy Assistant Secretary may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–300.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided*, That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights and Labor-Management, Regional Solicitors, and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to ''Executive Order 11246'' shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; to ''equal opportunity clause'' shall mean the equal opportunity clause published at § 60–300.5; and to ''regulations'' shall mean the regulations contained in this part.

§ 60–300.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Deputy

Assistant Secretary, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–300.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–300.67 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–300.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Deputy Assistant Secretary also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Deputy Assistant Secretary's decision. The petition shall be served on the Deputy Assistant Secretary and the Associate Solicitor for Civil Rights and Labor-Management and shall include the decision as an appendix. The Deputy Assistant Secretary may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–300.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for disabled veterans, recently separated veterans, other protected veterans, or Armed Forces service medal veterans, or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Deputy Assistant Secretary against any contractor who violates this obligation.

§ 60–300.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–300.80 Recordkeeping.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term *personnel records relevant to the complaint, compliance evaluation or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided*, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after the date that the Office of Management and Budget has cleared the requirements.

§ 60–300.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Act or this part. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act.

§ 60–300.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–300.83 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Deputy Assistant Secretary.

§ 60–300.84 Responsibilities of appropriate employment service delivery system.

(a) Appropriate employment service delivery systems shall refer qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans to fill employment openings listed by contractors with such appropriate employment service delivery systems pursuant to the mandatory listing requirements of the equal opportunity clause, and shall give priority to disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans in making such referrals.

(b) Appropriate employment service delivery systems shall contact employers to solicit the job orders described in paragraph (a) of this section. The employment service delivery systems shall provide OFCCP upon request information pertinent to whether the contractor is in compliance with the mandatory listing requirements of the equal opportunity clause.

Appendix A to Part 60–300—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent ''free-standing'' source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. *See* § 60–300.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under VEVRAA, like reasonable accommodation required under Section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to VEVRAA and Section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of a disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an ''otherwise qualified'' disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–300.2(o), a disabled veteran is qualified if he or she has the ability to perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the disabled veteran is qualified with respect to that process. One is ''otherwise qualified'' if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be disabled veterans. As stated in § 60–300.42(a) (*see* also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are a disabled veteran who may be covered by the Act and wish to benefit under the contractor's affirmative action program. Section 60–300.42(d) further provides that the contractor should seek the advice of disabled veterans who ''self-identify'' in this way as to proper placement and appropriate accommodation. Moreover, § 60–300.44(d) provides that if an employee who is a known disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the ''best'' accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees

who are disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term ''undue hardship'' refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, *e.g.*, the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the disabled veteran should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60–300.2(t) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the disabled veteran in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice), 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN) operated by the Office of Disability Employment Policy in the U.S. Department of Labor (1–800–526–7234 or 1–800–232–9675), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–300.2(t) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, *i.e.*, those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, *etc.,* if the individual is qualified, and if the position is vacant within a reasonable amount of time. A ''reasonable amount of time'' should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled veterans. It should also be noted that the contractor is not required to promote a disabled veteran as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to disabled veterans who are vision or hearing impaired, *e.g.*, by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, *e.g.*, extending regular time deadlines, allowing a disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–300—Sample Invitation to Self-Identify

Note: When the invitation to self-identify is being extended to disabled veterans prior to an offer of employment, as is permitted in limited circumstances under § 60–300.42(a)(1) and (2), paragraph 7(ii) of this appendix, relating to identification of reasonable accommodations, should be omitted. This will avoid a conflict with the EEOC's ADA Guidance, which in most cases precludes asking a job applicant (prior to a job offer being made) about potential reasonable accommodations.

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, which requires Government contractors to take affirmative action to employ and advance in employment qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

2. [THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING AN INVITATION TO RECENTLY SEPARATED VETERANS, OTHER PROTECTED VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS ONLY.] If you are a recently separated veteran, other protected veteran, or Armed Forces service medal veteran, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. The term ''recently separated veteran'' refers to any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty. The term ''other protected veteran'' refers to a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under laws administered by the Department of Defense. The term ''Armed Forces service medal veteran'' refers to a person who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (62 Fed. Reg. 1209).

[THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING AN INVITATION TO DISABLED VETERANS ONLY.] If you are a disabled veteran, we would like to include you in our affirmative action program. If you would like to be included under the affirmative action program, please tell us. This information will assist us in placing you in an appropriate position and in making accommodations for your disability. The term ''disabled veteran'' refers to a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary, or was discharged or released from active duty because of a service-connected disability.

[THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING AN INVITATION TO DISABLED VETERANS AS WELL AS RECENTLY SEPARATED VETERANS, OTHER PROTECTED VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS.] If you are a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. [The contractor should include here the definitions of ''disabled veteran,'' ''recently separated veteran,'' ''other protected veteran,'' and ''Armed Forces service medal veteran'' found in the two preceding paragraphs.]

3. You may inform us of your desire to benefit under the program at this time and/or at any time in the future.

4. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

5. The information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if you have a condition that might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by OFCCP, or enforcing the Americans with Disabilities Act, may be informed.

6. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

7. [THE FOLLOWING TEXT SHOULD BE USED ONLY WHEN EXTENDING AN INVITATION TO DISABLED VETERANS, EITHER BY THEMSELVES OR IN COMBINATION WITH RECENTLY SEPARATED VETERANS, OTHER PROTECTED VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS. PARAGRAPH 7(ii) SHOULD BE OMITTED WHEN THE INVITATION TO SELF-IDENTIFY IS BEING EXTENDED PRIOR TO AN OFFER OF EMPLOYMENT.] If you are a disabled veteran it would assist us if you tell us about (i) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (ii) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations. This information will assist us in placing you in an appropriate position and in making accommodations for your disability.

Appendix C to Part 60–300—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–300.44(b):

1. The application or personnel form of each known applicant who is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran should include (i) the identification of each promotion for which the covered veteran was considered, and (ii) the identification of each training program for which the covered veteran was considered.

3. In each case where an employee or applicant who is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran is rejected for employment, promotion, or training, the contractor should prepare a statement of the reason as well as a description of the accommodations considered (for a rejected disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, should be treated as confidential medical records in accordance with § 60–300.23(d). These materials should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place a disabled veteran on the job, the contractor should make a record containing a description of the accommodation. The record should be treated as a confidential medical record in accordance with § 60–300.23(d).

[FR Doc. 06–440 Filed 1–19–06; 8:45 am]

BILLING CODE 4510–CM–P

Federal Register

Friday,
January 20, 2006

Part III

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–2

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–2

RIN 1215–AB53

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) commissioned two studies to determine whether data submitted by contractors in response to the Equal Opportunity Survey (EO Survey) could be used to develop an effective and efficient tool to target those contractors most likely to be discriminating. The first study failed to find a correlation between the predictive variables generated from the EO Survey and determinations of noncompliance. The second study showed that the EO Survey did not provide sufficiently useful data for enforcement targeting purposes. In light of these findings, together with a review of both the costs associated with the EO Survey and the utility of the EO Survey in accomplishing any of its stated objectives, OFCCP is proposing to remove the current requirement for nonconstruction federal contractors to file the EO Survey under Section 60–2.18. This proposed change is intended to more effectively focus enforcement resources and to eliminate a regulatory requirement that fails to provide value to either OFCCP enforcement or contractor compliance. OFCCP's resources could be better directed for the benefit of victims of discrimination, the government, contractors, and taxpayers.

DATES: Comments must be received on or before March 21, 2006.

ADDRESSES: You may submit comments, identified by RIN number 1215–AB53, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *ofccp-mail@dol.esa.gov.* Include ''RIN number 1215–AB53'' in the subject line of the message.
- Fax: (202) 693–1304 (for comments of 6 pages or fewer).
- Mail: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room N3422, 200 Constitution Avenue, NW., Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0102 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at Room C3325, 200 Constitution Avenue, NW., Washington, DC 20210. People needing assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking will be made available in the following formats: Large print; electronic file on computer disk; and audiotape. To schedule an appointment to review the comments and/or to obtain this Notice of Proposed Rulemaking in an alternate format, contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

I. Background

A. History of Equal Opportunity Survey

Executive Order 11246, as amended, requires that Federal Government contractors and subcontractors ''take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.'' Section 202(1). Affirmative action under the Executive Order means more than passive nondiscrimination; it requires that contractors take affirmative steps to identify and eliminate impediments to equal employment opportunity. The affirmative steps include numerous recordkeeping obligations designed to assist the contractor, in the first instance, and also OFCCP in monitoring the contractor's employment practices. For example, contractors are generally required to maintain employment and personnel records for two years, to file annually an EEO–1 Report, and to develop an affirmative action program (AAP) that includes several quantitative analyses, identification of problem areas, development and execution of an action-oriented program to correct any problems identified, and development and implementation of an auditing system to periodically measure the effectiveness of the AAP. *See* 41 CFR 60–1.7, 60–1.12(a), 60–2.1, 60–2.10, and 60–2.17. Today's notice proposes no changes to these requirements.

On November 13, 2000, OFCCP published a final rule (165 FR 68046) revising regulations found at 41 CFR parts 60–1 and 60–2 relating to affirmative action programs and recordkeeping. Section 60–2.18 of the final rule requires that nonconstruction contractor establishments designated by OFCCP prepare and file an Equal Opportunity Survey (EO Survey). The EO Survey contains information about personnel activities, compensation and tenure data, and certain information about the contractor's affirmative action program. OFCCP recordkeeping rules require contractors to maintain information necessary to complete the EO Survey, although not in the format called for by the survey instrument. *See* 65 FR 26100 (May 4, 2000). The EO Survey had three major objectives:

(1) To improve the deployment of scarce federal government resources toward contractors most likely to be out of compliance;

(2) To increase agency efficiency by building on the tiered-review process already accomplished by OFCCP's regulatory reform efforts, thereby allowing better resource allocation; and

(3) To increase compliance with equal opportunity requirements by improving contractor self-awareness and encourage self-evaluations.

See 165 FR 68039 (Nov. 13, 2000); *see also* 65 FR 26101 (May 4, 2000).

The development of the EO Survey began in March 1999. During the initial development stage, discussions were held with OMB and meetings were held with contractors and contractor representatives, civil rights groups, and women's groups. A version of the EO Survey was field tested beginning in August 1999.

In April 2000, a pilot EO survey was sent to 7,000 contractors. After receipt of pilot EO Survey responses, OFCCP commissioned a study to determine whether the pilot EO Survey results could be used to predict whether a contractor would have findings of non-compliance. Bendick & Eagan Economic Consultants, Inc., The Equal Opportunity Survey: Analysis of a First Wave of Survey Responses (September 2000) (Bendick Report). The Bendick Report failed to find a correlation between the predictive variables, generated from the EO Survey, and determinations of noncompliance. Data problems prevented Bendick from conducting a full-scale analysis of the pilot EO Survey's predictive power. The report stated that the EO Survey results might in the future be a way of finding contractors that discriminate, but the pilot EO Survey was not. Bendick Report at 18–27.[1] The EO Survey sent to contractors in December 2000 was not substantively different from the pilot EO Survey.

OFCCP mailed 53,000 EO Surveys between December 2000 and March 2001, 10,000 in December 2002, 10,000 in December 2003, and 10,000 in December 2004.

B. Analysis of the Equal Opportunity Survey

In January 2003, OFCCP published a Notice in the **Federal Register** seeking a two-year extension of the PRA clearance that stated: ''Time constraints and a number of data problems affected an earlier pilot study of the EO Survey data in such a way so as not to be able to assess the Survey's predictive power. To perform a study that is not limited by these obstacles, OFCCP has engaged an outside contractor to study the Survey data. The contractor will assess data from the EO Survey submissions as part of its study.''

OFCCP contracted with Abt Associates, Inc. (Abt), of Cambridge, Massachusetts, to study whether EO Survey data could be used to develop a model to more effectively target those contractors engaging in systemic discrimination. OFCCP conducted compliance evaluations of a sample of supply and service contractor establishments completing the 2002 EO Survey.[2] Ultimately the study focused on 1,888 establishments that had completed compliance reviews and had reliable EO Survey data. Of these 1,888 cases, OFCCP found systemic discrimination in 67 cases (3.5%). Results of the compliance reviews and EO Surveys were analyzed to determine whether a model could be developed that would predict which contractors in the sample were engaged in systemic discrimination based solely on the EO Survey data submitted. An Evaluation of OFCCP's Equal Opportunity Survey (Abt Report) at 12–37.

In summer 2005, Abt Associates presented OFCCP with its report reviewing the 2002 EO Survey in the Abt Report. The Abt Report is posted on OFCCP's Web site at *http://www.dol.gov/esa/ofccp/index.htm* and is available for public inspection during normal business hours at Room C3325, 200 Constitution Avenue, NW., Washington, DC 20210.

Abt utilized standard statistical techniques to determine if there was any relation between the data reported on the EO Surveys and the determinations of systemic discrimination found through OFCCP compliance reviews. Abt developed potential predictor variables from Part B (personnel activity by EEO–1 category) and Part C (compensation data by EEO–1 category) of the EO Survey for the purpose of developing a statistical model aimed at targeting establishments that are more likely to be engaged in systemic discrimination.[3] Nearly all the predictor variables fell into two broad groups. One group attempted to measure the treatment of females relative to males within the same establishment. Another group of variables, in a parallel fashion, compared the treatment of minorities with that of non-minorities within the same establishment. Corresponding comparative variables were also developed to reflect the extent to which an individual establishment departs from other establishments in its comparison group, defined by industry and geography. *Id.* at 15–20.

After insuring data quality and performing a preliminary analysis on the data, Abt constructed a total of 125 potential predictor variables, derived from all reported aspects of personnel activity, compensation, and tenure. The first phase of analysis examined the relation between the findings of systemic discrimination in compliance reviews and each of the predictor variables. Most predictor variables derived from the EO Survey data were found to have no relation to findings of systemic discrimination. No single variable was found to have a high level of predictive ability. *Id.* at 21–24. Further, those establishments with findings of systemic discrimination did not share any combination of modeled characteristics that set them apart from establishments with findings of no systemic discrimination. *Id.* at 39.

Only 22 of the 125 potential predictor variables were found to have ''some association'' with the systemic discrimination determinations.[4] Combinations of the 22 predictors were examined both by including all of those variables in a multiple-variable logistic regression model and by a stepwise logistic regression model.[5] Abt identified, and used in a final model, only four variables, out of the initial 125 potential predictor variables, that when used in combination, were related to the presence or absence of systemic discrimination:

- Whether the establishment reported more than 200 full-time employees;
- The average (over EEO–1 categories) of the ratio of average tenure among minority employees to average tenure among non-minority employees;
- The absolute value of the difference between the proportion of female employees and the proportion of male employees in EEO–1 Category 3 (technicians);
- The average (over EEO–1 categories) of the ratio of the female-to-male tenure ratio to the median of those ratios in the establishment's comparison group (defined by industry and geography).

Id. at 24–38.

However, Abt found the model's predictive power to be only slightly better than chance. Screening on the basis of the model produced large numbers of false positives, that is, the model predicted numerous instances of systemic discrimination in the sample where OFCCP identified none. Specifically, using a cutoff for the probability that an establishment discriminates near the overall rate, the model suggests that 637 out of the 1,888

[1] Although the Executive Summary of the Bendick Report states that the EO Survey could enhance the efficiency and effectiveness of OFCCP's monitoring of contractor compliance, the report itself does not find data to support that statement. It acknowledges that the April 2000 pilot EO Survey, which the report reviews, ''does not offer circumstances in which the full predictive power of the survey can be revealed.'' Bendick Report at 20. It explains that the report ''presents only a preliminary examination of the ability of selected variables drawn from the EO Survey to differentiate establishments likely to have non-compliance findings from those not likely to have such outcomes.'' Bendick Report at 22. The report concludes only that given the limitations of the study there are ''preliminary positive indications'' of predictive power that could ''eventually'' be demonstrated in the future. However, the report could *not* fully validate the predictive powers of the EO Survey. Bendick Report at 25.

[2] As a basis for the Abt study, the 2002 EO Survey was sent to a statistical sample of 10,018 supply and service contractor establishments. A random subsample of 6,400 of these establishments was designated for compliance evaluations. Of these 6,400, only 3,723 establishments responded to the EO Survey. Of these 3,723, only 2,651 had data that allowed OFCCP to complete a compliance evaluation. Thus, OFCCP completed about 2,651 compliance evaluations. However, of the 2,651, a significant number, 763, had missing or incoherent data on the EO Survey, and were not used in the study. Ultimately the study focused on 1,888 cases that had completed compliance reviews and had reliable EO Survey data. An Evaluation of OFCCP's Equal Opportunity Survey (Abt Report) at 5–6, 10–14, 28; Abt Report, Appendix E, Tables A and B.

[3] Abt also considered previous work on discrimination including the data from the 2000 Pilot Test of the EO Survey, carried out by OFCCP, and the Bendick Report.

[4] Abt broadly defined ''some association'' to take into account the possibility that several predictors, each individually having a very weak association, may combine to make a strong contribution in a multiple-variable model.

[5] A stepwise regression model considers, at each iteration, whether any variable should be added to the model and then considers whether any variables in the model should be removed.

establishments in the study discriminate, yet only 42 (6.5%) of these are true positives. Thus, of 637 establishments that would be classified by the EO Survey results as suspected of having systemic discrimination, 93% would be false positives. *Id.* at 33. Even at a higher cutoff rate, where only 143 establishments are inspected, 127 were found to have no systemic discrimination, so the false positive rate remains high at 89% (i.e., 127/143).

Furthermore, the EO Survey model wrongly classifies a significant portion of true discriminators as non-discriminators, and thus would not target them for compliance evaluations. If the 637 establishments were chosen for review on the basis of the EO Survey model, 1,251 establishments would not have been reviewed. This group of 1,251 predicted by the EO Survey to lack discriminators would, in fact, have contained 21 of the 63 cases (33%) of systemic discrimination. Under the higher cutoff rate, about 75% of the establishments (47 contractors) that were found to have systemic discrimination would not have been reviewed under the EO Survey model. *Id.* at 34–35.[6]

In addition, two of the variables in the Abt model (whether the establishment reported more than 200 full-time employees and the absolute value of the difference between the proportion of female employees and the proportion of male employees in EEO–1 Category 3) can be obtained without the EO Survey from the EEO–1 form, which contractors are required to submit to OFCCP pursuant to 41 CFR 60–1.7 and which OFCCP already uses in targeting its compliance activities.

The Abt Report concludes that a model based on the two data elements that can be derived from EEO–1 forms has predictive ability only ''slightly lower'' than the four-variable model. *Id.* at 37. The Abt Report also suggests that OFCCP could explore developing a selection model based on data collected during compliance reviews rather than through an EO Survey. This approach would have several advantages, including collection of more accurate and more pertinent data than provided by the current EO Survey. *Id.* at 39.

C. Limited Utility of the EO Survey

As is discussed in more detail below, OFCCP has concluded that the EO Survey misdirects valuable enforcement resources and does not meet any of its three objectives set out in the November 13, 2000 preamble.

1. The EO Survey Does Not Improve the Deployment of Scarce Federal Government Resources Toward Contractors Most Likely To Be Out of Compliance

In promulgating the EO Survey requirement, OFCCP expected that it would ''enable OFCCP to more effectively and efficiently select contractor establishments that may have possible problems for compliance evaluations, thus enhancing the agency's ability to focus its enforcement resources on those establishments most likely to be out of compliance.'' 65 FR 26100 (May 4, 2000). This expectation has not been fulfilled. The Abt Report found selection models based on EO Survey data would have predictive power only slightly better than chance. EO Survey data does not in any meaningful way improve OFCCP's ability to target for review those contractors engaging in systemic discrimination. The vast majority of contractors identified for review under an EO Survey-based selection model would not be found by OFCCP to have engaged in systemic discrimination. In addition, the model would not identify for review a significant portion of establishments where OFCCP would in fact find systemic discrimination. A survey that produces 93% false positives and misses a substantial percentage of the cases of systemic discrimination is, in the language of the November 13, 2000 Preamble, ''no longer of value.''[7]

The Abt Report suggests that selection models based on EEO–1 data or data collected during compliance evaluations may be essentially equivalent or better than the models based on the EO Survey. Models based on these types of data would provide a significant administrative and cost saving to OFCCP, allowing the agency to more vigorously investigate systemic discrimination cases.

In addition, the development of the EO Survey was expensive. Moreover, the distribution, collection, and processing of the EO Survey has cost an average of $356,000 per year and this does not account for the cost of validating the data, nor any of the time spent by OFCCP personnel working on the EO Survey. This would be money well spent if the EO Survey provided an accurate targeting model. However, as the Abt Report explains, it does not. If OFCCP were to make the EO Survey a focus of its targeting for compliance reviews, then a significant amount of compliance officer time would be consumed by enforcing compliance with the EO Survey reporting requirement, rather than investigating systemic discrimination. Further, the Abt Report demonstrates that using the EO Survey for targeting would direct compliance officers away from contractors who are discriminating. In addition, the EO Survey would direct them—93% of the time—to contractors who are not discriminating. Such a broad implementation of the EO Survey would divert scarce resources away from enforcement methods that are effective.

In light of these EO Survey shortcomings and OFCCP's general practice of continually improving its process, OFCCP has continued its efforts to develop a selection model to better identify contractors who may be engaging in systemic discrimination. The agency is in the process of developing and implementing a new system for selecting contractors for compliance evaluations, called the Federal Contractor Selection System (FCSS). Although in the initial stages, OFCCP believes that FCSS will better target compliance evaluations based on indications of potential workplace discrimination. The new system is based on a thorough study of data from 10 years of OFCCP compliance evaluations to formally identify and characterize relationships between reported EEO–1 workforce profiles and findings of discrimination. OFCCP is currently working to refine the new selection model. OFCCP expects that the improved targeting objective of the EO Survey can be better achieved through another selection system, such as the FCSS, that is more effective in identifying potential discrimination and is more cost effective for the agency, than through a model based on the EO Survey. Irrespective of the effectiveness of the FCSS, the Department has determined that the EO Survey has, at best, only marginal value in improving

[6] The Abt Report stated that a model based on 4 out of a possible 125 (see *infra*) predictor variables ''fit the data reasonably well and had acceptable predictive ability.'' However, this statement is purely in the context of statistical modeling, not of enforcement utility. The Abt report continues that ''models tend to be 'tuned' to the data that are used in fitting them, and so measures of their performance may be optimistic.'' It further observed that ''the low prevalence of systemic discrimination in the population of supply and service contractors, and its relation to some of the predictor variables, however, limit the usefulness of the model and the survey.'' Abt Report at pp. 38–39. While use of these few predictor variables may have some statistical usefulness, this does not imply that the EO Survey has statistical validity or enforcement value. Rather, as discussed above, the Abt Report's findings of a false positive rate of 93% and a false negative rate of 33% demonstrate the EO Survey's lack of enforcement utility.

[7] When promulgating the final rule, OFCCP anticipated that some data elements may not be useful and suggested they could be altered or deleted when ''the data element in question is no longer of value.'' 165 FR 68037 (Nov. 13, 2000).

the deployment of scarce federal government resources toward contractors most likely to be out of compliance. And any marginal value is more than offset by the costs EO Survey, which divert scarce resources away from effective enforcement programs.

2. The EO Survey Does Not Increase Agency Efficiency by Building on the Tiered-review Process Already Accomplished by OFCCP's Regulatory Reform Efforts, Thereby Allowing Better Resource Allocation

OFCCP anticipated that it would use the EO Survey to increase agency efficiency by building on OFCCP's tiered review process. OFCCP has found, however, that the EO Survey has not contributed to agency efficiency in this manner. As discussed above, the Abt Report demonstrates that EO Survey data does not improve OFCCP's ability to target for review those contractors engaged in systemic discrimination. These findings of the Abt Report lead OFCCP to conclude that the EO Survey data would have similar disutility in predicting discrimination in the context of an individual compliance evaluation. In other words, because the EO Survey data has limited utility in predicting which contractors are engaged in systemic discrimination, it follows that EO Survey data would have limited utility in predicting whether and how the selected contractors are discriminating.

Moreover, the EO Survey data is largely duplicative of the information OFCCP receives during the first stages of a compliance evaluation. Under the tiered review system, a compliance evaluation consists of any one or any combination of the following investigative procedures: Compliance checks, off-site review of records, focused reviews and full compliance reviews. 41 CFR 60–1.20(a). The level of agency resources expended on a review is based on the likelihood of uncovering substantive violations as determined at the early stages of the review.

A compliance evaluation generally begins with a review of the data submitted by the contractor in response to a scheduling letter. OFCCP refers to this tier of the review as the desk audit. The contractor submits detailed establishment-specific information on personnel activities such as hiring, promotion, and termination, organized by job group or job title, and also submits detailed, establishment-specific annualized compensation data, organized by salary range, rate, grade, or level. OFCCP evaluates this data in the desk audit stage to determine whether it discloses potential discrimination that warrants more in-depth review.

The data submitted in response to the EO Survey is largely duplicative of desk audit data; indeed, the four EO Survey data elements found to have some discrimination predictive ability are available to OFCCP at the desk audit stage. The EO Survey data is presented, however, in a less-detailed, aggregate form, whereas the desk audit data is more detailed and tailored to an actual compliance evaluation. To the extent the EO Survey data is not duplicative of the desk audit data, the EO Survey data is presented in such an aggregate form that it cannot be used to identify discrimination, and thus does not contribute to the tiered review process.

OFCCP has continued its efforts to refine the tiered review process to better identify systemic discrimination in general, and compensation discrimination in particular, through methods other than use of the EO Survey. In 2003, OFCCP introduced new Active Case Management (ACM) procedures to be used in connection with desk audit reviews. Under ACM procedures, OFCCP opens a larger number of reviews than in the past, uses automated statistical methods, and ranks and prioritizes establishments for a full review based on the probability that discrimination would be uncovered during a more in-depth review. OFCCP closes cases during the desk audit if no statistical indicators are found that imply the presence of discrimination and thereby warrant further attention. More resources are then focused on full scale compliance evaluations of establishments where statistical indicators of systemic discrimination are found.

Additionally, OFCCP is developing guidance for use by OFCCP and contractors to assist in better identifying systemic compensation discrimination. On November 16, 2004, OFCCP published in the **Federal Register**, for notice and comment, a set of formal guidelines ''Interpreting the Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination.'' 69 FR 67246 (Nov. 16, 2004). The proposed Interpretative Standards for Systemic Compensation Discrimination under Executive Order 11246 are intended to govern OFCCP's analysis of contractors' compensation practices. In addition, these proposed standards are intended to constitute a definitive interpretation of the Sex Discrimination Guidelines, codified at 41 CFR 60–20, and EO 11246 with respect to systemic compensation discrimination. The proposed standards govern how OFCCP investigates systemic compensation discrimination, describing when employees are similarly situated for purposes of evaluating compensation decisions and when statistically significant compensation disparities constitute evidence of discrimination. The data required to make these judgments are not available in the EO Survey.

OFCCP expects that the improved tiered review procedures objective of the EO Survey can be better achieved through new procedures such as ACM and proposed compensation discrimination standards than through the EO Survey. The new procedures promise to be more effective in identifying potential discrimination and are more cost effective for the agency.

3. The EO Survey Does Not Increase Compliance With Equal Opportunity Requirements by Improving Contractor Self-Awareness and Encourage Self-Evaluations

OFCCP expected that the EO Survey requirement would ''heighten contractor awareness of each establishment's equal employment opportunity performance, which should encourage contractors to conduct self-audits of their performance and to make any necessary corrections and improvements in their equal employment opportunity programs [and that] the heightened awareness of performance, along with increased monitoring presence, will improve the level of compliance.'' 65 FR 26100 (May 4, 2000). The data contained in the EO Survey includes information, in summary form, about personnel activities, compensation and tenure data, and information about the contractor's affirmative action program. None of this information alone is sufficient to indicate discrimination or the lack of discrimination at a contractor establishment. As discussed above, the information lacks utility to OFCCP in targeting contractors and in conducting compliance evaluations. Similarly, the information would appear to provide no additional insights to the contractor. As the EO Survey responses do not indicate discrimination, they do not assist contractors in correcting and improving their equal employment opportunity programs. Moreover, since the EO Survey is only being sent to federal contractors—a group already subject to extensive equal employment opportunity and affirmative action obligations—it does not expand the population of employers who would undertake self-evaluations.

Furthermore, in recent years, OFCCP has significantly increased its compliance assistance efforts in order to heighten contractors' awareness of their equal opportunity obligations and to encourage self-evaluations through methods other than the EO Survey. OFCCP's compliance assistance includes over 1,000 regular compliance assistance seminars and workshops conducted throughout the country every year, and an extensive amount of compliance assistance material has been updated and added to OFCCP's webpage since 2001. In FY2005, OFCCP developed and made available to contractors on its webpage an *elaws* advisory interactive electronic tool that permits contractors to determine whether they are covered by the laws enforced by OFCCP and, if so, identifies their specific obligations. The OFCCP webpage contains extensive guidance about complying with OFCCP's laws, including a copy of the OFCCP compliance manual, OFCCP directives, compliance guides, and responses to frequently asked questions. OFCCP has established a National Office telephone help desk and an e-mail mailbox contractors can use to obtain specific compliance information tailored to their individual needs.

OFCCP compliance assistance materials include guidance about performing contractor self-analyses. For example, OFCCP has made available a sample affirmative action program on its webpage, as well as a link to Census data that provides contractors with easy access to statistical data on the availability of women and minorities in particular occupational categories and geographic areas. This Census data helps contractors to develop required availability analyses. OFCCP has also proposed a set of general guidelines that contractors can use to evaluate their compensation practices: ''Guidelines for Self-Evaluation of Compensation Practices for Compliance with Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination.'' 69 FR 67252 (Nov. 16, 2004). Moreover, OFCCP regulations already require contractors to conduct self-evaluations, including a compensation self-evaluation, see 41 CFR 60–2.10 *et seq.*

D. Burdens Imposed by the EO Survey

The EO Survey imposes a significant burden on the contractor establishments that are required to complete the EO Survey. As discussed in greater detail in the Paperwork Reduction Act section, below, each EO Survey is estimated to take each respondent 21 hours to complete. Based upon an estimated 10,000 respondents per year, the EO Survey costs contractor establishments 210,000 hours per year. Using data from the Bureau of Labor Statistics' 2004 National Compensation Survey, the total annual cost imposed on the regulated community by the EO Survey requirements approaches $6 million.

The EO Survey also consumes scarce OFCCP resources, diverting them away from effective enforcement programs, as discussed above. In addition, the development of the EO Survey was expensive. Moreover, the distribution, collection, and processing of the EO Survey has cost an average of $356,000 per year and this does not account for the cost of validating the data, nor any of the time spent by OFCCP personnel working on the EO Survey.

E. Proposal To Eliminate the EO Survey Requirement

OFCCP has concluded that the EO Survey has failed to provide the utility anticipated when the regulation was promulgated in 2000, and consequently does not provide sufficient programmatic value to be maintained as a requirement. In light of the failure of the EO Survey as an enforcement tool, OFCCP concludes that it is no longer of value to accomplish the objectives it was designed to address. OFCCP has developed, and will continue to develop, other more useful and cost effective methods to accomplish these objectives. Therefore, OFCCP has determined that continued use of the EO Survey cannot be justified and proposes to eliminate this regulatory requirement as no longer of value to OFCCP. Elimination of this requirement allows OFCCP to focus more effectively its enforcement resources to further the overall goal of the OFCCP program to promote and ensure equal opportunity for those employed or seeking employment with Government contractors. 41 CFR 60–1.1.

II. Authority

Authority: E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501.

III. Overview of the Rule

OFCCP proposes eliminating the requirement under Section 60–2.18 that nonconstruction federal contractors file the EO Survey. OFCCP proposes the removal of Section 60–2.18 from part 60–2. Elimination of the EO Survey requirement will not affect any other regulatory obligation to collect and maintain information or any other recordkeeping or nondiscrimination requirement. See, *e.g.*, 41 CFR 60–1.7, 60–1.4, 60–1.12(a), 60–2.1, 60–2.10, and 60–2.17.

IV. Regulatory Procedures

A. Paperwork Reduction Act

The proposed rule eliminates an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The Equal Opportunity Survey was reviewed and approved by OMB under OMB No. 1215–0196. The EO Survey burden is estimated to be 21 hours per respondent. (The EO Survey does not impose any recordkeeping requirements since the information required for the EO Survey comes from the records contractors are required to retain by 41 CFR Part 60.) Based upon an estimated 10,000 respondents per year, the proposed rule would reduce the total burden by 210,000 hours per year (*i.e.*, 21 hours times 10,000 respondents).

OFCCP estimated the annual cost reduction to the respondents based on Bureau of Labor Statistics' 2004 National Compensation Survey, which lists the hourly average wages for executive, administrative, and managerial as $36.22 and the hourly average wages for administrative support as $14.21. OFCCP then multiplied these figures by 1.4 to account for fringe benefits to arrive at an annual hourly cost of $50.71 for executive, administrative, and managerial and the hourly average wages for administrative support as $19.89. As for the 2000 final rule, OFCCP estimates that for the EO Survey, 25% of the burden hours will be executive, administrative, and managerial and 75% will be administrative support.

OFCCP has calculated the total estimated annualized cost of the EO Survey as follows:

- Executive, Administrative, and Managerial: 210,000 × 0.25 × $50.71 = $2,662,275
- Administrative Support: 210,000 × 0.75 × $19.89 = $3,132,675
- Total Estimated Annual Reduction in Respondent Costs = $5,794,950

Thus, OFCCP estimates that the proposed elimination of the EO Survey will reduce the costs for the respondents by almost $6 million each year.

B. Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this notice of proposed rulemaking is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has determined that this notice of proposed rulemaking is not ''economically significant'' as defined in section 3(f)(1) of Executive Order 12866. Based on an analysis of the data the proposed rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. As was discussed above in Section A, OFCCP estimates that the proposed elimination of the EO Survey will reduce the costs for respondents by $6 million each year. Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this proposed rule has been reviewed by the Office of Management and Budget.

C. Small Business Regulatory Enforcement Fairness Act

The Department has concluded that the proposed rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). In reaching this conclusion, the Department has determined that the proposed rule will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Executive Order 13132

OFCCP has reviewed the proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The proposed rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

E. Unfunded Mandates Reform

Executive Order 12875—This proposed rule, if promulgated in final, will not create an unfunded Federal mandate upon any State, local, or tribal government.

Unfunded Mandates Reform Act of 1995—This proposed rule, if promulgated in final, will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

List of Subjects in 41 CFR Part 60–2

Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Government contracts, and Labor.

Signed at Washington, DC, this 17th day of January, 2006.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

In consideration of the foregoing the Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor, proposes to amend part 60–2 of Title 41 of the Code of Federal Regulations as follows:

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

1. The authority citation for part 60–2 continues to read as follows:

Authority: E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501.

§ 60–2.18 [Removed and reserved]

2. Remove and reserve § 60–2.18.

[FR Doc. E6–646 Filed 1–19–06; 8:45 am]

BILLING CODE 4510–CM–P

Federal Register

Friday,

January 20, 2006

Part IV

Department of Housing and Urban Development

HUD's Fiscal Year 2006 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–N–01]

Notice of HUD's Fiscal Year 2006 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability (NOFA) policy requirements and general section to the FY2006 SuperNOFA for HUD's Discretionary Programs (notice).

SUMMARY: This notice provides prospective applicants for HUD competitive funding with the opportunity to become familiar with the General Section to HUD's FY2006 SuperNOFA, in advance of publication of the FY2006 SuperNOFA. Publication of HUD's annual SuperNOFA is targeted for publication in early 2006. This early publication of the General Section is one of several steps that HUD is taking to improve the funding process for its grantee community. Early publication of the General Section will give prospective applicants additional time to become familiar with and address those provisions in the General Section, which constitute part of almost every application. HUD will publish changes to this General Section made after today's publication with the SuperNOFA.

HUD will continue to require that applicants submit their applications electronically via *Grants.gov.* For FY2006, only the Continuum of Care will remain as a paper application process. It is HUD's intent to move the Continuum of Care to electronic application submittal in FY2007. All prospective applicants should take this time to carefully read the **Federal Register** Notice published on December 9, 2005 entitled ''Notice of Opportunity to Register Early for Electronic Submission of Grant Applications for HUD Funding Opportunities; Early Registration with *Grants.gov*,'' and register prior to the publication of the Program Sections of the FY2006 SuperNOFA. The early registration notice can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Continuum of Care applicants are advised to become familiar with the registration and submission procedures. Although HUD is not requiring electronic submission for the Continuum of Care this year, all the Federal grant-making agencies are pledging to make 75 percent of funding opportunities available on *Grants.gov* in FY2006. Therefore, Continuum of Care agencies would benefit from becoming familiar with the requirements so they do not limit their ability to get funding from sources other than HUD in FY2006.

FOR FURTHER INFORMATION CONTACT: Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410–5000, telephone number (202) 708–0667. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Each year, HUD strives to improve its competitive funding process. In FY2005, HUD successfully migrated from paper application submission for the majority of its funding opportunities to electronic application submission. Over 5,400 applicants successfully submitted applications electronically for HUD's grant programs. While the majority of HUD's applicants were able to make the transition to electronic government, a minority had difficulty with the submission process. In speaking with applicants, HUD has heard the concerns raised and therefore has taken several steps to provide early technical assistance and information so that every applicant can successfully meet the electronic submission requirements.

HUD wants every applicant to transition successfully to electronic application submission in FY2006. HUD believes that by issuing its Early Registration for Grant Application Submission Notice published on December 9, 2005 (70 FR 73332), and this General Section in advance of the publication of the FY2006 Program Sections of the SuperNOFA, applicants will have time to familiarize themselves with the General Requirements applicable to all programs and complete the five-step *Grants.gov* registration process. This way, when the program NOFAs are published, applicants can focus on completing and submitting their applications in accordance with all related requirements and timelines.

The Early Registration Notice provides step-by-step instructions for applicants that have to register with *Grants.gov* and renewal instructions for those that have previously registered. The renewal instructions are simple and easy to follow, but must be completed before an applicant's registration with the Central Contractor Registry (CCR) expires. Failure to update the registration in the CCR will require an applicant to go through the entire registration process again.

Early registration for electronic grant application submission (see notice published on December 9, 2005) and early publication of the General Section of the FY2006 SuperNOFA are just two steps that HUD is taking in FY2006 to improve the funding process. HUD is also taking steps to streamline and simplify the application submission requirements so that applications will be easier to complete and upload. To ensure that HUD continues to get feedback from the public on these improvements, each application and HUD's Web site will contain a revised ''You Are Our Client'' survey questionnaire. HUD requests that you respond to this survey to let us know what improvements have been beneficial and to share your ideas on where improvements can continue to be made. HUD carefully considers the comments received from its clients and continually strives to improve each year's SuperNOFA and its funding process.

HUD believes that early publication of the General Section is beneficial to prospective applicants by providing advance notice of the Department's threshold requirements, strategic goals, policy priorities, and other comprehensive requirements that are applicable to almost every individual NOFA that comprises the SuperNOFA. The General Section, as in the past, is structured to refer the reader to the individual program NOFAs. Although the program NOFAs are not being published at this time, the references are retained. This way, when the program sections of the FY2006 SuperNOFA are published, they will work together as they have done since the first SuperNOFA was published in 1998. HUD intends to publish the program NOFAs in early 2006. Applicants interested in receiving e-mail notification of the availability of the program sections should go to *http://www.grants.gov/Find#receiveGetStarted* and sign up for e-mail notification of funding opportunities. By doing so, you will receive an e-mail as soon as the program NOFA portion of the SuperNOFA and application is available on *Grants.gov.* This publication includes a list of programs anticipated to be in the FY2006 SuperNOFA, subject to the availability of funds. The program NOFA portion of the SuperNOFA will include any changes made to this listing and provide projected funding available and application deadline dates.

In addition to the early publication of the *Grants.gov* registration process and the General Section of the FY2006 SuperNOFA, HUD continually strives to provide technical assistance and training to prospective applicants. To ensure effective communication with current and potential funding recipients, HUD has been posting pertinent documents related to these efforts on its Web site, including training opportunities available via satellite broadcast and Webcast, local registration and submission clinics, and grant writing workshops sponsored by HUD's Office of Faith-Based and Community Initiatives. HUD encourages you to visit the Department's Web site for information regarding the latest developments. HUD's Web site address for information on this initiative is *http://www.hud.gov/offices/adm/grants/egrants/egrants.cfm.* Information on grant streamlining activities can be found at *http://www.hud.gov/offices/adm/grants/pl-106107/pl106–107.cfm.*

HUD hopes that the steps that it has taken to provide information early on the FY2006 funding process and SuperNOFA requirements will be of benefit to you.

Dated: January 11, 2006.

Roy A. Bernardi,

Deputy Secretary.

General Section to HUD's Fiscal Year 2006 SuperNOFA

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development (HUD), Office of the Secretary.

B. *Funding Opportunity Title:* Policy requirements applicable to all HUD notices of funding availability (NOFAs) published during FY2006.

C. *Announcement Type:* Initial announcement of the general policy requirements that apply to all HUD Federal financial assistance NOFAs for FY2006 issued simultaneously with or after the publication of this notice.

D. Funding Opportunity Number: FR 5030–N–01.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* A CFDA number is provided for each HUD Federal financial assistance program. When using ''Apply Step 1'' on the *Grants.gov* Web site to download an application, you will be asked for the CFDA number. Please refer to the program NOFA for the CFDA number assigned to the program(s) for which you wish to apply.

Tip for Finding Application Information: Use only the CFDA number, OR the Funding Competition Identification Number, OR Funding Opportunity Number when using the search feature on *Grants.gov.* Using more than one of these items will result in an error message indicating that the opportunity cannot be found.

F. *Dates:* The key dates that apply to all HUD Federal financial assistance made available through HUD's FY2006 NOFAs are found in each individual program NOFA. Appendix A to this General Section lists the programs expected to be included in the FY2006 SuperNOFA. The SuperNOFA publication will contain a detailed Appendix A that will provide the final list of programs included in the SuperNOFA, funds available under each funding opportunity, and key deadline dates.

G. *Optional, Additional Overview Content Information:* Unless otherwise stated, HUD's general policy requirements set forth in this notice apply to all HUD Federal financial assistance made available through HUD's FY2006 NOFAs. These policies cover those NOFAs issued through the SuperNOFA, as well as those that HUD will issue after publication of the SuperNOFA in the **Federal Register**.

Full Text of Announcement

I. Funding Opportunity Description

This notice describes HUD's FY2006 policy requirements applicable to all of HUD's NOFAs published in FY2006. Each such NOFA will contain a description of the specific requirements for the program for which funding is made available and each will refer to applicable policies described in this General Section. Each program NOFA will also describe additional procedures and requirements that apply to the individual program NOFA, including a description of the eligible applicants, eligible activities, threshold requirements, factors for award, and any additional program requirements or limitations. To adequately address all of the application requirements for any program for which you intend to apply, please carefully read and respond to both this General Section and the individual program NOFAs.

Authority. HUD's authority for making funding available under its FY2006 programs is identified in each program NOFA under the section entitled ''Funding Opportunity Description.''

II. Award Information

Funding Available. Each program NOFA will identify the estimated amount of funds available in FY2006, either as a result of the enactment of a HUD appropriations act or based upon available appropriations and any funds from previous years available for award in FY2006. Appendix A to this notice contains a chart of the programs expected to be included in the FY2006 SuperNOFA. HUD will publish an updated chart, noting the amount of funds available for each program, and the required deadline date with the publication of the Program NOFA section of the FY2006 SuperNOFA. If other program funds become available, HUD reserves the right to increase the available funding for the applicable program by those amounts. Note that additional program NOFAs may be published as part of the FY2006 SuperNOFA or published separately from the FY2006 SuperNOFA.

III. Eligibility Information

A. Eligible Applicants

The individual program NOFAs describe the eligible applicants and eligible activities for each program.

B. Cost Sharing or Matching

The individual program NOFAs describe the applicable cost sharing, matching requirements, or leveraging requirements related to each program, if any. Although matching or cost sharing may not be required, HUD programs often encourage applicants to leverage grant funds with other funding to receive higher rating points.

C. Other Requirements and Procedures Applicable to All Programs

Except as may be modified in the individual program NOFAs, the requirements, procedures, and principles listed below apply to all programs in FY2006 for which funding is announced by NOFA and published in the **Federal Register**. Please read the individual program NOFAs for additional requirements and information.

1. Statutory and Regulatory Requirements

To be eligible for funding under HUD's NOFAs issued during FY2006, applicants must meet all statutory and regulatory requirements applicable to the program or programs for which they seek funding. Applicants requiring program regulations may obtain them from the NOFA Information Center or through HUD's Grants Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* See the individual program NOFAs for instructions on how HUD will respond to proposed activities that are ineligible.

2. Threshold Requirements

a. *Ineligible Applicants.* HUD will not consider an application from an ineligible applicant.

b. *Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement.* All applicants seeking funding directly from HUD must obtain a DUNS number and include the number in its Application for Federal Assistance submission. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing award. This policy is pursuant to the Office of Management and Budget (OMB) policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/duns.cfm*. Applicants cannot submit applications electronically without a DUNS number entry. Applicants must carefully enter the DUNS number on the application package, making sure it is identical to the DUNS number under which the Authorized Organization Representative is registered to submit an application.

c. *Compliance With Fair Housing and Civil Rights Laws*.

(1) With the exception of federally recognized Indian tribes and their instrumentalities, applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12, as applicable. In addition to these requirements, there may be program-specific threshold requirements identified in the individual program NOFAs.

(2) If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagaph (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

d. *Conducting Business in Accordance With Core Values and Ethical Standards*. Applicants subject to 24 CFR parts 84 and 85 (most nonprofit organizations and State, local, and tribal governments or government agencies or instrumentalities that receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, applicants awarded assistance under a HUD program NOFA announced in FY2006 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. Applicants are prohibited from receiving an award of funds from HUD if they fail to meet this requirement for a code of conduct. Applicants that submitted an application during FY2004 or FY2005 and included a copy of their code of conduct will not be required to submit another copy if the applicant is listed on HUD's Web site at *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm* and if the information has not been revised. Applicants not listed on the HUD Web site must submit a copy of their code of conduct with their FY2006 application for assistance. Applicants must also include a copy of their code of conduct if the information listed on HUD's Web site has changed (*e.g.*, the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). Applicants that need to may submit their code of conduct to HUD via facsimile using the form HUD–96011, Facsimile Transmittal. When using the facsimile transmittal form, please type the requested information. Use HUD–96011 as the cover page to the submission and include in the top line of the form under ''Name of Document Being Requested,'' ''Code of Conduct for (insert organization name, city, and state),'' and fax the information to HUD's toll-free number at (800) HUD–1010. If you cannot access the 800 number or have problems, you may use (215) 825–8798 (this is not a toll-free number). When received, HUD will update the information on its Code of Conduct Web site.

e. *Delinquent Federal Debts*. Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), HUD will not award Federal funds to an applicant that has an outstanding delinquent Federal debt unless (1) the delinquent account is paid in full, (2) a negotiated repayment schedule is established and the repayment schedule is not delinquent, or (3) other arrangements satisfactory to HUD are made prior to the deadline date.

f. *Pre-Award Accounting System Surveys*. HUD may arrange for a pre-award survey of the applicant's financial management system in cases where the recommended applicant has no prior Federal support, HUD's program officials have reason to question whether the applicant's financial management system meets Federal financial management standards, or the applicant is considered a high risk based upon past performance or financial management findings. HUD will not disburse funds to any applicant that does not have a financial management system that meets Federal standards.

g. *Name Check Review*. Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to (1) deny funding or consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

h. *False Statements.* A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

i. *Prohibition Against Lobbying Activities.* Applicants are subject to the provisions of Section 319 of Public Law 101–121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SF–LLL), ''Disclosure of Lobbying Activities,'' any funds, other than federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under State law must comply with this requirement. Applicants must submit the SF–LLL if they have used or intend to use Federal funds for lobbying activities.

j. *Debarment and Suspension.* In accordance with 24 CFR part 24, no award of Federal funds may be made to applicants that are presently debarred or suspended, or proposed to be debarred or suspended from doing business with the Federal Government.

3. *Other Threshold Requirements.* The individual program NOFAs for which you are applying may specify other threshold requirements. Additional threshold requirements may be identified in the discussion of ''eligibility'' requirements in the individual program NOFAs. If a program NOFA requires a certification of consistency with the Consolidated Plan and the applicant fails to provide a certification, and such failure is not cured as a technical deficiency, HUD will not fund the application. If HUD is provided a signed certification indicating consistency with the area's approved Consolidated Plan and HUD finds that the activities are not consistent with the Consolidated Plan, HUD will not fund the inconsistent activities or will deny funding the application if a majority of the activities are not consistent with the approved Consolidated Plan. The determination not to fund an activity or to deny funding may be determined by a number of factors, including the number of activities being proposed, the impact of the elimination of the activities on the proposal, or the percent of the budget allocated to the proposed activities.

4. Additional Nondiscrimination and Other Requirements

Applicants and their subrecipients must comply with:

a. *Civil Rights Laws*, including the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*), the Age Discrimination Act of 1974 (42 U.S.C. 6101 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

b. *Affirmatively Furthering Fair Housing.* Under Section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. Unless otherwise instructed in the individual program NOFA, your application must include specific steps to:

(1) Overcome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the individual program NOFA rating factors that address affirmatively furthering fair housing. These requirements apply to all HUD programs announced via a NOFA, unless specifically excluded in the individual program NOFA.

c. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* Certain programs to be issued during FY2006 require recipients of assistance to comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135, including the reporting requirements at subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment, and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and business concerns that provide economic opportunities to low- and very low-income persons. Review the individual program NOFAs to determine if Section 3 applies to the program for which you are seeking funding.

d. *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD financial assistance. Too often, these businesses still experience difficulty in accessing information and successfully bidding on Federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e) and nonprofit recipients of assistance (grantees and sub-grantees) by 24 CFR 84.44(b) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used whenever possible or as specified in the individual program NOFAs.

e. *Relocation.* The relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and the implementing government-wide regulation at 49 CFR part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for ''temporary relocation'' under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A, § 24.2(a)(9)(ii)(D) to the URA regulation explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. For example, 24 CFR 583.310(f)(1) provides guidance on temporary relocation for the Supportive Housing Program for the homeless. Before planning their project, applicants should review the regulations for the programs for which they are applying. The URA does not apply to displacements resulting from the demolition or disposition of public housing covered by Section 18 of the United States Housing Act of 1937.

f. *Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency (LEP).''* Executive Order 13166 seeks to improve access to federally assisted services, programs, and benefits for individuals with limited English proficiency. Applicants obtaining an award from HUD must seek to provide access to program benefits and information to LEP individuals through translation and interpretive services in accordance with LEP guidance published on December 19, 2003 (68 FR 70968). For assistance and information regarding your LEP obligation, go to *http://www.lep.gov.*

g. *Executive Order 13279, ''Equal Protection of the Laws for Faith-Based and Community Organizations.''* HUD is committed to full implementation of Executive Order 13279. The Executive Order established fundamental principles and policymaking criteria to guide Federal agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection for these organizations in social services programs receiving Federal financial assistance. Consistent with this order, HUD has undertaken a review of all policies and regulations that have implications for faith-based and community organizations and has established a policy priority to provide full and equal access to grassroots faith-based and other community-based organizations in HUD program implementation. HUD revised its program regulations in 2003 and 2004 to remove the barriers to participation of faith-based organizations in HUD funding programs (68 FR 56396, September 30, 2003), (69 FR 41712, July 9, 2004), and (69 FR 62164, October 22, 2004). Copies of the regulatory changes can be found at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

h. *Accessible Technology.* Section 508 of the Rehabilitation Act (Section 508) requires HUD and other Federal departments and agencies to ensure, when developing, procuring, maintaining or using electronic and information technology (EIT), that the EIT allow, regardless of the type of medium of technology, persons with disabilities access to and use of information and data on a comparable basis as is made available to and used by persons without disabilities. Section 508's coverage includes, but is not limited to, computers (hardware, software, word processing, email, and Internet sites), facsimile machines, copiers, and telephones. Among other things, Section 508 requires that unless an undue burden would result to the Federal department or agency, electronic and information technology must allow individuals with disabilities who are employees or members of the public seeking information or services, to have access to and use of information and data that are comparable to that of employees and members of the public who are not disabled. Where an undue burden exists to the Federal department or agency, alternative means may be used to allow a disabled individual use of the information and data. Section 508 does not require that information services be provided at any location other than a location at which the information services are generally provided. HUD encourages its funding recipients to adopt the goals and objectives of Section 508 by ensuring, whenever EIT is used, procured, or developed, that persons with disabilities have access to and use of the information and data made available through the EIT on a comparable basis as is made available to and used by persons without disabilities. This does not affect recipients' required compliance with Section 504 of the Rehabilitation Act and, where applicable, the Americans with Disabilities Act.

i. *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a State that are using assistance under a HUD program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

j. *Participation in HUD-Sponsored Program Evaluation.* As a condition of the receipt of financial assistance under a HUD program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors who perform HUD-funded research or evaluation studies.

k. *Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.''* Compliance with HUD regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under a HUD program NOFA.

l. *Salary Limitation for Consultants.* FY2006 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant whether retained by the Federal government or the grantee at more than the daily equivalent of the rate of the high of the pay band paid for level IV of the Executive Schedule, unless specifically authorized by law.

m. *OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs.* Certain OMB Circulars also apply to HUD programs in this SuperNOFA. The policies, guidance, and requirements of OMB Circulars A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), A–21 (Cost Principles for Education Institutions), A–122 (Cost Principles for Nonprofit Organizations), A–133 (Audits of States, Local Governments, and Non-Profit Organizations), and the regulations at 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), may apply to the award, acceptance, and use of assistance under the individual program NOFAs of this SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of HUD's appropriations act for FY2006, other Federal statutes or regulations, or the provisions of this General Section. Compliance with additional OMB circulars or government-wide regulations may be specified for a particular program in the NOFA Program Section of the SuperNOFA. Copies of the OMB circulars may be obtained from EOP Publications, New Executive Office Building, Room 2200, Washington, DC 20503, telephone (202) 395–3080 (this is not a toll-free number) or (800) 877–8339 (toll-free TTY Federal Information Relay Service) or from the Web site at *http://www.whitehouse.gov/omb/circulars/index.html.*

n. *Environmental Requirements.* If you become a recipient under one of HUD's programs that assist in physical development activities or property acquisition, you are generally prohibited from acquiring, rehabilitating, converting, demolishing, leasing, repairing, or constructing property or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or

(2) For programs subject to 24 CFR part 58, HUD has approved a recipient's Request for Release of Funds (Form HUD–7015.15) following a Responsible Entity's completion of an environmental review.

You, the applicant, should consult the individual program NOFA for any program for which you are interested in applying to determine the procedures for, timing of, and any exclusions from environmental review under a particular program. For applicants applying for funding under the Section 202 Supportive Housing for the Elderly program or Section 811 Supportive Housing for Persons with Disabilities program, please note the environmental review requirements for these programs.

o. *Conflicts of Interest.* If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under this General Section or future NOFAs published in FY2006, you are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for programs in the SuperNOFA or NOFAs published in FY2006, you may not serve on a selection panel and you may not serve as a technical advisor to HUD. Persons involved in rating and ranking HUD FY2006 NOFAs, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Persons involved in rating and ranking applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable: How the selection or non-selection of any applicant under the FY2006 SuperNOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208, or how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The person must disclose this information before participating in any matter regarding a FY2006 NOFA. If you have questions regarding these provisions or concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at (202) 708–3815 (this is not a toll-free number).

p. *Drug-Free Workplace.* Applicants awarded funds from HUD are required to provide a drug-free workplace. Compliance with this requirement means that the applicant will:

(1) Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant's workplace and that such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that, as a condition of employment under the Federal award, they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing of any violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such violation;

(2) Establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The applicant's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, or employee maintenance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Notify the Federal agency in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be provided in writing to HUD's Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410–3000, along with the following information:

(a) The program title and award number for each HUD award covered;

(b) The HUD staff contact name, phone, and fax numbers and

(c) A grantee contact name, phone, and fax number; and

(4) Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (1) and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:

(a) Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(b) Imposition of a requirement that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

q. *Safeguarding Resident/Client Files.* In maintaining resident and client files, HUD funding recipients shall observe State and local laws concerning the disclosure of records that pertain to individuals. Further, recipients are required to adopt and take reasonable measures to ensure that resident and client files are safeguarded.

IV. Application and Submission Information

A. Addresses To Request Application Package

This section describes how applicants may obtain application forms, additional information about the HUD program NOFAs, and technical assistance. Copies of the published NOFAs and application forms for HUD programs announced through NOFAs may be downloaded from the *Grants.gov* Web site at *http://www.grants.gov/FIND* and chosen from links provided under the topic "Search Grant Opportunities," which allows applicants to do a basic search or to browse by category or agency. Applicants having difficulty accessing the information may receive customer support from *Grants.gov* by calling its help line at (800) 518–GRANTS or sending an e-mail to *support@grants.gov*. The customer service representatives will assist applicants in accessing the information. Applicants that do not have Internet access that need to obtain a copy of a NOFA can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may also call toll-free at (800) HUD–2209.

1. Application Kits

There are no application kits for HUD programs. All the information you need to apply will be in the NOFA and available at *http://www.grants.gov/Apply*. The NOFAs and forms can be downloaded from *http://www.grants.gov/Apply*, by clicking on Apply Step 1. Please pay attention to the submission requirements and format for submission specified in each program NOFA to ensure that you have submitted all required elements of your application.

2. Official NOFA Content Retrieval

In order to retrieve the instructions, applicants must go to the *Grants.gov* Web site entitled ''Download Application Package'' at *https://apply.grants.gov/forms_apps_idx.html*. Insert the Catalog of Federal Domestic Assistance (CFDA) number or the Funding Competition ID, or the Funding Opportunity Number. Once this information has been inserted, click on the ''Download Package'' button. The next page on the Web site, ''Selected Grant Application for Download,'' instructs applicants to download the application and its instructions by selecting the corresponding download link and saving the files to the applicant's computer for future reference and use. You do not need to be registered to read the instructions or complete the application once you have downloaded it and saved it on your computer.

a. Instructions and Application Download Contents. The instructions download will contain several files, the General Section, the Program Section, and any other forms that are not part of the Application Download. The Application Download will contain a cover page entitled ''Grant Application Package.'' The cover page provides information regarding the application package you have chosen to download, *i.e.*, Opportunity Title, Agency Name, CFDA Number, etc., so that you can ensure that you have selected the correct application to prepare. The Grant Application cover page separates the required forms into two categories: ''Mandatory Documents'' and ''Optional Documents.'' Please note that regardless of the box in which the forms are listed, the published **Federal Register** document is the official document HUD uses to solicit applications. Therefore, applicants should follow the submission requirements in the published NOFA for the program in which they are applying for funding. The Program NOFA will contain a list of forms and other documents that are part of the submission. The NOFA will also identify which forms may be applicable to only certain applicants and if so, they need to be submitted with the application.

b. The published **Federal Register** document is the official document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *http://www.grants.gov*, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** file for the program NOFA or NOFAs to which you are applying. By accessing the information via *Grants.gov* you will not have to wait for copies of the NOFAs or forms to begin to prepare your application. HUD is continuing to streamline programs and application submission requirements and encourages applicants to provide HUD with additional suggestions.

3. Guidebook and Further Information

A guidebook to HUD programs entitled, ''Connecting with Communities: A User's Guide to HUD Programs and the FY2006 NOFA Process,'' is available from the HUD NOFA Information Center and the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. The guidebook provides a brief description of all HUD programs, identifies eligible applicants for the programs, and provides examples of how programs can work in combination to serve local community needs. You can also obtain a copy from the NOFA Information Center by calling (800) HUD–8929. The hearing impaired may call (800) HUD–2209 (TTY) (both are toll-free numbers). The NOFA Information Center is open between the hours of 10 a.m. to 6:30 p.m. eastern time, Monday through Friday, except on Federal holidays. The NOFA Information Center will open with the publication of this Notice.

4. Technical Assistance

HUD staff will be available to provide you with general guidance and technical assistance about this notice or about individual program NOFAs. However, HUD staff is not permitted to help prepare your application. Following selection of applicants, but before announcement of awards are made, HUD staff is available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or annual contributions contract (ACC) by HUD. For technical support for downloading an application or submitting an application, please call *Grants.gov* Customer Support at (800) 518–GRANTS (this is a toll-free number) or send an e-mail to *support@grants.gov*.

5. SuperNOFA Webcasts

HUD provides technical assistance and training on its programs announced through NOFAs. The NOFA broadcasts are interactive and allow potential applicants to obtain a better understanding of the threshold, program, and application submission requirements for funding. Participation in this training opportunity is free of charge and can be accessed via HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. The SuperNOFA Webcast schedule can also be found via HUD's Web site at *http://www.hud.gov/webcasts/index.cfm*.

B. Content and Form of Application Submission

Be sure to read and follow the application submission requirements published in each individual program NOFA for which you are submitting an application.

1. Forms

Each program NOFA will identify all the required forms for submission. HUD's standard forms are identified below:

a. Application for Federal Assistance (SF–424);

b. Survey on Ensuring Equal Opportunity for Applicants (SF–424 Supplement);

c. Grant Application Detailed Budget (HUD–424–CB);

d. Grant Application Detailed Budget Worksheet (HUD–424–CBW);

e. Disclosure of Lobbying Activities (SF–LLL), if applicable;

f. Applicant/Recipient Disclosure/Update Report (HUD–2880);

g. Certification of Consistency with RC/EZ/EC–II Strategic Plan (HUD–2990), if applicable;

h. Certification of Consistency with the Consolidated Plan (HUD–2991), if applicable;

i. Acknowledgment of Application Receipt (HUD–2993);

j. You Are Our Client Grant Applicant Survey (HUD 2994–A) (Optional);

k. Program Outcome Logic Model (HUD–96010);

l. Race and Ethnic Data Reporting Form (HUD–27061), if applicable;

m. America's Affordable Communities Initiative (HUD–27300), if applicable; and

n. Facsimile Transmittal (HUD–96011).

Copies of these forms are available at HUD's Web site at *http://www.hud.gov/offices/adm/grants/nofa06/snofaforms.cfm.* Any additional program form required to be submitted to meet specific program requirements is included with each program NOFA. The electronic instructions contain all forms required for submission that are not PureEdge™ forms. The application download contains only the PureEdge™ forms. To have all the forms needed for application submission, applicants must download the instructions as well as the application.

2. Certifications and Assurances

The form SF–424–B, Assurances and Certifications, is no longer required as a separate submission. However, applicants are placed on notice that by signing the SF–424 cover page:

a. The governing body of the applicant's organization has duly authorized the application for Federal assistance. In addition, by signing or electronically submitting the application, the Authorized Organization Representative (AOR) certifies that the applicant:

(1) has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capacity (including funds to pay for any non-Federal share of program costs) to plan, manage, and complete the program as described in the application;

(2) will provide HUD any additional information it may require; and

(3) will administer the award in compliance with requirements identified and contained in the NOFA (General and Program Sections) as applicable to the program for which funds are awarded and in accordance with requirements applicable to the program.

b. No appropriated Federal funds have been paid or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress, in connection with this application for Federal assistance or any award of funds resulting from the submission of this application for Federal assistance or its extension, renewal, amendment, or modification. If funds other than Federal appropriated funds have been or will be paid for influencing or attempting to influence the persons listed above, the applicant agrees to complete and submit Standard Form LLL, Disclosure of Lobbying Activities, as part of its application submission package. The applicant further agrees to and certifies that it will require all subawards at all tiers including subgrants and contracts to similarly certify and disclose accordingly.

c. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by a federally recognized Indian tribe, as a result of the exercise of the tribe's sovereign power, are excluded from coverage by item b. (also known as the Byrd Amendment). However, State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage and therefore agree to, and must comply with, item b. above.

By submitting an application, the applicant affirms its awareness of these certifications and assurances. The Authorized Organization Representative submitting the application is affirming that these certifications and assurances are material representations of the facts upon which HUD will rely when making an award to the applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the applicant, the applicant may be subject to criminal prosecution, and HUD may terminate the award to the applicant organization or pursue other available remedies.

C. Deadline Dates and Times

Applications submitted through *Grants.gov* must be received and validated by *Grants.gov* no later than 11:59:59 p.m. eastern time on the application deadline date. Important Submission Tip: Please be aware that when submitting an application via *Grants.gov*, you will first receive a confirmation notice that *Grants.gov* received the application. The application will then go through a validation process. If the validation process finds problems with the application, it will be rejected and unavailable for retrieval by HUD. The validation check ensures that:

1. The application is virus free;
2. The application meets the deadline requirements established for the funding opportunity;
3. The DUNS number submitted on the application matches the DUNS number in the registration, and that the Authorized Organization Representative has been authorized to submit the application for funding by the organization identified by its DUNS number; and
4. All the mandatory fields and forms were completed on the application.
5. Upload the application using Internet Explorer or Netscape browsers.

If the application fails any of these items on the validation check, the application will be rejected. The validation check occurs 24 to 48 hours after the application submission. Therefore, HUD recommends that all applicants submit their application no later than 48 to 72 hours before the deadline. That way, if the application fails the validation process, the applicant will receive an e-mail notification providing the error messages. By submitting 48 to 72 hours in advance of the deadline, applicants have time to cure deficiencies in their application and resubmit it in time to meet deadline requirements. In developing the application submission dates, HUD has considered the validation process and established due dates for all NOFAs that build in the additional time for the validation process. For example, if HUD previously provided a 60-day application period, HUD will provide a 63-day application period in FY2006.

D. Intergovernmental Review

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' was issued to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. HUD implementing regulations are published at 24 CFR part 52. The order allows each State to designate an entity to perform a State review function. Applicants can find the official listing of State Points of Contact (SPOC) for this review process at *http://www.whitehouse.gov/omb/grants/spoc.html*. States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your State has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before submission to HUD.

Please make sure that you allow ample time for this review when developing and submitting your applications. If your State does not have a SPOC, you can submit your application directly to HUD using *Grants.gov*.

E. Funding Restrictions

The individual program NOFAs will describe any funding restrictions that apply to each program.

F. Other Submission Requirements

Application Submission and Receipt Procedures. This section provides the application submission and receipt instructions for HUD program applications. Please read the following instructions carefully and completely, as failure to comply with these procedures may disqualify your application.

1. Electronic Submission of Applications

Applicants must submit their applications electronically through *Grants.gov.* HUD described the *Grants.gov* registration process in its Early *Grants.gov* Registration notice published in the **Federal Register** on December 9, 2005 (70 FR 73332), and in other information available at *http://www.grants.gov/GetStarted.* The site provides registration checklists that applicants are advised to use, to ensure that they have all the information they need to complete all the steps in the registration process. Past applicants have found that the checklists made their registration easier and faster.

There are five sequential steps required for an applicant to complete the *Grants.gov* registration process:

a. Step one is to call Dun and Bradstreet and request a Dun and Bradstreet Universal Data Numbering System (DUNS) number for the organization (if it does not already have one), as described above. The DUNS number is used by the Federal Government to identify the organization. Organizations should be able to obtain a DUNS number on the same date they contact Dun and Bradstreet by phone (866) 705–5711 (this is a toll-free number).

b. Step two is to register with the Central Contractor Registry (CCR) either toll-free by telephone ((888) 227–2423) or by going online at *http://www.ccr.gov.* When an organization registers with the CCR, the organization will be required to designate an E-Business Point of Contact (E-Business POC). The E-Business POC will designate a special password called an ''M–PIN.'' The password gives the E-Business POC sole authority to designate which staff member(s) from the organization will be allowed to submit applications electronically on its behalf. Staff members that are designated by the organization's E-Business POC to submit applications on its behalf are called Authorized Organization Representatives (AORs). Registering with the CCR is required for an organization to be able to use *Grants.gov.* It takes 1 to 3 days to complete this process because security information has to be sent to the organization.

Note that CCR registration expires on an annual basis and, therefore, it must be updated to remain active. The CCR will send the E-Business POC an e-mail message 30 days before the expiration date of their current registration. If the E-Business POC does not update the CCR registration by the expiration date, the CCR will send the organization a letter notifying it that its account has been deactivated.

c. Step three requires that AORs from the organization register with the Credential Provider to obtain their username and password, via the Web site, *https://apply.grants.gov/OrcRegister.* The AOR usernames and passwords serve as ''electronic signatures'' when an AOR submits an application via *Grants.gov* on behalf of an organization. AORs must wait until after their organization has received registration confirmation from the CCR before they can obtain their user names and passwords. AORs designate their user name and password when registering with a credential provider. AORs will receive validation of their user names and passwords on the same day that they submit the information online.

d. Step four requires the AORs to register with *Grants.gov.* AORs must register with *Grants.gov* to obtain an account at the Web site, *https://apply.grants.gov/GrantsgovRegister.* AOR registration with *Grants.gov* allows AORs to submit applications on behalf of the organization and to track the status of submitted applications.

e. Step five requires the E-Business POC to approve the designated AORs. When an AOR registers with *Grants.gov* (step 4), the E-Business POC will receive an e-mail notification. The E-Business POC must subsequently log into *Grants.gov* (using the organization's DUNS number as the user name and the M–PIN as the password) and approve the AOR(s), thereby giving each approved AOR permission to electronically submit applications on behalf of the organization using *Grants.gov.* Only the organization's E-Business POC can approve AORs. After the E-Business POC approves an AOR, *Grants.gov* will send the AOR confirmation of the approval via e-mail. See HUD's Notice on Early Registration for complete details of the registration process and steps.

2. Important Registration Tips

a. The registration process is distinct from application submission and encompasses five-steps that can take approximately 10 business days to complete. Therefore, applicants must allow sufficient time to complete their registration prior to submitting their application. Applicants can submit their application to *Grants.gov* once they are fully registered. Please note that the Internal Revenue Service takes approximately 5 weeks to provide a new organization with a Tax Identification Number (TIN) or Employer Identification Number (EIN). You will need a TIN or EIN to register in the CCR. Please allow sufficient time to obtain the TIN or EIN if you currently do not have one for your organization, as you will need the number to complete the registration process in CCR.

b. Applicants must remember the password and ID they are provided during the registration process. Passwords and IDs are case sensitive. Forgetting your password or ID could delay the timely submission of your application.

c. Applicants must register and the E-Business Point of Contact must authorize the individual(s) who will be submitting the application on behalf of the organization. By authorizing the person to submit on behalf of the organization, the organization is stating that the person can make a legally binding commitment for the organization.

3. Instructions On How To Submit an Electronic Application to HUD via *http://www.grants.gov/Apply*

a. *Complete Application Package. Grants.gov* has a full set of instructions on how to complete a grant application on its Web site at *http://www.grants.gov/CompleteApplication.* Applicants are encouraged to read the ''Complete Application Package'' Web site. The site contains a multimedia demonstration that guides applicants through the process of completing an application package. The training demonstration is also available in text format on the Web site. *Grants.gov* allows applicants to download the application package, application instructions, and forms incorporated in the instructions and work off-line. In addition to forms that are part of the application instructions downloaded from *Grants.gov*, there are a series of electronic forms that use a PureEdge™ Reader. The PureEdge™ Reader is available free for download from Step 2 of *http://www.grants.gov/Get Started. Grants.gov* has an updated version of the PureEdge Viewer (version 6.2). If applicants have not upgraded their version of the PureEdge viewer, they must do so before downloading the application package. The PureEdge™

Reader allows applicants to read the electronic files in a form format so that they will look like any other Standard or HUD form. The PureEdge™ forms have content-sensitive help. To use this feature, click on the icon that features an arrow with a question mark at the top of the page. This engages the content-sensitive help for each field on the electronic form. The PureEdge™ forms can be downloaded and saved on your hard drive, network drive(s), or CDs. Because of the size of the application, HUD recommends downloading the application to your computer hard drive.

The instructions include the General and Program NOFA sections of the **Federal Register** publication and required forms that have not been converted to a PureEdge™ form. Each program NOFA also includes a checklist. Please review the checklist in the program section to ensure that your application contains all the required materials.

MacIntosh users will need to use the Virtual PC emulator software, which allows PC software to run on MacIntosh platforms. More information on PureEdge™ Support for MacIntosh Users is available at *http://www.grants.gov/CompleteApplication#*, located under the topic Tips and Tools. *Grants.gov* is in the process of upgrading its system to allow MacIntosh users to be able to view PureEdge forms. The new feature will be issued shortly. Please check the *Grants.gov* Web site for the announcement of this additional feature.

b. *Mandatory Fields on PureEdge™ Forms.* In the PureEdge™ forms, you will find fields with a yellow background. These data fields are mandatory and must be completed.

c. *Completion of SF–424 Fields First.* The PureEdge™ forms are designed to automatically populate common data such as the applicant name and address, DUNS number, etc., on all PureEdge™ electronic forms. In order to trigger this function, the Standard Form 424 (SF–424) must be completed first. Once applicants complete the SF–424, the information entered will transfer to the other forms.

d. *Submission of Narrative Statements, Third Party Letters, and Certifications.* In addition to forms, many of the NOFAs require the submission of other documentation, such as third party letters, certifications, or program narrative statements. This section discusses how you should submit this additional information electronically as part of your application:

(1) *Narrative Statements to the Factors for Award.* If you are required to submit narrative statements, you must submit them as an electronic file in Microsoft Word (version 9 or earlier), Microsoft Excel 2000, or in Portable Document Format (PDF) that is compatible with Adobe™ Reader version 6.0 or earlier. If HUD receives a file in a format other than those specified, HUD will not be able to read the file, and it will not be reviewed. Each response to a Factor for Award should be clearly identified and can be incorporated into a single attachment or all attachments zipped together into a single attached file. Program NOFAs may specify if they want the files submitted separately or as a single attachment file, so please carefully review the program NOFA requirements for submission format when they are published. Documents that applicants possess in electronic format, *e.g.*, narratives they have written, or graphic images (such as Computer Aided Design (CAD) files from an architect), must be attached using the ''Attachments'' form included in the application package downloaded from *Grants.gov*. In order to reduce the size of its attachments, applicants can compress all or several files using a ZIP utility. Applicants can then attach the zipped file as described above.

(2) *Third Party Letters, Certifications Requiring Signatures, and Other Documentation.* Applicants required to submit third party documentation (*e.g.*, establishing matching or leveraged fund, documentation of 501(c)(3) status or incorporation papers, documents that support the need for the program, memoranda of understanding (MOUs), or program required documentation that supports your organization's claims regarding work that has been done to remove regulatory barriers to affordable housing) can choose from the following two options, as a way to provide HUD with the documentation:

(a) *Scanning Documents to Create Electronic Files.* Scanning documents increases the size of files. Applicants may not submit scanned files unless the facsimile solution described below will not work due to the nature of the document. Electronic files must be labeled so that the recipient at HUD will know what the file contains. Program NOFAs will indicate any naming conventions that applicants must use when submitting files using the attachment form.

(b) *Faxing Required Documentation.* Applicants may submit the required documentation to HUD by facsimile. Applicants may only use the fax method to submit attachments that are part of their electronic applications. HUD will not accept entire applications by fax. HUD will disqualify applications submitted entirely by fax.

Facsimiles submitted in response to a NOFA must use the form HUD–96011. The transmittal form to be downloaded with the application can be found on *Grants.gov.* The transmittal form found in the downloaded application contains a unique identifier that allows HUD to match an applicant's application submitted via *Grants.gov* with faxes coming from a variety of sources. Therefore, for HUD to correctly match a fax to a particular application, the applicant must use and require third parties that fax documentation on its behalf to use the form HUD–96011 as the cover page of the facsimile. Using the form HUD–96011 will ensure that HUD can electronically read faxes submitted by and on behalf of an applicant and match them to the applicant's application package received via *Grants.gov.*

When you download an application package from *Grants.gov,* be sure to save it to your hard drive, complete the SF–424, and then provide copies of the form HUD–96011 facsimile transmittal cover page to third parties that will submit information in support of your application. *Do not* download the same application package from *Grants.gov* more than once. Each time the application package is downloaded, the forms are given a unique ID number. To ensure that all the forms in your package contain the same unique ID number, after downloading your application complete the SF–424, save the forms to your hard drive, and use the saved forms to create your application. If you have to provide a copy of the form HUD–96011 to another party that will be responsible for faxing an item as part of your application, make a copy of the facsimile transmittal cover page from your downloaded application and provide that copy to the third party for use with the fax transmission. Please instruct third parties to use the form HUD–96011 that you have provided as a cover page when they submit information supporting your application using the facsimile method, because it contains the embedded ID number that is unique to your application submission. Applicants must fax their information, and third parties must fax information in support of an applicant's application, using the HUD–96011 facsimile transmittal cover page, to the following fax number: (800) HUD–1010. If you cannot access this 800 number or have problems, you may use (215) 825–8798 (this is not a toll-free number). Failure to use the form HUD–96011 as the cover page will create a problem in electronically matching your faxes to the application. If HUD is unable to match the faxes electronically due to an applicant's failure to follow these directions, HUD will not hand-match faxes to applications and not consider the faxed information in rating the application.

In addition, applicants must fax individual documents as separate submissions to avoid fax transmission problems. When faxing several documents, applicants must use the form HUD–96011 as the cover page for each document (*e.g.*, Letter of Matching or Leveraging funds, Memorandum of Understanding, Certification of Consistency with the Consolidated Plan, etc.) Please be aware that faxing large documents at one time may result in transmission failures. Be sure to check the record of your transmission issued by the fax machine to ensure that your fax submission was completed ''OK.'' For large or long documents, HUD suggests that you divide the document into smaller sections for faxing purposes. Each time you fax a document that you have divided into smaller sections, you should indicate on the cover sheet the section number of the total number of sections that you submitted, (*e.g.*, ''Part 1 of 4 parts'' or ''pages 1–10 of 20 pages'').

Your facsimile machine should provide you with a record of whether HUD received your transmission. If you get a negative response or a transmission error, you should resubmit the document until you confirm that HUD has received your transmission. HUD will not acknowledge that it received a fax successfully. When HUD receives a fax electronically, HUD will electronically read it with an optical character reader and attach it to the application submitted through *Grants.gov.* Applicants and third parties submitting information in support of the applicant's application may submit information by facsimile transmissions at any time before the application deadline date. Applicants must ensure that the form HUD–96011 used to fax information matches their electronic application (*i.e.*, is part of the application package downloaded from *Grants.gov*). All faxed materials must be received no later than 11:59:59 p.m. eastern time on the application deadline date. HUD will store the information and match it to the electronic application when HUD receives it from *Grants.gov.*

Facsimile Transmission Tip: Be sure to save your receipt of successful facsimile transmission as proof that the document was timely submitted to HUD. In cases where receipt may be in question, the transmittal receipt is your proof of timely receipt and successful submission.

(c) *Submissions Using Other File Formats.* If you are required to submit files in other formats such as CAD files of architectural drawings and blueprints, or pictures, you must attach these as electronic files in PDF format that is compatible with Adobe™ Reader version 6.0 or earlier. The files should be part of the zipped folder that is attached and submitted with your application transmission.

e. *Customer Support.* The *Grants.gov* Web site provides customer support via (800) 518–GRANTS (this is a toll-free number) or via e-mail at *support@grants.gov.* The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except Federal holidays, to address Grants.gov technology issues. For technical assistance to program-related questions, contact the number listed in Section VII Agency Contact in the program NOFA you are applying for.

4. Timely Receipt Requirements and Proof of Timely Submission

a. *Electronic Submission.*

(1) All applications must be received and validated by *Grants.gov* by 11:59:59 p.m. eastern time on the application deadline date established for each program NOFA. If the application is not validated before the deadline date, it will not be considered as meeting the deadline requirements.

Important Submission Tip: Upon successful submission, an applicant will receive an e-mail notification confirming receipt and indicating the application is being validated and that the validation process will be completed in approximately 24 to 48 hours. If the application does not pass the validation check, it will be rejected and the applicant notified of the reason for the rejected application. Applicants should therefore not assume because *Grants.gov* received an application, that they have successfully submitted the application until they receive the validation notice. If a rejection notice is received, the applicant should review the reasons for rejection and, if time permits, correct the error(s) and resubmit the application in time to meet the deadline requirements.

(2) Proof of timely submission and validation is automatically recorded by *Grants.gov.* An electronic time stamp is generated within the system when the application has been successfully received and validated.

(3) An applicant will receive an acknowledgement of receipt and a tracking number from *Grants.gov* with the successful transmission of its application followed by the validation receipt. When the validated application is transmitted from *Grants.gov* to HUD, the applicant will receive an e-mail notification that the application was received by the funding agency. Applicants should print and file these receipts along with facsimile receipts for information provided by facsimile, as proof of timely submission. Applicants will be considered as meeting the deadline date requirements when *Grants.gov* has received and validated your application no later than the deadline date and time, and all fax transmissions have been received by the deadline date and time.

(4) Applications validated by *Grants.gov* after the established deadline date and time for the program will be considered late. HUD will not consider any late application submissions. Similarly, HUD will not consider information submitted by facsimile as part of the application if received by HUD after the established deadline date and time. Please take into account the transmission time required for submitting your application via the Internet and the time required to fax any related documents. HUD suggests that applicants submit their applications during the operating hours of the *Grants.gov* Support Desk so that, if there are questions concerning transmission, operators will be available to assist you through the process. Submitting your application during the Support Desk hours will also ensure that you have sufficient time for the application to complete its transmission before the application deadline.

(5) Applicants using dial-up connections should be aware that transmitting your application takes extra time before *Grants.gov* receives it. *Grants.gov* will provide either an error or a successfully received transmission message. The *Grants.gov* Support Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting a large file, particularly electronic forms with associated eXtensible mark-up language (XML) schema, will take considerable time to process and be received by *Grants.gov.*

Important Submission Tip. When submitting an application electronically, applicants should take the following steps to speed up the transmission process:

• Close all other applications running on the computer used for the upload;
• Save the completed application to the desktop, checking to make sure that the file that you intend to submit is the complete and final version of your application;
• Open and view all attachment files to make sure they are the final versions of the attachments that you plan to submit. Check your system to make sure other versions are not still saved and delete old versions so you do not submit the wrong attachments in the application submission;
• Check the application for errors using the check application for errors button contained in the *Grants.gov* application; if errors are found, follow each error message and correct the error;
• Submit your application using Internet Explorer or Netscape browsers. *Grants.gov* has been tested using these browsers, and HUD has found easier transmission with these browsers than others;
• Transmission, even for very large applications, should be completed in a few minutes. Transmission should not take longer than an hour. If transmission takes longer, close down the application, and contact the *Grants.gov* help line, retaining the help desk ticket number for future reference. You may also use the submit tips available on the *Grants.gov* Web site;
• Submit the application to *Grants.gov* 48 to 72 hours in advance of the deadline to provide sufficient time to correct any validation errors noted and address any registration issues;
• If validation errors are reported, correct the validation errors and resubmit the application if it is prior to the deadline date; late applications will not be accepted by *Grants.gov*;
• If you are not sure what to do, call the *Grants.gov* help desk and retain the ticket number for future reference.
• Do not attempt to submit electronically if the computer you are using does not meet the minimum requirements for electronic submission. These requirements are listed on the *Grants.gov* Web site, as well as HUD's Web site;
• If you get an ''MEC'' error message, it is a Microsoft Configuration Error. Contact your software provider or your computer/information technology support desk to help you configure your system for the size files you are trying to upload. This is not a *Grants.gov* system issue, but rather an issue with your computer configuration.

b. Late applications, whether received electronically or in hard copy, will not receive funding consideration. HUD will not be responsible for directing or forwarding applications to the appropriate location. Applicants should pay close attention to these submission and timely receipt instructions, as they can make a difference in whether HUD will accept your application for funding consideration.

5. Waiver of Electronic Submission Requirements

For FY2006, the procedures for obtaining a waiver of the electronic submission requirement have changed. On December 29, 2005 (70 FR 77292), HUD published a final rule that established in 24 CFR 5.1005 the regulatory framework for HUD's electronic submission requirement, as well as the procedures for obtaining a waiver. Applicants seeking a waiver of the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. If the waiver is granted, the applicable program office's response will include instructions on how, where, and how many hard copies of the paper application must be submitted. Applicants that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. The deadlines for applications will remain as provided in the program section of the SuperNOFA and as per the final Appendix A to be published with the SuperNOFA program sections. As a result, applicants seeking a waiver of the electronic application submission requirement should submit their waiver request with sufficient time to allow HUD to process and respond to the request. Applicants should also allow themselves sufficient time to submit their application so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that an applicant that finds it is unable to submit its application electronically and must seek a waiver of the electronic grant submission requirement, submit its waiver request to the headquarters of the applicable HUD office approximately no later than 15 days before the application deadline date. This will allow time for HUD to process the waiver request and give the applicant sufficient time to submit the paper application to meet the deadline date requirement if the waiver is granted. To expedite the receipt and review of such requests, applicants may e-mail their requests to the program contact listed in the program NOFA. Applications that are received after the established deadline date will not be considered.

V. Application Review Information

A. Criteria

1. Factors for Award Used To Evaluate and Rate Applications

For each program NOFA, the points awarded for the rating factors total 100. Depending on the program for which you are seeking funding, the funding opportunity may provide up to four bonus points as provided below:

a. *RC/EZ/EC-II.* HUD will award two bonus points to each application that includes a valid form HUD–2990 certifying that the proposed activities/projects in the application are consistent with the strategic plan for an empowerment zone (EZ) designated by HUD or the U.S. Department of Agriculture (USDA), the tax incentive utilization plan for an urban or rural renewal community designated by HUD (RC), or the strategic plan for and enterprise community designated in round II by USDA (EZ-II), and that the proposed activities/projects will be located within the RC/EZ/EC-II identified above and are intended to serve the residents. For ease of reference in this notice, all of the federally designated areas are collectively referred to as ''RC/EZ/EC-IIs'' and residents of any of these federally designated areas as ''RC/EZ/EC-II residents.'' The individual funding announcements will indicate if the bonus points are available under the program. This notice contains a certification that must be completed for the applicant to be considered for RC/EZ/EC-II bonus points. Applicants can obtain a list of RC/EZ/EC-IIs from HUD's grants Web page at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Applicants can determine if their program or project activities is located in one of these designated areas by using the locator on HUD's Web site at *http://egis.hud.gov/egis/.*

b. *Brownfields Showcase Communities.* In the Brownfields Economic Development Initiative (BEDI) competition, two bonus points are available for federally designated Brownfields Showcase Communities. (Please see the FY2006 BEDI program NOFA, when published, for additional information.) The designation of Brownfields Showcase Communities is a Federal agency initiative sponsored by 20 Federal agencies, including HUD. A list of the federally designated Brownfields Showcase Communities is available at *http://www.epa.gov/swerosps/bf/html-doc/showfact.htm.*

c. *The Five Standard Rating Factors for FY2006.* HUD has established the following five standard factors for awarding funds under the majority of its FY2006 program NOFAs. Additional details about the five rating factors and the maximum points for each factor are provided in the program NOFAs. For a specific funding opportunity, HUD may modify these factors to take into account explicit program needs or statutory or regulatory limitations. Applicants should carefully read the factors for award as described in the program NOFA to which you are responding. The standard factors for award, except as modified in the program NOFAs, are listed below.

Factor 1: Capacity of the Applicant and Relevant Organizational Staff.
Factor 2: Need/Extent of the Problem.
Factor 3: Soundness of Approach.
Factor 4: Leveraging Resources.
Factor 5: Achieving Results and Program Evaluation.

The Continuum of Care Homeless Assistance programs have only two factors that receive points: Need and Continuum of Care.

B. Reviews and Selection Process

1. HUD's Strategic Goals To Implement HUD's Strategic Framework and Demonstrate Results

HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, as well as the quality of the applicant's proposed evaluation and monitoring plans. HUD's strategic framework establishes the following goals and objectives for the Department:

a. *Increase Homeownership Opportunities.*
(1) Expand national homeownership opportunities.
(2) Increase minority homeownership.
(3) Make the home-buying process less complicated and less expensive.
(4) Fight practices that permit predatory lending.
(5) Help HUD-assisted renters become homeowners.
(6) Keep existing homeowners from losing their homes.

b. *Promote Decent Affordable Housing.*
(1) Expand access to affordable rental housing.
(2) Improve the physical quality and management accountability of public and assisted housing.
(3) Increase housing opportunities for the elderly and persons with disabilities.
(4) Help HUD-assisted renters make progress toward self-sufficiency.

c. *Strengthen Communities.*
(1) Provide capital and resources to improve economic conditions in distressed communities.
(2) Help organizations access the resources they need to make their communities more livable.
(3) End chronic homelessness.
(4) Mitigate housing conditions that threaten health.

d. *Ensure Equal Opportunity in Housing.*
(1) Resolve discrimination complaints on a timely basis.
(2) Promote public awareness of fair housing laws.
(3) Improve housing accessibility for persons with disabilities.

e. *Embrace High Standards of Ethics, Management, and Accountability.*
(1) Rebuild HUD's human capital and further diversify its workforce.
(2) Improve HUD's management and its internal controls and systems, as well as resolve audit issues.
(3) Improve accountability, service delivery, and customer service of HUD and its partners.
(4) Ensure program compliance.

f. *Promote Participation of Grassroots Faith-Based and Other Community-Based Organizations.*
(1) Reduce regulatory barriers to participation by grassroots faith-based and other community-based organizations.
(2) Conduct outreach to inform potential partners of HUD opportunities.
(3) Expand technical assistance resources deployed to grassroots faith-based and other community-based organizations.
(4) Encourage partnerships between grassroots faith-based and other community-based organizations and HUD's traditional grantees.

Additional information about HUD's Strategic Plan FY 2003–FY 2008, and 2002–2005 Annual Performance Plans is available at *http://www.hud.gov/offices/cfo/reports/cforept.cfm.*

2. Policy Priorities

HUD encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and achieving its goals for FY 2006 and beyond, when the majority of funding recipients will be reporting programmatic results and achievements. Applicants that include work activities that specifically address one or more of these policy priorities will receive higher rating scores than applicants that do not address these HUD priorities. Each NOFA issued in FY 2006 will specify which priorities relate to a particular program and how many points will be awarded for addressing those priorities.

a. *Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Persons with Limited English Proficiency.* Too often, these individuals and families are shut out of the housing market through no fault of their own. Often, developers of housing, housing counseling agencies, and other organizations engaged in the housing industry must work aggressively to open up the realm of homeownership and rental opportunities to low- and moderate-income persons, persons with disabilities, the elderly, minorities, and persons with limited English proficiency. Many of these families are anxious to have homes of their own, but are not aware of the programs and assistance that are available. Applicants are encouraged to address the housing, housing counseling, and other related supportive service needs of these individuals and coordinate their proposed activities with funding available through HUD's affordable housing programs and home loan programs.

Proposed activities support strategic goals a, b, and d.

b. *Improving our Nation's Communities.* HUD wants to improve the quality of life for those living in distressed communities. Applicants are encouraged to include activities that:
(1) Bring private capital into distressed communities;
(a) Finance business investments to grow new businesses;
(b) Maintain and expand existing businesses;
(c) Create a pool of funds for new small and minority-owned businesses; and
(d) Create decent jobs for low-income persons.
(2) Improve the environmental health and safety of families living in public and privately owned housing by including activities that:
(a) Coordinate lead hazard reduction programs with weatherization activities funded by State and local governments and the Federal Government; and
(b) Reduce or eliminate health related hazards in the home caused by toxic agents, such as molds and other allergens, carbon monoxide, and other hazardous agents and conditions.
(3) Make communities more livable by:
(a) Providing public and social services; and
(b) Improving infrastructure and community facilities.

Activities support strategic goals b, c, and d.

c. *Encouraging Accessible Design Features.* As described in Section III.C.2.c, applicants must comply with applicable civil rights laws, including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws and the regulations implementing them provide for nondiscrimination based on disability and require housing and other facilities to incorporate certain features intended to provide for their use and enjoyment by persons with disabilities. HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. These features would eliminate many other barriers limiting the access of persons with disabilities to housing and other facilities. Copies of the Uniform Federal Accessibility Standards (UFAS) are available from the NOFA Information Center at (800) HUD–8929 or (800) HUD–2209 (TTY) (these are toll-free numbers) and also from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5230, Washington, DC 20410–2000, at (202) 755–5404 or toll-free at (800) 877–8339 (TTY) (these are toll-free numbers).

Accessible design features are intended to promote visitability and incorporate features of universal design as described below.

(1) *Visitability in New Construction and Substantial Rehabilitation.* Applicants are encouraged to incorporate visitability standards, where feasible, in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. Visitability means that there is at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk, and that the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. More information about visitability is available at *http://www.concretechange.org.*

Activities support strategic goals b, c, and d.

(2) *Universal Design.* Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. Universal design is the design of products and environments to be usable by all people to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost to the user. Universal design benefits people of all ages and abilities. In addition to any applicable required accessibility feature under Section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, and electronic communication mechanisms, or when communicating with community residents at public meetings or events.

HUD believes that by creating housing that is accessible to all, it can increase the supply of affordable housing for all, regardless of ability or age. Likewise, creating places where people work, train, and interact that are usable and open to all residents increases opportunities for economic and personal self-sufficiency. More information on Universal Design is available from the Center for Universal Design at *http://www.design.ncsu.edu:8120/cud/* or the Resource Center on Accessible Housing and Universal Design at *http://www.abledata.com/abledata.cfm?pageid=113573&top=16029&sectionid=19326.*

Activities support strategic goals a, b, c, and d.

d. *Providing Full and Equal Access to Grassroots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.*

(1) HUD encourages nonprofit organizations, including grassroots faith-based and other community-based organizations, to participate in the vast array of programs for which funding is available through HUD's programs. HUD also encourages states, units of local government, universities, colleges, and other organizations to partner with grassroots organizations (*e.g.*, civic organizations, faith communities, and grassroots faith-based and other community-based organizations) that have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services, such as assisting the homeless and preventing homelessness, counseling individuals and families on fair housing rights, providing elderly housing opportunities, developing first-time homeownership programs, increasing homeownership and rental housing opportunities in neighborhoods of choice, developing affordable and accessible housing in neighborhoods across the country, creating economic development programs, and supporting the residents of public housing facilities. HUD seeks to make its programs more effective, efficient, and accessible by expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. Additionally, HUD encourages applicants to include these grassroots faith-based and other community-based organizations in their work plans. Applicants, their partners, and participants must review the individual FY2006 HUD program announcements to determine whether they are eligible to apply for funding directly or whether they must establish a working relationship with an eligible applicant in order to participate in a HUD funding opportunity. Grassroots faith-based and other community-based organizations, and applicants that currently or propose to partner, fund, subgrant, or subcontract with grassroots organizations (including grassroots faith-based or other community-based nonprofit organizations eligible under applicable program regulations) in conducting their work programs will receive higher rating points as specified in the individual FY 2006 HUD program announcements.

(2) Definitions of Grassroots Organizations.

(a) HUD will consider an organization a ''grassroots organization'' if the organization is headquartered in the local community in which it provides services; and

(i) Has a social services budget of $300,000 or less, or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.'' Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations, but must demonstrate that they are currently working with a grassroots organization (*e.g.*, having a grassroots faith-based or other community-based organization provide volunteers).

(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget, such as salaries and expenses, not directly expended in the provision of social services.

Activities support strategic goal f.

e. *Participation of Minority-Serving Institutions (MSIs) in HUD Programs.*

Pursuant to Executive Orders 13256, ''President's Board of Advisors on Historically Black Colleges and Universities,'' 13230, ''President's Advisory Commission on Educational Excellence for Hispanic Americans,'' 13216, ''Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs,'' and 13270, ''Tribal Colleges and Universities,'' HUD is strongly committed to broadening the participation of MSIs in its programs. HUD is interested in increasing the participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high quality education, and increase opportunities for MSIs to participate and benefit from Federal financial assistance programs. HUD encourages all applicants and recipients to include meaningful participation of MSIs in their work programs. A listing of MSIs can be found on the Department of Education Web site at *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html* or HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Activities support strategic goals c and d.

f. *Ending Chronic Homelessness.* President Bush has set a national goal to end chronic homelessness. HUD Secretary Alphonso Jackson has embraced this goal and has pledged that HUD's grant programs will be used to support the President's goal and better meet the needs of chronically homeless individuals. A person experiencing chronic homelessness is defined as an unaccompanied individual with a disabling condition who has been continuously homeless for a year or more or has experienced four or more episodes of homelessness over the last 3 years. A disabling condition is defined as a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. Applicants are encouraged to target assistance to chronically homeless persons by undertaking activities that will result in:

(1) Creation of affordable housing units, supportive housing, and group homes;

(2) Establishment of a set-aside of units of affordable housing for the chronically homeless;

(3) Establishment of substance abuse treatment programs targeted to the homeless population;

(4) Establishment of job training programs that will provide opportunities for economic self-sufficiency;

(5) Establishment of counseling programs that assist homeless persons in finding housing, managing finances, managing anger, and building interpersonal relationships;

(6) Provision of supportive services, such as health care assistance that will permit homeless individuals to become productive members of society; and

(7) Provision of service coordinators or one-stop assistance centers that will ensure that chronically homeless persons have access to a variety of social services.

Applicants that are developing programs to meet the goals set in this policy priority should keep in mind the requirements of the regulations implementing Section 504 of the Rehabilitation Act, in particular, 24 CFR 8.4(b)(1)(iv), 8.4(c)(1), and 8.4(d).

Activities support strategic goals b and c.

g. *Removal of Regulatory Barriers to Affordable Housing.*

In FY 2006, HUD continues to make removal of regulatory barriers a policy priority. Through the Department's America's Affordable Communities Initiative, HUD is seeking input into how it can work more effectively with the public and private sectors to remove regulatory barriers to affordable housing. Increasing the affordability of rental and homeownership housing continues to be a high priority of the Department. Addressing these barriers to housing affordability is a necessary component of any overall national housing policy.

Under this policy priority, higher rating points are available to (1) governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. To obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants must complete form HUD–27300, ''Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.'' Copies of HUD's notices published on this issue can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

Local jurisdictions and counties with land use and building regulatory authority applying for funding, as well as housing authorities, nonprofit organizations, and other qualified applicants applying for funds for projects located in these jurisdictions, are invited to answer the 20 questions under Part A. An applicant that scores at least five in column 2 will receive 1 point in the NOFA evaluation. An applicant that scores 10 or more in column 2 will receive 2 points in the NOFA evaluation.

State agencies or departments applying for funding, as well as housing authorities, nonprofit organizations, and other qualified applicants applying for funds for projects located in unincorporated areas or areas not otherwise covered in Part A, are invited to answer the 15 questions under Part B. Under Part B, an applicant that scores at least four in Column 2 will receive one point in the NOFA evaluation. Under Part B, an applicant that scores eight or greater will receive a total of two points in the respective evaluation.

Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed if an award is made. In no case will an applicant receive more than two points for barrier removal activities under this policy priority. An applicant that is an Indian tribe or TDHE may choose to complete either Part A or Part B based upon a determination by the tribe or TDHE as to whether the tribe's or the TDHE's association with the local jurisdiction or the state would be the more advantageous for its application.

Form HUD–27300 is available at *http://www.hudclips.org/sub/nonhud/cgi/pdfforms/27300.pdf.* A limited number of questions on form HUD–27300 expressly request the applicant to provide brief documentation with its response. Other questions require that, for each affirmative statement made, the applicant supply a reference, Internet address, or brief statement indicating where the back-up information may be found and a point of contact, including a telephone number or e-mail address. Applicants are encouraged to read HUD's three notices, which are available at *http://www.hud.gov/affordablecommunities*, to obtain an understanding of this policy priority and how it can affect their score. Applicants that do not provide the Internet addresses, references, or documentation will not get the policy priority points. Activities support strategic goals a and b.

h. *Participation in Energy Star.* HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency (EPA), and the Department of Energy (DOE) have signed a partnership to promote energy efficiency in HUD's affordable housing programs, including public housing, HUD-insured housing, and housing financed through HUD formula and competitive programs. The purpose of the Energy Star partnership is to promote energy-efficient affordable housing stock while protecting the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote energy efficiency in design and operations. They are urged especially to purchase and use products that display the Energy Star label. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star materials and practices, as well as buildings constructed to Energy Star standards, to both homebuyers and renters.

Applicants are encouraged to undertake program activities that include developing Energy Star promotional and information materials, providing outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, utilizing Energy Star-designated products in the construction or rehabilitation of housing units, and replacing worn products or facilities, such as light bulbs, water heaters, furnaces, etc., with Energy Star products to reduce operating costs. Communities and developers are encouraged to promote the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call (888) 782–7937, or (888) 588–9920 (TTY).

Activities support strategic goals 1 and 2.

3. Threshold Compliance

Only applications that meet all of the threshold requirements will be eligible to receive an award of funds from HUD.

4. Corrections to Deficient Applications

After the application deadline date and time, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants.

Examples of curable (correctable) technical deficiencies include inconsistencies in the funding request, failure to submit the proper certifications, and failure to submit an application that contains a signature by an official able to make a legally binding commitment on behalf of the applicant. In the case of an applicant that received a waiver of the regulatory requirement to submit an electronic application, the technical deficiency may include failure to submit an application that contains an original signature. If HUD finds a curable deficiency in the application, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or via the U.S. Postal Service, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time, HUD will reject the application as incomplete, and it will not be considered for funding. In order to meet statutory deadlines for the obligation of funds or for timely completion of the review process, program NOFAs may reduce the number of days for submitting a response to a HUD clarification or correction to a technical deficiency. Please be sure to carefully read each program NOFA for any additional information and instructions. An applicant's response to a HUD notification of a curable deficiency should be submitted directly to HUD in accordance with the instructions provided in the notification.

5. Rating Panels

To review and rate applications, HUD may establish panels that may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain certain expertise and outside points of view, including views from other Federal agencies. Persons brought into HUD to review applications are subject to conflict of interest provisions. In addition, reviewers using HUD information technology (IT) systems may be subject to an IT security check.

6. Rating

HUD will evaluate and rate all applications for funding that meet the threshold requirements. HUD will consider the factors described below when rating your application(s).

a. *Past Performance.* In evaluating applications for funding, HUD will take into account applicants' past performance in managing funds, including, but not limited to, the ability to account for funds appropriately, timely use of funds received either from HUD or other Federal, State, or local programs; meeting performance targets as established in Logic Models approved as part of the grant agreement, timelines for completion of activities, and receipt of promised matching or leveraged funds; and number of persons to be served or targeted for assistance. HUD may consider information available from HUD's records, the name check review, public sources, such as newspapers, Inspector General or Government Accountability Office reports or findings, or hotline or other complaints that have been proven to have merit.

b. *Deducting Points for Poor Performance.* In evaluating past performance, HUD may elect to deduct points from the rating score or establish threshold levels as specified under the Factors for Award in the individual program NOFAs.

7. Ranking

HUD will rank applicants within each program or, for Continuum of Care applicants, across the three programs identified in the Continuum of Care NOFA. HUD will rank applicants only against those applying for the same program funding.

Where there are set-asides within a program competition, you, the applicant, will compete against only those applicants in the same set-aside competition.

C. Anticipated Announcement and Award Dates

The individual program NOFAs will provide the applicable information regarding this subject.

VI. Award Administration Information

A. Award Notices

1. Negotiation

After HUD has rated and ranked all applications and made selections, HUD may require, depending on the program, that a selected applicant participate in negotiations to determine the specific terms of the funding agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In such an instance, HUD may offer an award to and proceed with negotiations with the next highest-ranking applicant.

2. Adjustments to Funding

a. HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of funds and enable the purposes or requirements of a specific program to be met.

b. HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirements; does not meet the requirements of this notice; or is duplicative of other funded programs or activities from prior year awards or other selected applicants. Only the eligible portions of your application (excluding duplicative portions) may be funded.

c. If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next highest-ranking application.

d. If funds remain after all selections have been made, remaining funds may be made available within the current fiscal year for other competitions within the program area or held over for future competitions.

e. Individual program NOFAs may have other requirements, so please review the program NOFA carefully.

3. Funding Errors

In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of a program NOFA, HUD may select that applicant when sufficient funds become available.

4. Performance and Compliance Actions of Funding Recipients

HUD will measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions of their respective programs.

5. Debriefing

For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A request for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF–424 or his or her successor in office, and submitted to the person or organization identified as the contact under the section entitled ''Agency Contact(s)'' in the individual program NOFA under which you applied for assistance. Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

B. Administrative and National Policy Requirements

See Section III.C. of this notice regarding related requirements.

C. Reporting

In FY2004, HUD used the Logic Model as a planning tool, which was submitted as part of the NOFA application. In FY2005, HUD required performance reporting against the approved logic model incorporated into the grant agreement. In FY2006, HUD is moving to standardized ''Master'' Logic Models from which applicants can select needs, activities/outputs, and outcomes appropriate to their programs. In addition, program offices have identified Program Management Evaluation Questions and a Return on Investment (ROI) Statement that grantees will be required to report on as specified in the program NOFA. The timeframe established for the Logic Model reporting will be in accordance with the program's established reporting periods and as stated in the program NOFA. The program NOFA will also establish the timeframe for reporting the Program Management Evaluation Questions and ROI Statement.

The download instructions found on *Grants.gov* for each funding opportunity will include the Program Outcome Logic Model form HUD–96010, which is a Microsoft Excel™ workbook containing instructions in Tab 1 on how to use the form. The form or eLogic Model™ incorporates a program-specific master list of statements of need, service or activity/output(s), and their associated unit(s) of measure; and outcome(s) and their associated unit(s) of measure. To begin completing the form, applicants will be required to click on a cell within a column, at which time a drop down button will appear to the right of the cell. Applicants can then select the appropriate statement(s) that reflect their proposed program. Applicants can select multiple need(s), services or activities/outputs, and outcomes, but each selection is entered in separate cells using the drop-down menu. The units of measure, whether for outputs or outcomes, contain both a number and a descriptor of the output or outcome that is counted. Applicants select the unit of measure in accordance with the output or outcome selected, and then insert the expected number of units to be completed during the period of performance. In this manner, the applicant will build a custom logic model reflecting their program of activities. The custom logic model will link the need(s) to the activity/output(s), which in turn are linked to the result or expected outcome(s).

Applicants that do not have Microsoft Excel™ may obtain a PDF version of the form along with a program specific Master Logic Model from HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. Each program-specific Master Logic Model will be under the program title on the Web site. Multiple forms can be used to distinguish between short, intermediate, and long-term outputs and outcomes in the applicant's proposed program. The PDF form can be completed, printed, and transmitted using the facsimile transmittal form (HUD–96011).

1. In FY2006, grantees must adhere to the following reporting principles:

a. An evaluation process will be part of the ongoing management of the HUD-funded award;

b. Comparisons will be made between projected and actual numbers for outputs and outcomes;

c. Deviations from projected outputs and outcomes will be documented and explained as part of required reporting; and

d. Data will be analyzed to determine the relationship of outputs to outcomes to determine which outputs produce which outcomes and which are most effective.

2. As stated above, in FY2006, HUD is requiring each program to establish a set of Program Management Evaluation Questions and a ROI Statement for grantee reporting. Grantees must use these program-specific questions to self-evaluate the management and performance of their program and address the ROI Statement for the program in accordance with the program-specific reporting requirements. In developing the Master Logic Model Program Management Evaluation Questions, HUD trained its program managers on a critical thinking process known as the ©Carter-Richmond methodology that identifies key management and evaluation questions for HUD's programs. The following table identifies the ©Carter-Richmond generic questions and where the source data is found in the Logic Model.

©CARTER-RICHMOND METHODOLOGY [1]: BUILDING BLOCKS FOR EFFECTIVE MANAGEMENT

Management questions	Logic model columns for source data
1. How many clients are you serving?	Service/Activity/Output.
2. How many units were provided?	Service/Activity/Output.
3. Who are you serving?	Service/Activity/Output.
4. What services do you provide?	Service/Activity/Output.
5. What does it cost?	Service/Activity/Output.
6. What does it cost per service delivered?	Service/Activity/Output/Evaluation.
7. What happens to the "subjects" as a result of the service?[2]	Outcome.
8. What does it cost per outcome?	Outcome and Evaluation.
9. What is the value of the outcome?	Outcome and Evaluation.
10. What is the return on investment?	Evaluation.

[1] The Carter-Richmond methodology is copyrighted and is provided to support the development of your grant application. Any other use is prohibited without prior written permission of The Center for Applied Management Practices, Inc., 3609 Gettysburg Road, Camp Hill, PA 17011, (717) 730–3705, *http://www.appliedmgt.com*.

[2] The subject can be a client or a unit, such as a building and is defined in its associated unit of service.

As a result of this training, each program has developed specific Program Management Evaluation Questions tailored to the statutory purpose of each of their programs. Each program NOFA will require applicants to address the Program Management Evaluation Questions based upon the ©Carter-Richmond methodology in their reports to HUD. The program NOFAs will identify the particular program management evaluation questions to be addressed that relate to the statutory purpose and intent of each program.

Training on HUD's Logic Model, the reporting requirements for addressing the Program Management Evaluation Questions, and how to calculate a ROI Statement will be provided via satellite broadcast. The training will also provide examples of how to construct the Logic Model using the copy and paste method. Training materials and the dates for the training will be on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*, shortly after publication of the SuperNOFA. In addition, each program NOFA broadcast will address the specific ROI reporting requirements for the program during the broadcast.

Applicants should submit the completed Logic Model as an attachment to their application in accordance with the directions in the program NOFA for addressing the factors for award. Each program NOFA will identify if they want the factors for award, including the Logic Model required as part of the application submission, submitted as a single attached file or as separate files. Please follow the program NOFA directions.

Once selected for funding and awarded funds, grantees will be required to submit a completed form HUD–96010 Logic Model indicating results achieved against the proposed output(s) and proposed outcome(s) stated in the grantee's approved application and agreed to by HUD. The submission of the Logic Model and required ROI Statement calculation must be submitted to HUD in accord with the reporting periods identified in each program NOFA for providing reports to HUD.

VII. Agency Contact(s)

The individual program NOFAs will identify the applicable agency contacts related to each program. Questions regarding this notice should be directed to the NOFA Information Center between the hours of 10 a.m. and 6:30 p.m. eastern time at 800–HUD–8929. Hearing impaired persons may call 800–HUD–2209. Questions regarding specific program requirements should be directed to the agency contacts identified in each program NOFA.

VIII. Other Information

A. Grants.gov and P.L. 106–107 Streamlining Activities

The Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107) directs each Federal agency to develop and implement a plan that, among other things, streamlines and simplifies the application, administrative, and reporting procedures for Federal financial assistance programs administered by the agency. This law also requires the Director of the Office of Management and Budget (OMB) to direct, coordinate, and assist Federal agencies in establishing (1) a common application and reporting system and (2) an interagency process for addressing ways to streamline and simplify Federal financial assistance application and administrative procedures and reporting requirements for program applicants.

The first segment of the *Grants.gov* initiative focuses on allowing the public to easily FIND competitive funding opportunities and then APPLY via *Grants.gov.* HUD posted all of its funding opportunities on *http://www.grants.gov/Find* in FY2004, with the exception of the Continuum of Care, and intends to do the same in FY2006. In addition, *Grants.gov* is working with the Federal agencies to begin the process of accepting mandatory and formula grant program plans and application submissions online via *Grants.gov* in 2006. Applicants for HUD's formula and competitive programs are urged to become familiar with the *Grants.gov* site, registration procedures, and electronic submissions so that as the site is expanded, you will be registered and familiar with the find-and-apply functionality.

B. HUD-Internal Revenue Service (IRS) Memorandum of Agreement

HUD and the IRS have entered into a memorandum of agreement to provide information to HUD grantees serving low-income, disabled, and elderly persons, as well as persons with limited English proficiency, on the availability of low-income housing tax credits, the earned income tax credit, individual development accounts, child tax credits, and the IRS Voluntary Income Tax Assistance program. HUD is making available on its Web site information on these IRS asset-building resources. HUD encourages you to visit the site and disseminate this information to low-income residents in your community and other organizations that serve low-income residents, so that eligible individuals can take advantage of these resources.

C. Paperwork Reduction Act Statement

The information collection requirements in this notice have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. Each program NOFA will identify its applicable OMB control number.

D. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. eastern time, Monday through Friday, except Federal holidays, in the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

E. Executive Orders and Recent Legislative Changes

1. Executive Order 13132, Federalism

Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of Section 6 of the executive order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the executive order.

2. American-made Products

Sections 708 and 709 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115; approved Nov. 30, 2005) states that, to the greatest extent practicable, all equipment and products purchased with funds made available in FY2006 should be American-made.

3. Eminent Domain

Section 726 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115; approved Nov. 30, 2005) states that no funds made available under the Act may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use.

For purposes of this provision, public use shall not be construed to include economic development that primarily benefits private entities.

Further, any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownsfield as defined in the Small Business Liability Relief and Brownsfield Revitalization Act (Pub. L. 107–118) shall be considered a public use for purposes of eminent domain.

F. Public Access, Documentation, and Disclosure

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) (42 U.S.C. 3545) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under individual NOFAs published as part of HUD's SuperNOFA or thereafter, as described below.

1. Documentation, Public Access, and Disclosure Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to its FY2006 NOFAs published in the 2006 SuperNOFA or NOFAs published thereafter are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. Form HUD–2880

HUD will also make available to the public for 5 years all applicant disclosure reports (form HUD–2880) submitted in connection with an FY2006 NOFA. Update reports (also reported on form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than 3 years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

BILLING CODE 4210–32–P

3. Publication of Recipients of HUD Funding

HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all funding decisions made by the Department to provide:

a. Assistance subject to Section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) noncompetitive basis, but that is not provided based on a competition.

G. Section 103 of the HUD Reform Act

HUD's regulations implementing Section 103 of the HUD Reform Act, codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are prohibited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708–3815 (this is not a toll-free number). The toll-free TTY number for persons with speech or hearing impairments is (800) 877–8339. HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

Appendix A Programs Included In The SuperNOFA

Community Development Technical Assistance (CD-TA) Programs
HOME TA CFDA No.: 14.239 OMB Approval No.: 2506-0166
CHDO (HOME) TA CFDA No.: 14.239 OMB Approval No.: 2506-0166
McKinney-Vento Homeless Assistance Programs TA CFDA No.: 14.235 OMB Approval No.: 2506-0166
HOPWA TA CFDA No.: 14.241 OMB Approval No.: 2506-0133
Youthbuild TA CFDA No.: 14.243 OMB Approval No.: 2506-0142
Indian Community Development Block Grant Program
Indian Community Development Block Grant Program (ICDBG) CFDA No.: 14.862 OMB Approval No.: 2577-0191
University and College Programs
Historically Black Colleges and Universities Program (HBCU) CFDA No.: 14.520 OMB Approval No.: 2528-0235
Hispanic-Serving Institutions Assisting Communities Program (HSIAC) CFDA No.: 14.514 OMB Approval No.: 2528-0198
Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC) CFDA No.: 14.515 OMB Approval No.: 2528-0206
Tribal Colleges and Universities Program (TCUP) CFDA No.: 14.519 OMB Approval No.: 2528-0215

Appendix A Programs Included In The SuperNOFA

Fair Housing Initiatives Programs

Fair Housing - Private Enforcement Initiative (PEI)
CFDA No.: 14.408
OMB Approval No.: 2529-0033
Fair Housing Education and Outreach Initiative (EOI)
CFDA No.: 14.408
OMB Approval No.: 2529-0033

Housing Counseling Programs

Housing Counseling
Local Housing Counseling Agencies (LHCA)
National and Regional Intermediaries
Housing Counseling - State Housing Finance Agencies (SHFA)
CFDA.: 14.169
OMB Approval No.: 2502-0261

Healthy Homes and Lead Hazard Control Programs

Lead Hazard NOFA

Lead-Based Paint Hazard Control Grant Program
CFDA No.: 14.900
OMB Approval No.: 2539-0015
Operation Lead Elimination Action Program (LEAP)
CFDA No.: 14.903
OMB Approval No.: 2539-0015
Lead Hazard Reduction Demonstration Grant Program
CFDA No.: 14.905
OMB Approval No.: 2539-0015

Technical Studies NOFA

Lead-Technical Studies
CFDA No.: 14.902
OMB Approval No.: 2539-0015
Healthy Homes Technical Studies
CFDA No.: 14.906
OMB Approval No.: 2539-0015

Lead Outreach Grant Program
CFDA No.: 14.904
OMB Approval No.: 2539-0015

Healthy Homes Demonstration Program
CFDA No.: 14.901
OMB Approval No.: 2539-0015

Appendix A Programs Included In The SuperNOFA

Economic Development Programs

Brownfields EconomicDevelopment Initiative (BEDI)
CFDA No: 114.246
OMB Approval No: 2506-0153

Youthbuild
CFDA No: 14.243
OMB Approval No: 2506-0142

Housing Choice Voucher Family Self-Sufficiency (FSS) Program Coordinators
CFDA No.: 14.871
OMB Approval No.: 2577-0178

Rural Housing & Economic Development (RHED)
CFDA #: 14.250
OMB Approval Number: 2506-0169

HOPE VI Main Street Program
CFDA No: 14.866
OMB Approval Number: 2577-0208

Public Housing Resident Opportunity and Self-Sufficiency (ROSS)

ROSS Elderly/Persons with Disabilities
CFDA No.: 14.870
OMB Approval No.: 2577-0229

ROSS Family-Homeownership
CFDA No.: 14.870
OMB Approval No.: 2577-0229

Technlogy for Increased Resident Self-Sufficiency

Public Housing Neighborhood Networks
CFDA No.: 14.870
OMB Approval No.: 2577-0229

Public Housing Family Self-Sufficiency
CFDA No.: 14.870
OMB Approval No.: 2577-0229

Appendix A Programs Included In The SuperNOFA

Targetted and Assisted Housing

Housing Opportunities for Person with AIDS (HOPWA)
CFDA No.: 14.241
OMB Approval No.: 2506-0133

Assisted-Living Conversion Program for Eligible Multifamily Projects
CFDA No.: 14.314
OMB Approval No.: 2502-0542

Service Coordinators in Multifamily Housing
CFDA No.: 14.191
OMB Approval No.: 2502-0447

Section 202 Supportive Housing for the Elderly
CFDA No.: 14.157
OMB Approval No.: 2502-0267

Section 811 Supportive Housing for Persons with Disabilities
CFDA No.: 14.181
OMB Approval No.: 2502-0462

Continuum of Care Homeless Assistance Programs

Supportive Housing Program (SHP)
CFDA No.: 14.235
OMB Approval No.: Pending

Shelter Plus Care (S+C)
CFDA No.: 14.238
OMB Approval No.: Pending

Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals
CFDA No.: 14.249
OMB Approval No.: Pending

[FR Doc. 06–531 Filed 1–19–06; 8:45 am]
BILLING CODE 4210–32–C

Federal Register

Friday,
January 20, 2006

Part V

The President

Notice of January 18, 2006—Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

Federal Register
Vol. 71, No. 13
Friday, January 20, 2006

Presidential Documents

Title 3—

The President

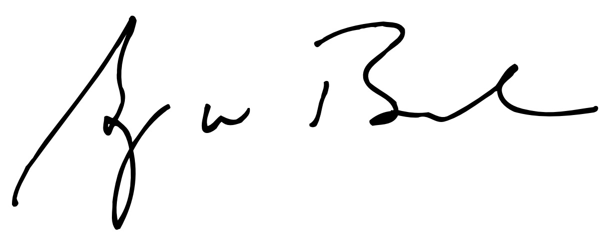
Notice of January 18, 2006

Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President modified the Annex to Executive Order 12947 to identify four additional persons, including Usama bin Laden, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, as expanded on August 20, 1998, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 23, 2006. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 18, 2006.

[FR Doc. 06–623
Filed 1–19–06; 11:47 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 71, No. 13

Friday, January 20, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

15 CFR

930..........788

17 CFR

36..........1953
37..........1953
38..........1953
39..........1953
40..........1953
242..........232

Proposed Rules:

4..........1463

18 CFR

11..........2863
2..........1348
33..........1348

Proposed Rules:

35..........303
370..........303

19 CFR

12..........3000
101..........2457

20 CFR

404..........2312, 2871, 3217
416..........2871, 3217

21 CFR

210..........2458
510..........875, 2147
520..........875
522..........1689
558..........5, 1689
803..........1488

Proposed Rules:

56..........2493
210..........2494
310..........2309
866..........1399

23 CFR

Proposed Rules:

1313..........29

24 CFR

401..........2112
402..........2112

Proposed Rules:

401..........2126
402..........2126
1000..........2176

25 CFR

243..........2426

26 CFR

1..........6, 11, 1971, 2462
20..........2147
31..........11
301..........3219
602..........6

Proposed Rules:

1..........2496
31..........46
301..........2497, 2498, 3248

27 CFR

Proposed Rules:

9..........1500

28 CFR

16..........16
105..........1690

Proposed Rules:

61..........3248

29 CFR

1926..........2879
1952..........2885
2520..........1904
4022..........2147
4044..........2147, 2148

Proposed Rules:

2700..........553
2704..........553
2705..........553

30 CFR

946..........1488

31 CFR

103..........496
215..........2149
501..........1971

Proposed Rules:

103..........516
501..........1994

32 CFR

199..........1695

Proposed Rules:

153..........3254

33 CFR

110..........3001
117..........1494, 2151
165..........538, 2152, 2886, 3003, 3005, 3007

Proposed Rules:

110..........3025
117..........2176
165..........3027

36 CFR

223..........522, 523
1011..........2109

Proposed Rules:

219..........307

37 CFR

Proposed Rules:

1..........48, 61
2..........2498

38 CFR

17..........2464
21..........1496

39 CFR

111..........1976
3001..........2464

40 CFR

9..........388, 654
16..........232
35..........17
52..........19, 21, 24, 241, 244, 541, 1463, 1696, 3009
60..........2472
61..........2472
63..........1378
81..........24, 541
86..........2810
141..........388, 654
142..........388, 654
180..........2889
271..........3220
300..........3227

Proposed Rules:

50..........2620
51..........69
52..........85, 569, 577, 890, 892, 1994, 1996, 2177, 3029
53..........2710
58..........2710
60..........2509
61..........2509
63..........1386, 1403
86..........2843
122..........894
180..........901
745..........1588
1604..........309

41 CFR

301–10..........876

Proposed Rules:

60-2..........3374
60-300..........3352

42 CFR

419..........2617

43 CFR

Proposed Rules:

2930..........2899

46 CFR

10..........2154

47 CFR

1..........2167
64..........2895, 3014
73..........245, 246, 247, 877

Proposed Rules:

20..........3029
54..........1721
73..........312, 313

48 CFR

Ch. 1..........198, 228, 864, 866
1..........200
2..........208, 211
4..........208
5..........219, 220
6..........219
7..........208, 211
8..........221
9..........219, 227
11..........211, 227
12..........211, 219, 220
14..........219
16..........211
17..........219
19..........220, 221
22..........219, 864
25..........219, 221, 223, 224, 227, 864
27..........227
34..........227
37..........211
38..........227
39..........211, 227
42..........200, 221
43..........227
44..........225
46..........200, 227
47..........200
48..........227
50..........227
52..........200, 208, 219, 221, 224, 225, 226, 227, 864
53..........200
1631..........3015
1644..........3015
1652..........3015
2401..........2432
2402..........2432
2406..........2432
2408..........2432
2409..........2432
2411..........2432
2413..........2432
2415..........2432
2416..........2432
2419..........2432
2422..........2432
2426..........2432
2432..........2432
2437..........2432
2442..........2432
2446..........2432
2448..........2432
2452..........2432

Proposed Rules:

Ch. 8..........2342
2404..........2444
2408..........2444
2415..........2444
2437..........2444
2439..........2444
2452..........2444
9903..........313

49 CFR

71..........3228
219..........1498
383..........2897
384..........2897
571..........877

Proposed Rules:

192..........1504
1105..........3030

50 CFR

223..........834
224..........834
229..........1980
299..........247
600..........27
622..........3018
635..........273, 1395, 3245
679..........3247
648..........1982, 3016
679..........1698

Proposed Rules:

17..........315, 3158
223..........3033
660..........1998, 2510, 3254
679..........386

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 20, 2006

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants and cooperative agreements; availability, etc.:
Public Television Station Digital Transition Program; published 1-20-06

EDUCATION DEPARTMENT

Elementary and secondary education:
State Charter School Facilities Incentive Program; published 12-21-05

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
Ohio; published 1-20-06

FEDERAL COMMUNICATIONS COMMISSION

Radio frequency devices:
Digital television receiver tuner requirements; published 12-21-05

FEDERAL ELECTION COMMISSION

Federal Election Campaign Act:
Electioneering communications; definitions; published 12-21-05

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Insurance requirements; published 12-21-05
Member business loans; published 12-21-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; published 12-16-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
Bovine Spongiform encephalopathy; minimal-risk regions and importation of commodities; comments due by 1-27-06; published 11-28-05 [FR 05-23334]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Poultry product exportation to United States; eligible countries; addition—
China; comments due by 1-23-06; published 11-23-05 [FR 05-23123]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp; comments due by 1-23-06; published 11-23-05 [FR 05-23203]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Miscellaneous organic chemical manufacturing; comments due by 1-24-06; published 12-8-05 [FR 05-23666]

Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 1-27-06; published 12-28-05 [FR 05-24473]
Tennessee; comments due by 1-26-06; published 12-27-05 [FR 05-24414]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tralkoxydim; comments due by 1-23-06; published 11-23-05 [FR 05-23106]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Commercial mobile radio services—
Roaming obligations; reexamination; comments due by 1-26-06; published 1-19-06 [FR 06-00456]

Emergency Alert System; digital communications technology coverage; comments due by 1-24-06; published 11-25-05 [FR 05-23270]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
Minor uses or minor species; new drugs designation; comments due by 1-27-06; published 12-28-05 [FR 05-24512]

HEALTH AND HUMAN SERVICES DEPARTMENT

Administrative requirements:
Health Insurance Portability and Accountability Act; implementation—
Electronic health care claims attachments; comments due by 1-23-06; published 11-22-05 [FR 05-23077]

Medicare and medicaid:
Health Insurance Portability and Accountability Act; implementation—
Electronic health care claims attachments; standards; comments due by 1-23-06; published 9-23-05 [FR 05-18927]

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Resources and Services Administration

Health resources development:
Organ Procurement and Transplantation Network—
Intestines; comments due by 1-23-06; published 11-23-05 [FR 05-23149]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
New Jersey; comments due by 1-23-06; published 11-22-05 [FR 05-23028]

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:
Public land recreation permits; comments due by 1-23-06; published 11-22-05 [FR 05-23113]

LABOR DEPARTMENT

Labor-Management Standards Office

Standards of conduct:
Labor organization officer and employee reports; comments due by 1-26-06; published 10-24-05 [FR 05-21274]

NUCLEAR REGULATORY COMMISSION

Plants and materials; physical protection:
Design basis threat; comments due by 1-23-06; published 11-7-05 [FR 05-22200]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 1-23-06; published 11-23-05 [FR 05-23156]
Gulfstream; comments due by 1-23-06; published 12-9-05 [FR 05-23832]
Lycoming Engines; comments due by 1-26-06; published 12-27-05 [FR E5-07815]
Raytheon; comments due by 1-23-06; published 11-22-05 [FR 05-23055]

Airworthiness standards:
Transport category airplanes—
Seat belt attachment fittings on passenger seats; unreliable design; policy statement; comments due by 1-27-06; published 12-28-05 [FR 05-24501]

Class D airspace; comments due by 1-25-06; published 10-31-05 [FR 05-21585]

Class E airspace; comments due by 1-27-06; published 1-5-06 [FR 06-00080]

Colored Federal airways; comments due by 1-23-06; published 12-8-05 [FR 05-23759]

Offshore airspace areas; comments due by 1-23-06; published 12-8-05 [FR 05-23757]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Buy America requirements; definitions and waiver procedures amendments; comments due by 1-27-06; published 11-28-05 [FR 05-23323]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline safety:
Gas gathering line definition; safety standards for onshore lines; public meeting; comments due by 1-26-06; published 1-10-06 [FR 06-00224]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Partner's distributive share; comments due by 1-25-06; published 11-18-05 [FR 05-22281]

VETERANS AFFAIRS DEPARTMENT

Servicemembers' and veterans' group life insurance:

Traumatic injury protection; comments due by 1-23-06; published 12-22-05 [FR 05-24390]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4340/P.L. 109–169

United States-Bahrain Free Trade Agreement Implementation Act (Jan. 11, 2006; 119 Stat. 3581)

Last List January 12, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.