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Presidential Documents

Title 3—

The President

Proclamation 7979 of February 3, 2006

National Consumer Protection Week, 2006

By the President of the United States of America

A Proclamation

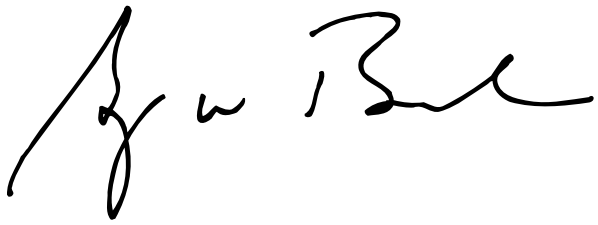
During National Consumer Protection Week, we highlight the importance of consumer education in the ongoing fight against fraud and encourage consumers to make wise decisions.

Each year, nearly 25 million adults are victims of consumer fraud. These crimes damage lives and shake consumer confidence. The Federal Trade Commission (FTC) and other organizations recommend several steps that Americans can take to help protect themselves against fraud. First, consumers should be cautious about giving out personal information such as Social Security and account numbers. Second, they should be aware of the credentials of an organization before making a transaction, especially through the mail, over the phone, or on the Internet. Third, before finalizing a purchase or agreement, the FTC suggests considering offers with care, avoiding immediate decisions, and requesting to have information in writing. In addition, when using the Internet, the FTC recommends that consumers exercise caution in responding to solicitations and that consumers use and regularly update their anti-virus software and firewall.

My Administration is committed to vigorous enforcement of the consumer protection statutes, and the Department of Justice's Office of Consumer Litigation and other Federal agencies are working diligently to that end. The FTC is working to fight unsolicited e-mail under the Controlling the Assault of Non-Solicited Pornography and Marketing Act and is establishing new rules under the Fair and Accurate Credit Transactions Act to further protect against identity theft. We are protecting American consumers through the National Do-Not-Call Registry. Millions of Americans have registered already, and individuals may call 1–888–382–1222 or visit the Do-Not-Call website at www.donotcall.gov to have their number added to the list. Citizens can learn more about ways to fight fraud from the National Consumer Protection Week website at www.consumer.gov/ncpw. By actively guarding against fraud, consumers can protect themselves and enhance the strength and integrity of our Nation's economy.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 5 through February 11, 2006, as National Consumer Protection Week. I call upon Government officials, industry leaders, and consumer advocates to provide citizens with information about how they can be responsible consumers, and I encourage all citizens to take an active role in protecting their personal information.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



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Presidential Documents

Title 3—

The President

Memorandum of February 3, 2006

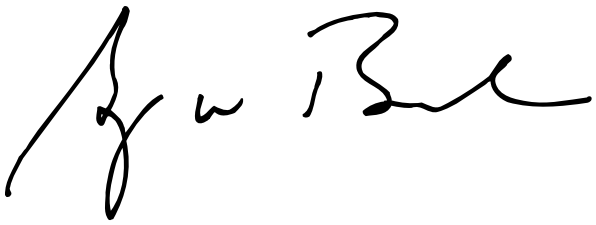
Assignment of Certain Reporting Function

Memorandum for the Secretary of Labor

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President contained within section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), to provide the specified final report to the Congress in relation to Proclamation 7959 of November 3, 2005.

This function may be further delegated to the Deputy Secretary of Labor.

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



THE WHITE HOUSE,
Washington, February 3, 2006.

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. 05–036IF; FDMS Docket Number FSIS–2005–0040]

RIN 0583–AD21

Ante-Mortem Inspection of Horses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to provide for a voluntary fee-for-service program under which official establishments that slaughter horses will be able to apply for and pay for ante-mortem inspection. The fiscal year (FY) 2006 Appropriations Act prohibits the use of appropriated funds to pay the salaries or expenses of FSIS personnel to conduct ante-mortem inspection of horses. The Joint Explanatory Statement of the Committee of Conference on the FY 2006 appropriations bill for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, however, provides that the Department of Agriculture is obliged to provide for inspection of meat for human consumption. FSIS is establishing this fee-for-service program under the Agricultural Marketing Act (AMA). Post-mortem inspection and other inspection activities authorized by the Federal Meat Inspection Act (FMIA) at official establishments that slaughter horses would continue to be paid for with appropriated funds, except for overtime or holiday inspection services.

DATES: *Effective date:* March 10, 2006. Comments must be received on or before March 10, 2006. FSIS is providing a shortened comment period because it is issuing an interim final rule and finds that it is in the public interest for it to receive comments on an expedited basis.

ADDRESSES: FSIS invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number 05–036IF.

All comments submitted in response to this interim final rule, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lynn Ellen Dickey, Ph.D., Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, Food Safety and Inspection Service, 300 12th Street, SW., Room 112 Cotton Annex Building, Washington, DC 20250–3700, (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

To prevent adulterated meat and meat food products from entering interstate commerce, the FMIA requires that FSIS inspection personnel conduct ante-mortem examination and inspection of all livestock (cattle, sheep, swine, goats, horses, mules, and other equines) before they are allowed to enter any slaughtering, packing, meat-canning, rendering, or other similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce (21 U.S.C. 603). The FMIA also requires that FSIS inspection personnel conduct post-mortem examination and inspection of the carcasses and parts thereof of all livestock to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia as articles of commerce that are capable of use as human food (21 U.S.C. 604). Additionally, the FMIA requires that FSIS inspection personnel conduct inspection of official establishments that slaughter livestock and prepare meat and meat food products thereof to determine whether the establishments maintain sanitary conditions (21 U.S.C. 608).

The Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*) requires that humane methods be used for handling and slaughtering livestock, including horses. The ante-mortem inspection provisions of the FMIA reference the HMSA and provide that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection (21 U.S.C. 603(b)).

Fiscal Year 2006 Appropriations Act

The FY 2006 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Pub. L. 109–97) was enacted on November 10, 2005. Section 794 of the Appropriations Act states that, effective 120 days after the date of its enactment, none of the FY 2006 appropriated funds may be used to

pay the salaries or expenses of personnel to inspect horses under section 3 of the FMIA (21 U.S.C. 603) or under the guidelines issued under section 903 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; Pub. L. 104–127). Section 3 of the FMIA (21 U.S.C. 603) requires that FSIS inspection personnel conduct ante-mortem examination and inspection of all livestock, including horses, before they are allowed to enter an official establishment for slaughter. Section 903 of the Federal Agriculture Improvement and Reform Act of 1996 provides that, subject to the availability of appropriations, the Secretary of Agriculture may issue guidelines for the regulation of the commercial transportation of equine for slaughter by persons regularly engaged in that activity within the United States. Such guidelines have been issued and are administered by the Animal and Plant Health Inspection Service (APHIS), rather than by FSIS.

Although the FY 2006 Appropriations Act specifically prohibits the use of appropriated funds for ante-mortem inspection of horses (section 794 of the Act), it does not preclude the use of FY 2006 appropriated funds for post-mortem inspection of horse carcasses and parts thereof or other inspection services authorized by the FMIA at official establishments that slaughter horses. The Joint Explanatory Statement of the Committee of Conference that accompanies the FY 2006 appropriations bill states, ''It is the understanding of the conferees that the Department is obliged under existing statutes to provide for the inspection of meat intended for human consumption (domestic and exported). The conferees recognize that the funding limitation in section 794 prohibits the use of appropriated funds only for payment of salaries or expenses of personnel to inspect horses'' (p. 107). Therefore, according to the Joint Explanatory Statement, conferees recognize that horse *meat* intended for human consumption must undergo inspection. Similarly, it is significant that the Joint Explanatory Statement explains that section 794 prohibits the use of appropriated funds only for payment of salaries or expenses of personnel to inspect *horses* and does not refer to any prohibition on the use of appropriated funds to inspect horse *carcasses or parts thereof.* Thus, the Joint Explanatory Statement is consistent with the FY 2006 Appropriation Act's language that specifically prohibits the use of appropriated funds to pay for ante-mortem inspection of horses but makes no such restriction on the use of appropriated funds for post-mortem inspection of horse carcasses and parts thereof. The Appropriations Act also includes no limitation on the Agency's ability to establish a voluntary fee-for-service program for ante-mortem inspection.

Section 798 of the FY 2006 Appropriations Act amends the FMIA by striking the phrase ''cattle, sheep, swine, goats, horses, mules, and other equines'' each place it appears and replacing it with the phrase ''amenable species.'' Section 798 defines ''amenable species'' as ''those species subject to the provisions of the Act [FMIA] on the day before the date of the enactment of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006; and any additional species of livestock that the Secretary considers appropriate.'' Horses slaughtered in official establishments were subject to the provisions of the FMIA on the day before the FY 2006 Appropriations Act was passed. Therefore, according to section 798 of the FY 2006 Appropriations Act, horses slaughtered for use as human food in commerce are an ''amenable species'' and continue to be subject to applicable provisions of the FMIA.

Petition on Voluntary Ante-Mortem Inspection of Horses

On November 23, 2005, the USDA received a petition on behalf of the three official establishments that slaughter horses in the United States requesting that FSIS promulgate an interim final rule to provide for voluntary, fee-for-service ante-mortem inspection of horses under the AMA. The petition also requested that the USDA provide for voluntary, fee-for-service transportation-related inspection of equines to slaughter under the Agricultural Marketing Act (AMA).

The Interim Final Rule

Because the FY 2006 Appropriations Act prohibits FSIS from using FY 2006 appropriated funds for the salaries or expenses of personnel to conduct ante-mortem inspection of horses and because the Joint Explanatory Statement makes clear that the Department is obliged to provide for inspection of meat for human consumption, FSIS is establishing a voluntary fee-for-service program under the AMA (7 U.S.C. 1622 and 1624) in which official establishments that slaughter horses can apply and pay for ante-mortem inspection. Therefore, this interim final rule is consistent with the petitioners' request that FSIS promulgate an interim final rule to provide for voluntary, fee-for-service ante-mortem inspection of horses under the AMA.

Regulations for the commercial transportation of equines for slaughter are administered by APHIS, rather than by FSIS. (*See* 9 CFR part 88, ''Commercial Transportation of Equines for Slaughter.'') Thus, FSIS referred the petitioner's request that USDA establish a program for voluntary fee-for-service transportation-related inspection of equines under the AMA to APHIS. While not all of the activities conducted by APHIS under 9 CFR part 88 are affected by the restrictions imposed by Congress on using appropriated funds during FY 2006, activities involving inspection of horses are affected. To continue to ensure the humane transportation or horses to slaughter, APHIS is prepared to establish a voluntary fee-for-service program in order to continue its inspection of horses under 9 CFR part 88.

APHIS intends to establish such a program under the authority provided in the FY 2006 Appropriations Act, which authorizes the agency to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to a trust fund account established for this purpose, to remain available until expended, without further appropriation, for providing such assistance, goods, or services. APHIS will make this program available to the three domestic entities that slaughter horses via agreements under which APHIS will be reimbursed for services provided to inspect horses delivered to the facilities. No changes to the regulations are necessary. APHIS anticipates that the costs for each facility would average approximately $10,100 to cover the salary of one animal health technician for the time necessary to inspect horses at the facility for the remainder of FY 2006.

In this interim final rule, FSIS is amending part 352 of the Federal meat inspection regulations to include this program. Part 352 of Title 9 of the CFR includes provisions for the voluntary inspection and certification service for wholesomeness relating to the slaughter and processing of exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) (§ 352.2).

As is explained above, the FMIA requires that horses, like all amenable species, undergo examination and inspection before they can enter an establishment in which they are to be slaughtered for their meat that will be used for human consumption. Thus, with the passage of the FY 2006 Appropriations Act, if FSIS does not establish a means for official establishments that slaughter horses to obtain ante-mortem inspection, these establishments will not be able to operate and presumably will be forced out of business.

In this interim final rule, FSIS is establishing a program under which official establishments that slaughter horses can pay for ante-mortem inspection under the AMA. Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides the Secretary of Agriculture with the authority: ''To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection.''

The fees that this interim final rule will require for ante-mortem inspection of horses are necessary to cover the costs of inspection services rendered. Under this rule, official establishments that slaughter horses will pay for ante-mortem inspection at the rates that apply to exotic animal establishments under voluntary inspection (§ 352.5). Therefore, the fees that official establishments that slaughter horses will pay for ante-mortem inspection are reasonable.

In this interim final rule, FSIS is amending part 352 of the regulations so that the existing regulations that apply to exotic species would become Subpart A. FSIS is also adding a new Subpart B that will apply to horses. In Subpart B, FSIS is specifying which provisions in part 352 Subpart A will also apply to official establishments that slaughter horses. Subpart B specifies that official establishments that wish to slaughter horses can apply for voluntary ante-mortem inspection according to § 352.3, and that such establishments will pay the base time, overtime, and holiday rates for ante-mortem inspection that apply to exotic species establishments under voluntary inspection according to § 352.5. Such inspections shall be made only in pens on the premises of the establishment at which the horses are offered for slaughter, in accordance with § 309.1(b). Subpart B also specifies that official establishments that slaughter horses will be required to meet all other applicable requirements in §§ 352.8 and 352.9 to receive voluntary ante-mortem inspection. Specifically, under § 352.8, such establishments will be required to notify the District Manager or designee, in advance, of the hours when ante-mortem inspection is desired and will be required to provide inspection personnel access at all times to every part of the official establishment. Under § 352.9, official establishments that slaughter horses and receive voluntary ante-mortem inspection will be required to provide such information as may be required on forms provided by FSIS.

This interim final rule requires that, if an establishment that wishes to slaughter horses meets the applicable requirements in part 352 Subpart A, FSIS inspection personnel will conduct ante-mortem inspection at the establishment in accordance with § 352.10, and all provisions in part 309 that pertain to horses will continue to apply. Thus, under this interim final rule, official establishments that slaughter horses will continue to receive ante-mortem inspection services consistent with those provided to other official establishments that slaughter livestock. In addition, under this rule, FSIS can deny or withdraw ante-mortem inspection services at horse slaughter establishments for any applicable reason under § 352.6.

Finally, this interim final rule provides that the official marks and devices used to identify Federally-inspected and passed horse carcasses, and parts of horse carcasses, and horse meat food products will continue to be those set forth in § 312.3. Although this interim final rule will provide that official establishments that slaughter horses receive ante-mortem inspection services pursuant to a fee-for-service program governed by the AMA, all other inspection services conducted at such establishments, including post-mortem inspection of horse carcasses, parts thereof, and horse meat food products, will continue to be rendered pursuant to, and in accordance with the requirements of the FMIA. Therefore, it is appropriate that inspected and passed horse carcasses, parts of horse carcasses, and horse meat food products continue to receive the official inspection legend in § 312.3.

As is explained above, in accord with the FY 2006 Appropriations Act, horses slaughtered for use in human food in commerce are an ''amenable species'' and continue to be subject to applicable provisions in the FMIA. Therefore, all requirements in the regulations authorized by the FMIA that pertain to official establishments that slaughter horses will continue to apply. For example, as is currently required, the slaughter or other preparation of horses will be required to be done in establishments separate from any establishment in which cattle, sheep, swine, or goats are slaughtered or their products prepared (§ 305.2(b)). Official establishments that slaughter horses will also be required to continue to use humane methods for handling and slaughtering horses (§ 352.10).

The FY 2006 Appropriations Act will be in effect until October 1, 2007 (the first day of FY 2007). FSIS will make any necessary changes to this interim final rule based on any applicable legislation in future fiscal years.

Executive Order 12866 and the Regulatory Flexibility Act

This interim final rule has been determined to be non-significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Need for the Rule

The FY 2006 Appropriations Act for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies prohibits the use of appropriated funds for ante-mortem inspection of horses at official establishments. The FMIA requires that horses undergo examination and inspection before they can enter an official establishment in which they are to be slaughtered. This interim final rule is necessary to allow official establishments that slaughter horses to continue to operate in FY 2006.

Description of the Affected Industry

There are three small official establishments that slaughter horses in the United States. According to the Pathogen Reduction; Hazard Analysis and Critical Control Point final rule, a small establishment is one that has 10 or more but fewer than 500 employees (61 FR 38819). The establishments that will be affected by this rule slaughter horses to be processed into human food overseas.

Costs to Industry

To be consistent with the Joint Explanatory Statement and to allow horse slaughter establishments to

continue to operate, this interim final rule provides that these establishments may apply and pay for ante-mortem inspection under the regulations for the voluntary inspection of exotic animals (part 352). According to these regulations, the base time rate is $43.64 per program employee (§ 391.2). FSIS personnel typically conduct ante-mortem inspection for 10 to 15 hours per week at each official establishment that slaughters horses. Each establishment will pay approximately $22,693 ($43.64 * 10 hours * 52 weeks) to $34,039 ($43.64 * 15 hours * 52 weeks) for base time ante-mortem inspection in FY 2006. Therefore, total costs of the rule will range from $68,079 to $102,117 in FY 2006.

Net Benefits

The benefits of this rule are those revenues that horse slaughter establishments realize by continuing to operate in FY 2006. The costs of this rule are the user fees, estimated above, which official establishments that slaughter horses will have to pay for ante-mortem inspection in order to continue operating in FY 2006. These fees are reasonable, and the establishments should be able to continue to realize a profit after paying these expenses.

Regulatory Flexibility Analysis

FSIS has examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–012). FSIS has made an initial determination that this rule will not have a significant effect on a substantial number of small entities.

All the establishments affected by this rule qualify as small under the Small Business Administration definition of a small business. FSIS has estimated that each official establishment affected by this proposal would pay approximately $22,693 to $34,039 in FY 2006 for base time ante-mortem inspection. These fees are reasonable, and, therefore, not likely to have a significant negative effect on affected establishments.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Need for Immediate Action

In accordance with the Administrative Procedures Act (5 U.S.C. 553), it is the practice of FSIS to offer interested parties the opportunity to comment on proposed regulations. However, adoption of this interim final rule without prior notice and an opportunity to comment is appropriate and necessary following enactment of the FY 2006 Appropriations Act. The FY 2006 Appropriations Act prohibits the use of appropriated funds for ante-mortem inspection of horses, effective 120 days after the date of its enactment (November 10, 2005). Nevertheless, horses slaughtered for human food continue to be subject to all requirements of the FMIA, including the requirements for ante-mortem inspection, post-mortem inspection, and other inspection activities. As is explained above, the FY 2006 Appropriations Act does not preclude the use of appropriated funds for post-mortem inspection and other inspection activities conducted under the FMIA at official establishments that slaughter horses. Furthermore, the Appropriations Act includes no limitation on the Agency's ability to establish a voluntary fee-for-service program for ante-mortem inspection.

This interim final rule must be published in the **Federal Register** and must be effective within 120 days following enactment of the FY 2006 Appropriations Act to ensure continuity of operations at official establishments that slaughter horses. With the passage of the FY 2006 Appropriations Act, if FSIS does not establish a means for official establishments that slaughter horses to obtain ante-mortem inspection, these establishments will not be able to operate and presumably will be forced out of business. This interim final rule is necessary to avoid disruption of operations at official establishments that slaughter horses. Therefore, the Administrator has determined that prior notice and opportunity for public comment are impracticable and contrary to the public interest under 5 U.S.C. 553(b), and that there is good cause under 5 U.S.C. 553(d) for making the action effective as specified herein.

Paperwork Reduction Act of 1996

There is no new paperwork associated with this action. Under this interim final rule, official establishments that slaughter horses will be required to submit an application for ante-mortem inspection according to § 352.3. The OMB approval number for applications for voluntary inspection is 0583–0082. The interim final rule contains no other paperwork requirements.

FSIS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and, in particular, minorities, women, and persons with disabilities are aware of this interim final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Interim_&_Final_Rules_Index/index.asp.* The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The website is located at *http://www.regulations.gov/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations,

directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

List of Subjects in 9 CFR Part 352

Food labeling, Meat inspection, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR part 352 of the Federal meat inspection regulations as follows:

PART 352—EXOTIC ANIMALS AND HORSES; VOLUNTARY INSPECTION

■ 1. The heading of part 352 is revised to read as set forth above.

■ 2. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

■ 3. A new subpart A heading is added before § 352.1 to read as follows:

Subpart A—Exotic Animals

■ 4. A new Subpart B is added to read as follows:

Subpart B—Horses

§ 352.19 Ante-mortem inspection and applicable requirements.

Notwithstanding part 309 of this subchapter, an official establishment that wishes to slaughter horses can apply for voluntary ante-mortem inspection according to § 352.3. Such establishments shall pay the applicable base time, overtime, and holiday rates for ante-mortem inspection in accordance with § 352.5. Such ante-mortem inspection shall be made in pens on the premises of the establishment at which the horses are offered for slaughter in accordance with § 309.1(b), and such establishments also shall comply with all applicable provisions of §§ 352.8 and 352.9. If the establishment complies with all these requirements for ante-mortem inspection, FSIS will conduct ante-mortem inspection at that establishment in accordance with § 352.10, and all other provisions in part 309 of this subchapter that pertain to horses will apply. FSIS may deny or withdraw ante-mortem inspection services at official establishments that slaughter horses for any applicable reason under § 352.6. Official marks and devices to identify inspected and passed horse carcasses and parts of carcasses, or horse meat food products shall be those in § 312.3 of this subchapter.

Done at Washington, DC, on February 2, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. 06–1101 Filed 2–7–06; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective February 8, 2006. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 5.25 percent to 5.50 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 5.75 percent to 6.00 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the Federal funds rate (from 4.25 percent to 4.50 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> Although recent economic data have been uneven, the expansion in economic activity appears solid. Core inflation has stayed relatively low in recent months and longer-term inflation expectations remain contained. Nevertheless, possible increases in resource utilization as well as elevated energy prices have the potential to add to inflation pressures.
>
> The Committee judges that some further policy firming may be needed to keep the risks to the attainment of both sustainable economic growth and price stability roughly in balance. In any event, the Committee will respond to changes in economic prospects as needed to foster these objectives.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.50	January 31, 2006.
New York	5.50	January 31, 2006.
Philadelphia	5.50	January 31, 2006.
Cleveland	5.50	January 31, 2006.
Richmond	5.50	January 31, 2006.
Atlanta	5.50	January 31, 2006.
Chicago	5.50	January 31, 2006.
St. Louis	5.50	February 1, 2006.
Minneapolis	5.50	February 2, 2006.
Kansas City	5.50	January 31, 2006.
Dallas	5.50	January 31, 2006.
San Francisco	5.50	January 31, 2006.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	6.00	January 31, 2006.
New York	6.00	January 31, 2006.
Philadelphia	6.00	January 31, 2006.
Cleveland	6.00	January 31, 2006.
Richmond	6.00	January 31, 2006.
Atlanta	6.00	January 31, 2006.
Chicago	6.00	January 31, 2006.
St. Louis	6.00	February 1, 2006.
Minneapolis	6.00	February 2, 2006.
Kansas City	6.00	January 31, 2006.
Dallas	6.00	January 31, 2006.
San Francisco	6.00	January 31, 2006.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 2, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–1158 Filed 2–7–06; 8:45 am]

BILLING CODE 6210–02–P

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22401; Directorate Identifier 2004–NM–93–AD; Amendment 39–14480; AD 2006–03–16]

RIN 2120–AA64

Airworthiness Directives; Hamburger Flugzeugbau GmbH Model HFB 320 HANSA Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Hamburger Flugzeugbau GmbH Model HFB 320 HANSA airplanes. This AD requires revising the Limitations section of the HFB 320 Hansa Airplane Flight Manual to prohibit operation of the airplane past its designed life limit for the primary structure, which is 15,000 flight hours or 15,000 fight cycles, whichever occurs first; and to require contacting the FAA for approval of analysis that the airplane is safe to continue operation beyond the designed life limit. This AD results from a report that all airplanes in operation might have met or exceeded the designed life limit for the primary structure. We are issuing this AD to prevent continued operation of an airplane beyond its designed life limit for the primary structure, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective March 15, 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.

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 all Hamburger Flugzeugbau GmbH Model HFB 320 HANSA airplanes. That NPRM was published in the **Federal Register** on September 14, 2005 (70 FR 54314). That NPRM proposed to require revising the Limitations section of the HFB 320 Hansa Airplane Flight Manual (AFM) to prohibit operation of the airplane past its designed life limit for the primary structure, which is 15,000 flight hours or 15,000 fight cycles, whichever occurs first; and to require contacting the FAA for approval of analysis that the airplane is safe to continue operation beyond the designed life limit.

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.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

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

There are 4 airplanes of U.S. registry that will be affected by this AD. The revision to the Limitations section will take about 1 work hour per airplane at an average labor rate of $65 per work hour. Based on these figures, the cost of the AFM revision for U.S. operators will be $260, or $65 per airplane. We recognize that this AD may impose certain additional operational costs. However, we cannot calculate those costs because we cannot predict the extent of any necessary repairs to ensure the continued airworthiness of the affected airplanes.

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, 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):

2006–03–16 Hamburger Flugzeugbau GmbH: Amendment 39–14480. Docket No. FAA–2005–22401; Directorate Identifier 2004–NM–93–AD.

Effective Date

(a) This AD becomes effective March 15, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Hamburger Flugzeugbau GmbH Model HFB 320 HANSA airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that all airplanes in operation might have met or exceeded the designed life limit for the primary structure. We are issuing this AD to prevent continued operation of an airplane beyond its designed life limit for the primary structure, which could result in reduced structural integrity 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.

Airworthiness Limitations Revision

(f) Within 30 days after the effective date of this AD: Revise the Limitations section of the HFB 320 Hansa Airplane Flight Manual (AFM) to state the following (or insert a copy of this AD into the Limitations section):

''Do not operate the airplane beyond 15,000 total flight cycles, or 15,000 total flight hours, whichever occurs first.''

(g) This limitation may be removed from the HFB 320 Hansa AFM after the Manager, International Branch, ANM–116, FAA, approves analysis that would substantiate continued safe operation beyond the designed life limit of 15,000 total flight cycles, or within 15,000 total flight hours on the airplane, whichever occurs first.

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 § 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) German airworthiness directive 2002–158, effective October 3, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on January 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–1147 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22748; Directorate Identifier 2005–NM–127–AD; Amendment 39–14471; AD 2006–03–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires modifying the passenger door and installing new placards. This AD results from reports of the airstairs-type passenger door opening during flight. We are issuing this AD to prevent rapid decompression of the airplane, or ejection of a passenger or crew member out the door during flight.

DATES: This AD becomes effective March 15, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 15, 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; 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 Fokker Model F.28 Mark 0070 and 0100 airplanes. That NPRM was published in the **Federal Register** on October 21, 2005 (70 FR 61239). That NPRM proposed to require modifying the passenger door and installing new placards.

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
Modify door and install placards	17–18	$65	$2,645	$3,750–3,815	2	$7,500–7,630

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):

2006–03–07 Fokker Services B.V.: Amendment 39–14471. Docket No. FAA–2005–22748; Directorate Identifier 2005–NM–127–AD.

Effective Date

(a) This AD becomes effective March 15, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, as identified in Fokker Service Bulletin SBF100–52–069, Revision 3, dated December 18, 2002.

Unsafe Condition

(d) This AD results from reports of the airstairs-type passenger door opening during flight. We are issuing this AD to prevent rapid decompression of the airplane, or ejection of a passenger or crew member out the door during flight.

Compliance

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

Installation

(f) Within 30 months after the effective date of this AD, modify the passenger door and install new placards, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–069, Revision 3, dated December 18, 2002; including Fokker Manual Change Notification—Operational Documentation MCNO–F100–031, dated December 3, 2001; and Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–064, Revision 2, dated December 18, 2002; and including the drawings listed in Table 1 of this AD. (To conform to certain Office of the Federal Register requirements for incorporating these materials by reference, the table identifies the date of the service bulletin for undated drawings.)

TABLE 1.—DRAWINGS INCLUDED IN SERVICE BULLETIN SBF100–52–069

Fokker drawing	Sheet	Issue	Date
W41074	065	DB	December 18, 2002.
W41418	003	L	December 18, 2002.
W41418	005	E	December 18, 2002.
W41418	006	E	December 18, 2002.
W41418	007	E	December 18, 2002.
W41418	008	M	December 18, 2002.
W42310	001	D	August 14, 2000.
W42310	002	B	August 14, 2000.
W42310	003	F	June 11, 2001.
W59243	024	AU	June 12, 2001.
W59261	017	W	August 9, 2002.
W59261	025	S	July 3, 2001.

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 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

(h) Dutch airworthiness directive 2002–057, dated April 29, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100–52–069, Revision 3, dated December 18, 2002; including Fokker Manual Change Notification—Operational Documentation MCNO–F100–031, dated December 3, 2001; and including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–064, Revision 2, dated December 18, 2002; and including the drawings listed in Table 2 of this AD, to do 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, 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 2.—DRAWINGS INCLUDED IN SERVICE BULLETIN SBF100–52–069

Fokker drawing	Sheet	Issue	Date
W41074	065	DB	December 18, 2002.
W41418	003	L	December 18, 2002.
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W41418	006	E	December 18, 2002.
W41418	007	E	December 18, 2002.
W41418	008	M	December 18, 2002.
W42310	001	D	August 14, 2000.
W42310	002	B	August 14, 2000.
W42310	003	F	June 11, 2001.
W59243	024	AU	June 12, 2001.
W59261	017	W	August 9, 2002.
W59261	025	S	July 3, 2001.

Issued in Renton, Washington, on January 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–988 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30478; Amdt. No. 3152]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 8, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

For Purchase: Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription: Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 27, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 16 March 2006*

Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 16, Amdt 1
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 34, Amdt 1

** * * Effective 13 April 2006*

Toksook Bay, AK, Toksook Bay, RNAV (GPS) RWY 34, Orig

Toksook Bay, AK, Toksook Bay, Takeoff Minimums and Textual DPs, Orig
Payson, AZ, Payson, Takeoff Minimums and Textual DP, Amdt 1
San Bernardino, CA, San Bernardino Intl, ILS OR LOC RWY 6, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 22L, Orig
Chicago, IL, Chicago Midway Intl, VOR/DME RNAV OR GPS RWY 22L, Amdt 3B, CANCELLED
Moline, IL, Quad City Intl, NDB RWY 9, Amdt 28, CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RNAV RWY 4R, Amdt 1A, CANCELLED
Bangor, ME, Bangor Intl, ILS OR LOC RWY 33, Amdt 11
Polson, MT, Polson, RNAV (GPS) RWY 18, Orig-A
Keene, NH, Dillant-Hopkins, ILS OR LOC RWY 2, Amdt 3
Socorro, NM, Socorro Muni, NDB–B, Orig-A, CANCELLED
Idabel, OK, McCurtain County Regional, NDB–A, Orig, CANCELLED
Chester, SC, Chester Catawba Regional, VOR/DME–A, Amdt 1, CANCELLED
Lancaster, SC, Lancaster County-McWhirter Fld, VOR/DME–A, Amdt 6, CANCELLED
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 7, Amdt 1
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 13, Amdt 1
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 25, Amdt 1
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 31, Orig
Pierre, SD, Pierre Regional, ILS OR LOC RWY 31, Amdt 12
Salt Lake City, UT, Salt Lake City Intl, VOR/DME RWY 34R, Amdt 9

The FAA published an Amendment in Docket No. 30475, Amdt No. 3150 to Part 97 of the Federal Aviation Regulations (Vol 71, FR No. 17, page 4244; dated Jan 26, 2006) under section 97.33 effective 16 FEB 2006, which is hereby rescinded:

Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 13C, Orig
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 22L, Orig

[FR Doc. 06–1119 Filed 2–7–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4169–F–04]

RIN 2502–AG87

Delegation of Insuring Authority To Direct Endorsement Mortgages; Announcement of Information Collection Effective Date

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date for the information collection statement contained in a HUD interim rule published in the **Federal Register** on June 2, 1997. An information collection requirement cannot be instituted unless it is cleared by the Office of Management and Budget (OMB) and assigned an OMB control number. The information collection requirements of the June 2, 1997 interim rule were cleared by OMB on July 10, 1997, and are currently covered by OMB Control Number 2502–0059. Accordingly, the information collection statement in HUD's June 2, 1997, interim rule took effect upon approval by OMB on July 10, 1997.

DATES: *Effective Date:* The amendment to § 203.255(f), published in the **Federal Register** on June 2, 1997, at 62 FR 30222, is effective as of July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen O. McDermott, Senior Management Analyst, Policy Planning and Analysis Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–7000, telephone (202) 708–0826 (this is not a toll free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On June 2, 1997 (62 FR 30222), HUD published an interim rule, entitled ''Delegation of Insuring Authority to Direct Endorsement Mortgagees,'' which, in part, provided that Lender Insurance mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request (24 CFR 203.255(f)).

At the time of the publication of the interim rule, the information collection requirements contained in § 203.255(f) had been submitted to, but not yet approved by, the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless and until the collection displays a valid OMB control number.

OMB approved the information collection contained in 24 CFR 203.255(f), as amended by HUD's June 2, 1997, interim rule, on July 10, 1997. Accordingly, the information collection requirements were effective upon that date. The information collection requirements at § 203.255(f) were originally assigned OMB control number 2502–0365. In July 2000, OMB control number 2502–0059 replaced OMB control number 2502–0365 as the valid control number that authorizes the information collection requirements. OMB control number 2502–0059 remains the currently approved control number for § 203.255(f).

Dated: January 30, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. 06–1121 Filed 2–7–06; 8:45 am]
BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[Docket No. OAR–2005–0154; FRL–8028–8]

Final Rule Making Findings of Failure To Submit Required State Implementation Plans for Phase II of the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action making findings, under the Clean Air Act (CAA), that Indiana, Illinois, Kentucky, Michigan, and Virginia failed to make complete State implementation plan (SIP) submittals required under the CAA. Under the CAA and Phase II of EPA's nitrogen oxides (NO_X) SIP Call regulations, these States were required to submit SIP measures providing for reductions in the emissions of NO_X, an ozone precursor.

DATES: *Effective Date:* This final rule is effective on March 10, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OAR–2005–0514. 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 at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The public reading room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the public reading room is (202) 566–1744, and the Air Docket telephone number is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711; telephone number (919) 541–5665; fax number (919) 541–0824; e-mail *king.jan@epa.gov.* Legal questions should be addressed to Winifred Okoye, Office of General Counsel, (2344A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–5446; e-mail *okoye.winifred@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

I. Background
II. What Action Is EPA Taking Today?
III. Statutory and Executive Order Reviews
A. Notice and Comment Under the Administrative Procedures Act
B. Executive Order 12866: Regulatory Planning and Review
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Unfunded Mandates Reform Act
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer Advancement Act
K. Congressional Review Act

I. Background

On October 27, 1998 (63 FR 57356), we took final action in the NO_X SIP Call Rule, under sections 110(a)(2)(D) and 110(k)(5) of the CAA, to prohibit specified amounts of emissions of one of the main precursors of ground-level ozone, NO_X, in order to reduce ozone transport across State boundaries in the eastern half of the United States. Based on extensive air quality modeling and analyses, we found that sources in 22 States and the District of Columbia (DC) (23 States) emit NO_X in amounts that significantly contribute to nonattainment of both the 1-hour and 8-hour ozone national ambient air quality standards (NAAQS) in downwind States. We set forth requirements for each of the affected upwind States to submit SIP revisions prohibiting those amounts of NO_X emissions which significantly contribute to downwind air quality problems. In the NO_X SIP Call Rule, as modified by the March 2, 2000, technical amendments (65 FR 11222), we also established statewide NO_X emissions budgets for the affected States. The budgets were calculated by assuming the emissions reductions that would be achieved by applying available, highly cost-effective controls to source categories of NO_X emissions. States had the flexibility to adopt the appropriate mix of controls to meet their statewide NO_X emissions budgets.

A number of parties, including certain States as well as industry and labor groups, challenged our NO_X SIP Call Rule by filing petitions for review in the U.S. Court of Appeals for the District of Columbia (DC Circuit or Court). On March 3, 2000, the DC Circuit issued an opinion, largely upholding the 1-hour basis for the NO_X SIP Call.[1]

In response to the Court decision, EPA divided the NO_X SIP Call Rule into two phases, now known as Phase I and Phase II. Under Phase I of the rule, EPA moved ahead with implementing those aspects of the rule that were upheld by the Court for 19 States and the District of Columbia. The EPA required these States to submit SIPs that comply with Phase I by October 30, 2000. Because the Court vacated the rule as to Wisconsin, Georgia, and Missouri, these States were not required to submit Phase I SIPs.

On April 21, 2004, EPA published a final response to the Court decision that addressed the outstanding issues remanded or otherwise vacated by the Court, and which is Phase II of the NO_X SIP Call rule. The affected States were required to submit Phase II SIPs by April 1, 2005.[2]

II. What Action Is EPA Taking Today?

Today, EPA is making findings of failure to submit complete SIP revisions, including adopted rules, in response to Phase II of the NO_X SIP Call.[3] The States that are receiving findings of failure to submit Phase II SIP revisions are Indiana, Illinois, Kentucky, Michigan, and Virginia. This finding defines the start of a clock for EPA to develop a federal implementation plan (FIP) under section 110(c) of the CAA.

Recently, EPA sent letters to State officials of the affected States describing the status of the States' effort in completing a Phase II SIP. The letters also noted that we would be publishing findings of failure to submit in the **Federal Register**. (These letters are included in the docket for this rulemaking). The EPA intends to continue working with these States so that they can submit approvable adopted rules as soon as possible.

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedures Act

This is a final EPA action, but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes, consistent with past practice (see for example, 61 FR 36294, July 10, 1996), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no significant EPA judgment is involved in making a finding of failure to submit SIPs or elements of SIPs required by the CAA, where States have made no submissions to meet the requirement by the statutory date.

B. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

[1] In light of various legal challenges to our promulgation of the 8-hour ozone NAAQS (62 FR 38856; July 18, 1997), we requested, and the Court granted our motion to stay consideration of issues regarding the 8-hour basis for the NO_X SIP Call. Additionally, on September 18, 2000, we stayed the 8-hour basis for the NO_X SIP Call indefinitely. (65 FR 56245). See also 40 CFR 51.121(q).

[2] The States which are required to submit Phase II SIPs are Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. With respect to Georgia, however, EPA has stayed this requirement in order to respond to a petition of reconsideration filed by the Georgia Coalition for Sound Environmental Policy. (70 FR 5159; August 31, 2005).

[3] Our stay of the 8-hour basis of the NO_X SIP Call Rule is with respect to all aspects of the rule as they relate to the 8-hour requirements, thus, the affected States remain under no obligation to submit SIP revisions that address the 8-hour basis for the NO_X SIP Call. Today's findings, therefore, are only for purposes of the 1-hour basis, and not the 8-hour basis of the NO_X SIP Call Rule.

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

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

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

Pursuant to the terms of Executive Order 12866, a determination has been made that this rule is not a ''significant regulatory action'' because none of the above factors apply. As such, this final action was not formally submitted to the Office of Management and Budget (OMB) for review.

C. Paperwork Reduction Act

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

D. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more in any 1 year by either State, local, or Tribal governments in the aggregate or to the private sector in any 1 year. It does not create any additional requirements beyond those of the NO_X SIP Call (63 FR 57356). This rule responds to the requirement in the CAA for States to submit SIPs to satisfy requirements of the NO_X SIP Call. This action simply finds that States have failed to submit SIPs to address a pre-existing statutory requirement under the CAA. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have ''Tribal implications'' as specified in Executive Order 13175. This rule responds to the requirement in the CAA for States to submit SIPs to satisfy certain elements required under section 110(a)(2) of the CAA for the NO_X SIP Call. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children.

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

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

J. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act

of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 10, 2006.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 27, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 06–1175 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0014; FRL–8027–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent degreasers. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 10, 2006 without further notice, unless EPA receives adverse comments by March 10, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–CA–0014, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our''refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1122	Solvent Degreasers	10/01/04	01/13/05

On February 16, 2005, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix se 6349V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 1122 into the SIP on April 2, 1999. The SCAQMD adopted revisions to the SIP-approved version on October 1, 2004, and CARB submitted them to us on January 13, 2005.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The current rule amendments strengthen the requirements for the exemption of small degreasers from rule requirements, based on the findings of a technology assessment. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates a 1-hour ozone nonattainment area (see 40 CFR part 81), so Rule 1122 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The revised rule contains more stringent criteria for exempting small degreasers from rule requirements. Except for some narrowly defined applications, small degreasers may only be exempted if they are vented to a VOC emissions control system. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

EPA has no recommendations to further improve this rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 10, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 10, 2006. This will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(335)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(335) * * *

(i) * * *

(D) South Coast Air Quality Management District.

(*1*) Rule 1122, adopted on October 1, 2004.

* * * * *

[FR Doc. 06–1171 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2005–AZ–0006; FRL–8029–2]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Finding of Attainment for Ajo Particulate Matter of 10 Microns or Less (PM_{10}) Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to determine that the Ajo moderate PM_{10} nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2002–2004. EPA also finds that the Ajo area has continued to attain the PM_{10} NAAQS since 2004. Based on this determination, EPA is also determining that certain Clean Air Act requirements are not applicable for so long as the Ajo area continues to attain the PM_{10} NAAQS.

DATES: This direct final rule is effective on April 10, 2006 without further notice, unless EPA receives adverse comment by March 10, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2005–AZ–0006 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *tax.wienke@epa.gov.*
- Fax: (415) 947–3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.
- Hand Delivery: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2005–AZ–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. 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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at

the Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, (520) 622–1622, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background

A. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Finding?

The NAAQS are safety thresholds for certain ambient air pollutants set by EPA to protect public health and welfare. Particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers, or PM_{10}, is the subject of this action. PM_{10} is among the ambient air pollutants for which EPA has established health-based standards.

PM_{10} causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. (See 40 CFR 50.6). The 24-hour primary PM_{10} standard is 150 micrograms per cubic meter ($\mu g/m^3$) with no more than one expected exceedance per year. The annual primary PM_{10} standard is 50 $\mu g/m^3$ as an annual arithmetic mean. The secondary PM_{10} standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

B. What Is the Designation and Classification of This PM_{10} Nonattainment Area?

Upon enactment of the 1990 Clean Air Act Amendments (CAA or the Act), PM_{10} areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for PM_{10} by operation of law and classified ''moderate.'' These areas included all former Group I PM_{10} planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 **Federal Register** document). A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 Amendments, known as ''initial'' PM_{10} nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694). All other areas in the nation not designated nonattainment at enactment were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act).

Ajo, Arizona was among the areas listed in the March 15, 1991 **Federal Register** action (see 56 FR at 11103) as meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act and was designated nonattainment for PM_{10} by operation of law and classified ''moderate.'' In accordance with section 189(a)(2) of the CAA, Arizona was to submit a state implementation plan (SIP) by November 15, 1991 demonstrating attainment of the PM_{10} standards by December 31, 1994 for the Ajo area.[1]

[1] Arizona submitted a moderate area plan for the Ajo area on November 14, 1991 but EPA has not taken action on it.

C. How Do We Make Attainment Determinations?

Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM_{10} nonattainment areas attained the NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon an area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement.

Generally, we will determine whether an area's air quality is meeting the PM_{10} NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring sites (NAMS) in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data entered into the AQS has been determined to meet federal monitoring requirements (see 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A and B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM_{10} standard is achieved when the annual arithmetic mean PM_{10} concentration over a three-year period is equal to or less than 50 $\mu g/m^3$. Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM_{10} concentrations greater than 150 $\mu g/m^3$. The 24-hour standard is attained when the expected number of days with levels above 150 $\mu g/m^3$ (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM_{10}. See 40 CFR part 50 and appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

II. What Is the Basis for EPA's Determination That the Ajo Area Has Attained the PM_{10} NAAQS?

The Ajo PM_{10} nonattainment area is located in western Pima County in southern Arizona. The town of Ajo is

located approximately in the center of this 47 square mile nonattainment area. Ajo is one of several early settlements in Arizona in which mining and copper smelting was of prominent importance. When the New Cornelia mine, operated by Phelps Dodge, closed in 1986, the population of the Ajo area significantly declined. More recent growth in the Ajo area may be attributed to additional employers in the local economy, as well as retirees moving into the area. Employment is mainly in the commercial, service, and tourism sectors.

Ajo has one SLAMS monitor operated by the Arizona Department of Environmental Quality (ADEQ). Table 1 summarizes the one-in-six day PM_{10} data collected from 2002–2004. We deemed the data from this site valid and the data has been submitted by the ADEQ to be included in AQS.

TABLE 1.—SUMMARY OF 24 HOUR AND ANNUAL PM_{10} CONCENTRATIONS ($\mu g/m^3$) FOR AJO, 2002–2004

	Year		
	2002	2003	2004
Maximum 24 hour concentration	50	139	43
Annual average	18.7	22.7	19.3
3-year annual average	21		

The PM_{10} concentrations reported at the Ajo monitoring site showed no measured exceedances of the 24-hour PM_{10} NAAQS between 2002 and 2004, or since 2004.[2] Thus, the three-year average was less than 1.0, which indicates Ajo has attained the 24-hour PM_{10} NAAQS.

Review of the annual standard for calendar years 2002, 2003, and 2004 reveals that Ajo also attained the annual PM_{10} NAAQS. There was no violation of the annual standard for the three-year period from 2002 through 2004, or since 2004. See footnote 2.

III. What Are the Applicable Planning Requirements for the Ajo Area as a Result of EPA's Attainment Determination?

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble [3] describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM_{10} nonattainment area SIP provisions. The General Preamble provides a detailed discussion of our interpretation of the title I requirements.

In nonattainment areas where monitored data demonstrates that the NAAQS have already been achieved, EPA has determined that certain requirements of part D, subparts 1 and 2 of the Act do not apply. Therefore we do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2'' (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71612, 71645–71646 (November 29, 2005). EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' and our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM_{10}. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM_{10}, ozone or $PM_{2.5}$.[4]

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS because the stated purpose of RFP is to ensure attainment by the applicable date. 57 FR at 13564. EPA believes the same reasoning applies to the PM_{10} provisions of part D, subpart 4. Section 189(c)(1), applicable to PM_{10} nonattainment areas, states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, and such milestones are designed to show reasonable further progress ''toward attainment by the applicable date'', as defined by section 171. Thus it is clear that once the area has attained the standard, no further milestones are necessary or meaningful.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for ''a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date. * * *'' As with the RFP requirements, if an area is already monitoring attainment of the standards, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble (57 FR at 13564), the December 14, 2004 memorandum and of the section 182(b) and (c) requirements set forth in the May 10, 1995 memorandum.

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of section 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of section 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard, because those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; May 10, 1995 memorandum at 5–6.)

Both Sections 172(c) and 189(a)(1)(C) require ''provisions to assure that reasonably available control measures'' (RACM) are implemented in a nonattainment area. However, the Ajo area was able to attain the PM_{10} NAAQS without any additional measures being implemented. The General Preamble, 57 FR at 13560, states that EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration. Thus,

[2] We have received AQS data from ADEQ through September 30, 2005 and the Ajo nonattainment area continues to attain both PM_{10} standards. States are required to report data to the AIRS AQS on a rolling basis and have until 90 days from the end of a given quarter to submit quality-assured monitoring data into AQS. See 40 CFR 58.28.

[3] ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992).

[4] Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club* v. *EPA,* 99F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion).

for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies.

Here, as in both our Phase 2 final rule and ozone and $PM_{2.5}$ clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, should EPA at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS has violated the relevant standard, the area would again be required to submit the pertinent CAA requirements for the area.[5]

IV. EPA's Final Action

Based on quality-assured data meeting the requirements of 40 CFR part 50, appendix K, we find that the Ajo, Arizona nonattainment area has attained the PM_{10} NAAQS. This action is not a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved a maintenance plan as required under section 175(A) of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 will remain moderate nonattainment for this area until such time as Arizona meets the CAA requirements for redesignation of the Ajo area to attainment. See footnote 5.

EPA also finds that, because the Ajo area has continued to attain the NAAQS, the following CAA requirements no longer apply: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of 189(a)(1)(c), the RFP provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. This action will be effective April 10, 2006, without further notice unless the EPA receives relevant adverse comments by March 10, 2006.

If we receive such comments, then we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 10, 2006, and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data and does not impose any additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 97249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[5] Note, however, that on December 20, 2005, EPA proposed revisions to the NAAQS for particulate matter. See 71 FR 2620, January 17, 2006. The proposed revisions address two categories of particulate matter: Fine particles which are particles 2.5 micrometers in diameter and smaller; and ''inhalable coarse'' particles which are particles between 2.5 and 10 micrometers ($PM_{10-2.5}$). Upon finalization of a primary 24-hour standard for $PM_{10-2.5}$, EPA proposes to revoke the current 24-hour PM_{10} standard in all areas of the country except in areas where there is at least one monitor located in an urbanized area (as defined by the U.S. Bureau of the Census) with a minimum population of 100,000 that violates the current 24-hour PM_{10} standard based on the most recent three years of data. In addition, EPA proposes to revoke the current annual PM_{10} standard upon finalization of a primary 24-hour standard for $PM_{10-2.5}$.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, National parks, Wilderness areas, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 24, 2006.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 06–1174 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0508; FRL–7755–8]

Imazethapyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an increase in tolerances for the sum of the residues of imazethapyr and its metabolites, CL 288511, (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid), and CL 182704, (5-[1-(beta-D-glucopyranosyloxy)ethyl]-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid), applied as its acid or ammonium salt in or on rice grain at 0.3 ppm, rice straw at 0.4 ppm, and imazethapyr and its metabolite, CL 288511 in or on crayfish at 0.15 ppm. BASF Corporation requested the tolerances for rice grain and rice straw under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), because of a requested increase in the use rate of imazethapyr in rice. In addition, this regulation increases the tolerance on crayfish from 0.10 ppm to 0.15 ppm due to exposure of crayfish raised in rice fields to imazethapyr.

DATES: This regulation is effective February 8, 2006. Objections and requests for hearings must be received on or before April 10, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0508. All documents in the docket are listed on the www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET 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.

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of June 29, 2005 (70 FR 37392) (FRL–7718–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F 6947) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528. The petition requested that 40 CFR 180.447 be amended by establishing a tolerance for the sum of the residues of the herbicide Imazethapyr, and its metabolites CL 288511 and CL182704, in or on rice grain at 0.3 parts per million (ppm), and rice straw at 0.4 ppm. That notice included a summary of the petition prepared by BASF Corporation, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

In addition, after completion of the dietary risk analysis for imazethapyr residues on rice, the Agency determined that the tolerance for combined residues for imazethapyr and the metabolite CL 288511 in crayfish needs to be increased from 0.10 ppm to 0.15 ppm. Crayfish are often raised in flooded rice fields, and thus are exposed to residues of pesticides that are applied to rice.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section

408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerances for the sum of the residues of imazethapyr and its metabolites CL 288511 and CL 182704 on rice grain at 0.3 ppm, rice straw at 0.4 ppm, and for the sum of residues of imazethapyr and its metabolite 288511 in crayfish at 0.15 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imazethapyr are discussed in Unit III.A. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323, FRL–7193–4).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *www.epa.gov/pesticides*.

A summary of the toxicological endpoints for imazethapyr used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of (FR notice dated August 29, 2002, 67 FR 55323).

C. Exposure Assessment

The Registrant, BASF Corporation, has requested an amended registration to increase the use rate of, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid from 0.125 lbs acid equivalent (ae)/application/acre/crop season and a 45–day preharvest interval (PHI) to 0.188 lbs ae/application/acre per crop season and an 85–day PHI.

The dietary exposure for all populations continues to be <1% chronic population adjusted dose (cPAD) with the minor changes in tolerances for rice grain and straw, and crayfish established in this **Federal Register** Notice. The exposure assessment for imazethapyr is discussed in Unit III.C. of the final rule that established the original imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323). In this action, the tolerances for rice grain are increased from 0.2 ppm to 0.3 ppm, for rice straw are increased from 0.15 ppm to 0.4 ppm) and in crayfish are increased from 0.10 ppm to 0.15 ppm. These increases resulted in an increase in dietary exposure for the general population from 0.000393 milligram/kilogram/day (mg/kg/day) to 0.002367 mg/kg/day, which is still much less than 1% of the cPAD of 2.5 mg/kg/day. The highest dietary exposure as a result of the increased tolerances is 0.008824 mg/kg/day for non-nursing infants, which is also less than 1% of the cPAD. (Since dietary exposure for non-nursing infants was not calculated separately in the previous dietary assessment, but was included as part of all infants, there is no meaningful comparison to previous dietary risk exposures.)

D. Safety Factor for Infants and Children

The safety factors for infants and children for imazethapyr are discussed in Unit III.D. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323).

E. Aggregate Risks and Determination of Safety

The aggregate risks and determination of safety for imazethapyr are discussed in Unit III.E. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (notice dated August 29, 2002, 67 FR 55323). Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imazethapyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The enforcement method for use on rice grain and rice straw is Method M3120. This method measures the concentrations of imazethapyr and its metabolites CL 288511 and CL 182704. The method extracts residues with acidic aqueous methanol, and the extract is then eluted through C18, strong anion exchange, and strong cation exchange columns. Residues are quantified via capillary electrophoresis with a UV detector.

The enforcement method for use on crayfish is Method 3512. This method quantifies the residues for imazethapyr and its metabolite CL 299511. This method involves extraction of residues using acidic acetone, followed by elution through a C18 column, and residues are quantified using LC/MS analysis. The enforcement methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex maximum residue levels established or proposed for residues of imazethapyr on rice.

C. Response to Comments

Public comments were received from B. Sachau. She objected that the several of the proposed tolerances levels, including the level for chicken, are too high. She questions who performed the tests showing these levels are necessary and whether EPA checked the tests. Ms. Sachau also objected to the use of animal testing, and the use of food intake survey data from 1994.

Response: EPA requires that petitioners submit data from studies on residue levels in treated crops and in animals that consume treated crops. Such studies are performed according to established protocols and EPA carefully examines the data from the studies after it is submitted. That was done with regard to the tolerance levels for imazethapyr. It is noted that imazethapyr tolerances in chicken are not being increased by this action. EPA has responded to B. Sachau's generalized comments, in including her generalized objections to animal testing, on numerous previous occasions (see January 7, 2005, 70 FR 1349, 1354, FRL–7691–4); (October 29, 2004, 69 FR 63083, 63096, FRL–7681–9). As to her claim that food consumption data from 1994 is out of date, EPA would note that the food consumption data relied upon was collected between 1994 and 1998 by the United States Department of Agriculture (USDA) in there (Continuing Survey of Food Intakes by Individuals (CSFII)). Generally, major surveys of consumption patterns have been conducted by the USDA every 5 to 10 years or so. EPA has found that changes between surveys are on the margin and EPA has no reason to believe that there have been significant shifts in food consumption patterns in the last several years. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to imazethapyr, including all anticipated dietary exposures and all other exposures for which there is reliable information.

V. Conclusion

Therefore, tolerances are established for the sum of the residues of imazethapyr, and its metabolites CL 288511 and CL 182704, in or on rice, grain at 0.3 ppm, and rice, straw at 0.4 ppm and for the sum of the residues of imazethapyr and its metabolite CL 288511 in or on crayfish at 0.15 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify ID number EPA–HQ–OPP–2005–0508 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 10, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the EPA.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0508, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply,*

Distribution, or Use (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.447 is amended by increasing the tolerance level for the following commodities in the tables in paragraphs (a)(2) and (a)(3) to read as follows:

§ 180.447 Imazethapyr; tolerances for residues.

(a)(1) * * *

(2) * * *

Commodity	Parts per million
* * *	* *
Rice, grain	0.3
Rice, straw	0.4

(3)* * *

Commodity	Parts per million
* * *	* *
Crayfish	0.15
* * *	* *

* * * * * *

[FR Doc. 06–1036 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0145; FRL–7757–9]

Boscalid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro [1,1′-biphenyl]-2-yl) in or on banana (imported), celery, and spinach. In addition, existing tolerances are being increased on almond hulls. Finally, the existing lettuce exception listed for the indirect or inadvertent residues in vegetables, leafy, group 4, is being revised to include celery and spinach, as well as lettuce. BASF requested the tolerances on almonds and bananas, and Interregional Research Project #4 (IR-4) has proposed group tolerances on vegetable, leafy, except brassica, Group 4 (to include celery and spinach), under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 8, 2006. Objections and requests for hearings must be received on or before April 10, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0145. All documents in the docket are listed on the *www.regulations.gov* website. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET 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.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; e-mail address: *kish.tony@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of July 6, 2005 (70 FR 38911) (FRL–7721–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filings of pesticide petitions (PP 4F6875, 3E6791, 5E6933) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709 and IR-4. The petition requested that 180.589 be amended by establishing a tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro(1,1′-biphenyl)-2-yl, in or on the raw agricultural commodity almond, hulls at 15 parts per millions (ppm) (PP 4F6875), vegetable, leafy, except brassica, Group 4 at 50 ppm (PP 3E6791), and banana at 0.5 ppm (PP 5E6933). That notice included a summary of the pesticide petition prepared by BASF, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV below.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of boscalid on almond hulls at 17 ppm, banana (imported) at 0.20 ppm, celery at 45 ppm, and spinach at 60 ppm. IR-4 requested a 50 ppm group tolerance for vegetable, leafy, except brassica in Group 4. However, the requested Boscalid tolerance for this entire group is inappropriate because the proposed 50 ppm group tolerance is substantially higher than the existing 11 ppm tolerance for the representative lettuce member of this group. Therefore, based on the submitted data, separate tolerances are established for the celery and spinach members in this group. The existing lettuce exception listed in 40 CFR 180.589(d) for indirect or inadvertent residues in vegetables, leafy, group 4, is being revised to include celery, and spinach, as well as lettuce. This is because of the separate tolerances established herein for celery and spinach in 40 CFR 180.589(a). EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by boscalid as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found in the **Federal Register** of July 30, 2003 (68 FR 44640) (FRL–7319–6).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for boscalid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 30, 2003 (68 FR 44640).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.589) for the residues of boscalid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from boscalid in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for Boscalid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments:

The assessment was based on tolerance-level residues (in some cases modified by DEEM (Version 7.81) default processing factors), and assumed 100% crop treated.

iii. *Cancer*. A quantitative cancer exposure assessment is not necessary because EPA concluded that boscalid is unlikely to pose a carcinogenic risk to humans. This conclusion was based on the following weight of evidence considerations. First, in male Wistar rats, there was a significant trend (but not pairwise comparison) for the combined thyroid adenomas and carcinomas. This trend was driven by the increase in adenomas. Second, in the female rats, there was only a borderline significant trend for thyroid adenomas (there were no carcinomas). Third, the mouse study was negative as were all of the mutagenic tests. Based on this weak evidence of carcinogenic effects, the Agency concluded that boscalid is not expected to pose a carcinogenic risk.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for boscalid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of boscalid.

The Agency used the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD.

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of boscalid for acute exposures are estimated to be 87.53 parts per billion (ppb) for surface water and 0.63 ppb for ground water. The EECs for chronic exposures are estimated to be 25.77 ppb for surface water and 0.63 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Residential exposure to boscalid is possible on golf courses and at ''U-pick'' farms and orchards. A non-occupational dermal post-application exposure/risk assessment for these exposusres was conducted in the previous occupational and residential exposure (ORE) assessment and is described in the final rule dated July 30, 2003 (68 FR 44640).

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to boscalid and any other substances and boscalid does not appear to produce a

toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that boscalid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. A complete discussion of the prenatal/postnatal sensitivity study was recently discussed in the final rule dated July 30, 2003 (68 FR 44640). No new information has been received to change this information. The Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity as the degree of concern is low for susceptibility, as evidenced by the data in the studies for the rodent and non-rodent prenatal developmental, reproduction and fertility effects, and the acute, subchronic and developmental neurotoxicity studies.

3. *Conclusion*. There is a complete toxicity data base for boscalid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following *in utero* exposure to rats and there is low concern and no residual uncertainties in the developmental neurotoxicity study after establishing toxicity endpoints and traditional uncertainty factors for intraspecies variability and interspecies extrapolation of 100X used in the risk assessment. Based on these data and conclusions, EPA reduced the FQPA safety factor to 1X.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. No acute risk is expected from exposure to boscalid.

2. *Chronic risk*. The chronic dietary exposure analysis was based on tolerance-level residues (in some cases modified by DEEM (Version 7.81) default processing factors), and assumes 100% crop treated. Even with these highly conservative assumptions, the risk estimates are well below the Agency's LOC. The most highly exposed population subgroup from DEEM is children 1–2 years, which has an exposure estimate of 0.067 mg/kg/day, and utilizes 31% of the chronic population adjusted dose (Cpad).

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). In this case, the non-occupational uses to be aggregated with dietary exposure are the turf use on golf courses and u-pick farms. Post-application exposures from these uses is considered short-term, and applies to adults and youth. Therefore, a short-term aggregate risk assessment was conducted. As all endpoints are from the same study, exposures from different routes can be aggregated. The exposure to residues in drinking water were included in the dietary exposure analysis. As a result, the aggregate exposure is the sum of two exposure values: Dietary (food + water) and residential. The target maximum daily exposure to boscalid residues is 0.22 mg/kg/day. The sum of the food, water, and residential exposures is 0.021 mg/kg/day. As a result, the short-term aggregate risk of exposure to boscalid residues is below the Agency's LOC. The exposure estimate was calculated using the general U.S. population, but is considered to be representative of youth because youth and adults possess similar body surface area to weight ratios and because the dietary exposure for youth (13–19 years old) is less than that of the general U.S. population.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Because no intermediate term, non-occupational exposures are anticipated from the use of Boscalid, boscalid is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population*. Based on the weight of the evidence evaluation described previously herein, EPA concluded that boscalid is not expected to pose a carcinogenic risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to boscalid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography, mass spectrometry and electron capture detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no International or Codex maximum residue levels (MRLs) for boscalid.

C. Response to Comments

One comment dated 7/9/05 was received from B. Sachau. Ms. Sachau's comments regarding general exposure to pesticides contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to Boscalid, including all anticipated dietary exposures and other exposures for which there is reliable information. This comment as well as her comments regarding animal testing have been responded to by the Agency on several occasions. For example, 70 FR 1349 (January 7, 2005)(FRL–7691–4); 69 FR 63083 (October 29, 2004)(FRL–7681–9).

V. Conclusion

Therefore, tolerances are established for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-

chloro[1,1′-biphenyl]-2-yl), in or on banana (imported) at 0.20 ppm, celery at 45 ppm and spinach at 60 ppm. The existing 3.0 ppm tolerance on almond hulls is being increased to 17 ppm.

IR-4 requested a 50 ppm group tolerance for vegetable, leafy, except brassica in Group 4. However, the requested Boscalid tolerance for this entire group is inappropriate because the proposed 50 ppm group tolerance is substantially higher than the existing 11 ppm tolerance for the representative lettuce member of this group. Therefore, based on the submitted data, separate tolerances are established for the celery and spinach members in this group.

The existing lettuce exception listed in 40 CFR 180.589(d) for indirect or inadvertent residues in vegetables, leafy, group 4, is being revised to include celery, and spinach, as well as lettuce. This is because of the separate tolerances established herein for celery and spinach in 40 CFR 180.589(a).

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0145 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 10, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0145, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect

on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.589 is amended as follows:

■ a. In the table to paragraph (a)(1) by revising the entry for ''Almond, hulls'' and alphabetically adding commodities.

■ b. In the table to paragraph (d) by revising the entry ''Vegetable, leafy, group 4, except lettuce''.

§ 180.589 Boscalid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Almond, hulls	17
* * *	* *
Banana, import[1]	0.20
* * *	* *
Celery	45
* * *	* *
Spinach	60
* * *	* *

[1] No US registration as of January 31, 2006.

* * * * *

(d)* * *

Commodity	Parts per million
* * *	* *
Vegetable, leafy, group 4, except lettuce, celery and spinach	1.0
* * *	* *

[FR Doc. 06–1170 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094–AA49

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its regulations that implement the Equal Access to Justice Act to bring them up to date with amendments to the statute that have been enacted since 1983.

DATES: *Effective Date:* February 8, 2006.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, Phone 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

OHA published a proposed rule on October 5, 2005, to update its regulations that implement the Equal Access to Justice Act (EAJA), 5 U.S.C. 504 (2000). 70 FR 58167–58175 (October 5, 2005). Those regulations were first promulgated in 1983. 48 FR 17596 (April 25, 1983). A section-by-section analysis of the proposed regulations was provided. 70 FR 58168–58170 (October 5, 2005).

We received one comment on the proposed rule, from Hobbs, Straus, Dean & Walker, LLP, on behalf of client Indian tribes and organizations. It ''applaud[ed]'' the proposed changes and recommended that they be made applicable to cases pending before OHA on the date the regulations become effective. We accept this suggestion. Although we proposed to omit section 4.604 (''Applicability to Department of the Interior proceedings'') of the 1983 regulations because it is no longer needed, 70 FR 58169 (October 5, 2005), we did not intend that the 1983 regulations would apply to cases pending when the new regulations became effective. We have added paragraph (b) to section 4.601 of the regulations to make our intention explicit that, when the new regulations become effective, they will apply to any EAJA application pending then or filed subsequently.

We explained in the proposed rule that we had omitted any reference to fees for ''agents'' in section 4.606 because the Department does not authorize specialized non-attorney practitioners to practice before it. 70 FR 58169 (October 5, 2005). We have added a new paragraph (a) to section 4.606 to specify that an award is limited to the fees and expenses of attorneys and expert witnesses.

The regulations are otherwise adopted as proposed.

II. Procedural Requirements

A. Decision To Make the Rule Effective Upon Publication

The Department has determined that this rule should be effective upon publication because it relieves restrictions in OHA's regulations that are inconsistent with current provisions of EAJA and because good cause exists to make the revised regulations immediately available to parties in pending cases. 5 U.S.C. 553(d)(1), (3). Delaying the effective date by 30 days, as normally required by 5 U.S.C. 553(d), would mean that current applicants for an award of attorney fees and expenses under EAJA might be subject to these inconsistent restrictions, *e.g.*, in the types of proceedings covered or in the maximum rate payable.

B. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is not a significant rule. OMB has not reviewed the rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost-benefit and economic analysis is not required. These amended regulations will have virtually no effect on the economy because they merely implement amendments to EAJA that are already in effect.

2. This rule will not create inconsistencies with or interfere with other agencies' actions, since all agencies are subject to EAJA and its amendments.

3. This rule will not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures implementing EAJA, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues. The regulations will merely implement amendments to EAJA that are already in effect.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulations merely implement amendments to EAJA that are already in effect. A Small Entity Compliance Guide is not required.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of $100 million or more. The regulations merely implement amendments to EAJA that are already in effect. They should have no effect on the economy.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, will not affect costs or prices for citizens, individual industries, or government agencies.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we find that:

1. This rule will not have a significant or unique effect on state, local, or tribal governments or the private sector. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, will neither uniquely nor significantly affect these governments.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on state, local, or tribal governments, in the aggregate, or the private sector in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1532 is not required.

F. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule will not have significant takings implications. A takings implication assessment is not required. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, should have no effect on property rights.

G. Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from updating OHA's procedural regulations implementing EAJA, based on amendments to that Act. A Federalism Assessment is not required.

H. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Because these regulations will merely implement amendments to EAJA that are already in effect, they will not burden either administrative or judicial tribunals.

I. Paperwork Reduction Act

This rule will not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. The rule is an administrative and procedural rule that simply updates existing procedural regulations implementing EAJA, based on amendments to that Act.

J. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that

do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature * * *.'' In addition, the Department has determined that none of the extraordinary circumstances listed in 516 DM 2, Appendix 2, applies to the rule. The rule is an administrative and procedural rule that simply updates existing procedural regulations implementing EAJA, based on amendments to that Act. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

K. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these regulations on Federally recognized Indian tribes and has determined that there are no potential effects. These regulations will not affect Indian trust resources; they will merely implement amendments to EAJA that are already in effect.

L. Effects on the Nation's Energy Supply (E.O. 13211)

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, will not affect energy supply or consumption.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Claims; Equal access to justice.

Dated: February 1, 2006.

R. Thomas Weimer,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons set forth in the preamble, part 4, subpart F, of title 43 of the Code of Federal Regulations is revised as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

General Provisions

Sec.

4.601 What is the purpose of this subpart?
4.602 What definitions apply to this subpart?
4.603 What proceedings are covered by this subpart?
4.604 When am I eligible for an award?
4.605 Under what circumstances may I receive an award?
4.606 What fees and expenses may be allowed?

Information Required from Applicants

4.610 What information must my application for an award contain?
4.611 What information must I include in my net worth exhibit?
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Procedures for Considering Applications

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4.621 When may the Department or other agency file an answer?
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4.625 How will my application be decided?
4.626 How will my appeal from a decision be handled?
4.627 May I seek judicial review of a final decision?
4.628 How will I obtain payment of an award?

Authority: 5 U.S.C. 504(c)(1).

General Provisions

§ 4.601 What is the purpose of this subpart?

(a) The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Department of the Interior. Under the Act, an eligible party may receive an award when it prevails over the Department or other agency, unless the position of the Department or other agency was substantially justified or special circumstances make an award unjust. The regulations in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Office of Hearings and Appeals will use in ruling on those applications.

(b) The regulations in this subpart apply to any application for an award of attorney fees and other expenses that is:

(1) Pending on February 8, 2006; or

(2) Filed on or after February 8, 2006.

§ 4.602 What definitions apply to this subpart?

As used in this subpart:

Act means section 203(a)(1) of the Equal Access to Justice Act, Public Law 96–481, 5 U.S.C. 504, as amended.

Adjudicative officer means the deciding official(s) who presided at the adversary adjudication, or any successor official(s) assigned to decide the application.

Adversary adjudication means any of the following:

(1) An adjudication under 5 U.S.C. 554 in which the position of the Department or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding;

(2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Interior Board of Contract Appeals pursuant to section 8 of that Act (41 U.S.C. 607);

(3) Any hearing conducted under section 6103(a) of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.); or

(4) Any hearing or appeal involving the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

Affiliate means:

(1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant; or

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest.

Demand means the express demand of the Department or other agency that led to the adversary adjudication, but does not include a recitation by the Department or other agency of the maximum statutory penalty:

(1) In the administrative complaint; or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

Department means the Department of the Interior or the component of the Department that is a party to the adversary adjudication (e.g., Bureau of Land Management).

Final disposition means the date on which either of the following becomes final and unappealable, both within the Department and to the courts:

(1) A decision or order disposing of the merits of the proceeding; or

(2) Any other complete resolution of the proceeding, such as a settlement or voluntary dismissal.

Other agency means any agency of the United States or the component of the agency that is a party to the adversary adjudication before the Office of Hearings and Appeals, other than the Department of the Interior and its components.

Party means a party as defined in 5 U.S.C. 551(3).

Position of the Department or other agency means:

(1) The position taken by the Department or other agency in the adversary adjudication; and

(2) The action or failure to act by the Department or other agency upon which the adversary adjudication is based.

Proceeding means an adversary adjudication as defined in this section.

You means a party to an adversary adjudication.

§ 4.603 What proceedings are covered by this subpart?

(a) The Act applies to adversary adjudications conducted by the Office of Hearings and Appeals, including proceedings to modify, suspend, or revoke licenses if they are otherwise adversary adjudications.

(b) The Act does not apply to:

(1) Other hearings and appeals conducted by the Office of Hearings and Appeals, even if the Department uses procedures comparable to those in 5 U.S.C. 554 in such cases;

(2) Any proceeding in which the Department or other agency may prescribe a lawful present or future rate; or

(3) Proceedings to grant or renew licenses.

(c) If a hearing or appeal includes both matters covered by the Act and matters excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 4.604 When am I eligible for an award?

(a) To be eligible for an award of attorney fees and other expenses under the Act, you must:

(1) Be a party to the adversary adjudication for which you seek an award; and

(2) Show that you meet all conditions of eligibility in this section.

(b) You are an eligible applicant if you are any of the following:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has a net worth of $7 million or less, including both personal and business interests, and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of $7 million or less and 500 or fewer employees; or

(6) For purposes of § 4.605(c), a small entity as defined in 5 U.S.C. 601(6).

(c) For the purpose of eligibility, your net worth and the number of your employees must be determined as of the date the proceeding was initiated.

(1) Your employees include all persons who regularly perform services for remuneration under your direction and control.

(2) Part-time employees must be included on a proportional basis.

(d) You are considered an ''individual'' rather than a ''sole owner of an unincorporated business'' if:

(1) You own an unincorporated business; and

(2) The issues on which you prevail are related primarily to personal interests rather than to business interests.

(e) To determine your eligibility, your net worth and the number of your employees must be aggregated with the net worth and the number of employees of all of your affiliates. However, this paragraph does not apply if the adjudicative officer determines that aggregation would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities.

(f) The adjudicative officer may determine that financial relationships other than those described in the definition of ''affiliate'' in § 4.602 constitute special circumstances that would make an award unjust.

(g) If you participate in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible, you are not eligible for an award.

§ 4.605 Under what circumstances may I receive an award?

(a) You may receive an award for your fees and expenses in connection with a proceeding if:

(1) You prevailed in the proceeding or in a significant and discrete substantive portion of a proceeding; and

(2) The position of the Department or other agency over which you prevailed was not substantially justified. The Department or other agency has the burden of proving that its position was substantially justified.

(b) An award will be reduced or denied if you have unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) This paragraph applies to an adversary adjudication arising from an action by the Department or other agency to enforce compliance with a statutory or regulatory requirement:

(1) If the demand of the Department or other agency in the action is excessive and unreasonable compared with the adjudicative officer's decision, then the adjudicative officer must award you your fees and expenses related to defending against the excessive demand, unless:

(i) You have committed a willful violation of law;

(ii) You have acted in bad faith; or

(iii) Special circumstances make an award unjust.

(2) Fees and expenses awarded under this paragraph will be paid only if appropriations to cover the payment have been provided in advance.

§ 4.606 What fees and expenses may be allowed?

(a) If the criteria in §§ 4.603 through 4.605 are met, you may receive an award under this subpart only for the fees and expenses of your attorney(s) and expert witness(es).

(b) The adjudicative officer must base an award on rates customarily charged by persons engaged in the business of acting as attorneys and expert witnesses, even if the services were made available to you without charge or at a reduced rate.

(1) The maximum that can be awarded for the fee of an attorney is $125 per hour.

(2) The maximum that can be awarded for the fee of an expert witness is the highest rate at which the Department or other agency pays expert witnesses with similar expertise.

(3) An award may also include the reasonable expenses of the attorney or expert witness as a separate item, if the attorney or expert witness ordinarily charges clients separately for those expenses.

(c) The adjudicative officer may award only reasonable fees and expenses under this subpart. In determining the reasonableness of the fee for an attorney or expert witness, the adjudicative officer must consider the following:

(1) If the attorney or expert witness is in private practice, his or her customary fee for similar services;

(2) If the attorney or expert witness is your employee, the fully allocated cost of the services;

(3) The prevailing rate for similar services in the community in which the attorney or expert witness ordinarily performs services;

(4) The time actually spent in representing you in the proceeding;

(5) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(6) Any other factors that bear on the value of the services provided.

(d) The adjudicative officer may award the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on your behalf to the extent that:

(1) The charge for the service does not exceed the prevailing rate for similar services; and

(2) The study or other matter was necessary for preparation of your case.

Information Required From Applicants

§ 4.610 What information must my application for an award contain?

(a) Your application for an award of fees and expenses under the Act must:

(1) Identify you;

(2) Identify the proceeding for which an award is sought;

(3) Show that you have prevailed;

(4) Specify the position of the Department or other agency that you allege was not substantially justified;

(5) Unless you are an individual, state the number of your employees and those of all your affiliates, and describe the type and purpose of your organization or business;

(6) State the amount of fees and expenses for which you seek an award;

(7) Be signed by you or your authorized officer or attorney;

(8) Contain or be accompanied by a written verification under oath or under penalty of perjury that the information in the application is true and correct; and

(9) Unless one of the exceptions in paragraph (b) of this section applies, include a statement that:

(i) Your net worth does not exceed $2 million, if you are an individual; or

(ii) Your net worth and that of all your affiliates does not exceed $7 million in the aggregate, if you are not an individual.

(b) You do not have to submit the statement of net worth required by paragraph (a)(9) of this section if you do any of the following:

(1) Attach a copy of a ruling by the Internal Revenue Service that you qualify as a tax-exempt organization described in 26 U.S.C. 501(c)(3);

(2) Attach a statement describing the basis for your belief that you qualify under 26 U.S.C. 501(c)(3), if you are a tax-exempt organization that is not required to obtain a ruling from the Internal Revenue Service on your exempt status;

(3) State that you are a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)); or

(4) Seek fees and expenses under § 4.605(c) and provide information demonstrating that you qualify as a small entity under 5 U.S.C. 601.

(c) You may also include in your application any other matters that you wish the adjudicative officer to consider in determining whether and in what amount an award should be made.

§ 4.611 What information must I include in my net worth exhibit?

(a) Unless you meet one of the criteria in § 4.610(b), you must file with your application a net worth exhibit that meets the requirements of this section. The adjudicative officer may also require that you file additional information to determine your eligibility for an award.

(b) The exhibit must show your net worth and that of any affiliates when the proceeding was initiated. The exhibit may be in any form that:

(1) Provides full disclosure of your and your affiliates' assets and liabilities; and

(2) Is sufficient to determine whether you qualify under the standards in this subpart.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, if you object to public disclosure of information in any portion of the exhibit and believe there are legal grounds for withholding it from disclosure, you may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure.

(1) The motion must describe the information sought to be withheld and explain, in detail:

(i) Why it falls within one or more of the exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b);

(ii) Why public disclosure of the information would adversely affect you; and

(iii) Why disclosure is not required in the public interest.

(2) You must serve the net worth exhibit and motion on counsel representing the agency against which you seek an award, but you are not required to serve it on any other party to the proceeding.

(3) If the adjudicative officer finds that the information should not be withheld from disclosure, it must be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit will be disposed of in accordance with the Department's procedures under the Freedom of Information Act, 43 CFR 2.7 *et seq.*

§ 4.612 What documentation of fees and expenses must I provide?

(a) Your application must be accompanied by full documentation of the fees and expenses for which you seek an award, including the cost of any study, analysis, engineering report, test, project, or similar matter.

(b) You must submit a separate itemized statement for each professional firm or individual whose services are covered by the application, showing:

(1) The hours spent in connection with the proceeding by each individual;

(2) A description of the specific services performed;

(3) The rates at which each fee has been computed;

(4) Any expenses for which reimbursement is sought;

(5) The total amount claimed; and

(6) The total amount paid or payable by you or by any other person or entity for the services provided.

(c) The adjudicative officer may require you to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed, in accordance with § 4.624.

§ 4.613 When may I file an application for an award?

(a) You may file an application whenever you have prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. You must file the application no later than 30 days after the final disposition of the proceeding.

(b) Consideration of an application for an award must be stayed if:

(1) Any party seeks review or reconsideration of a decision in a proceeding in which you believe you have prevailed; or

(2) The Department or other agency (or the United States on its behalf) appeals an adversary adjudication to a court.

(c) A stay under paragraph (b)(1) of this section will continue until there has been a final disposition of the review or reconsideration of the decision. A stay under paragraph (b)(2) of this section will continue until either:

(1) A final and unreviewable decision is rendered by the court on the appeal; or

(2) The underlying merits of the case have been finally determined.

Procedures for Considering Applications

§ 4.620 How must I file and serve documents?

You must file and serve all documents related to an application for an award under this subpart on all other parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 4.611(c) for confidential information. The Department or other agency and all other parties must likewise file and serve their pleadings and related documents on you and on each other, in the same manner as other pleadings in the proceeding.

§ 4.621 When may the Department or other agency file an answer?

(a) Within 30 days after service of an application, the Department or other agency against which an award is sought may file an answer to the application. However, if consideration of an application has been stayed under § 4.613(b), the answer is due within 30 days after the final disposition of the review or reconsideration of the decision.

(1) Except as provided in paragraph (a)(2) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested. In such case, the adjudicative officer will issue a decision in accordance with § 4.625 based on the record before him or her.

(2) Failure to file an answer within the 30-day period will not be treated as a consent to the award requested if the Department or other agency either:

(i) Requests an extension of time for filing; or

(ii) Files a statement of intent to negotiate under paragraph (b) of this section.

(b) If the Department or other agency and you believe that the issues in the fee application can be settled, you may jointly file a statement of intent to negotiate a settlement. Filing this statement will extend for an additional 30 days the time for filing an answer, and the adjudicative officer may grant further extensions if you and the agency counsel so request.

(c) The answer must explain in detail any objections to the award requested and identify the facts relied on to support the Department's or other agency's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Department or other agency must include with the answer either supporting affidavits or a request for further proceedings under § 4.624.

§ 4.622 When may I file a reply?

Within 15 days after service of an answer, you may file a reply. If your reply is based on any alleged facts not already in the record of the proceeding, you must include with the reply either supporting affidavits or a request for further proceedings under § 4.624.

§ 4.623 When may other parties file comments?

Any party to a proceeding other than the applicant and the Department or other agency may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in the proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 4.624 When may further proceedings be held?

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, the adjudicative officer may order further proceedings, which will be held only when necessary for full and fair resolution of the issues and will be conducted as promptly as possible.

(b) The adjudicative officer may order further proceedings on his or her own initiative or in response to a request by you or by the Department or other agency. A request for further proceedings under this section must:

(1) Identify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to resolve the issues.

(c) As to issues other than substantial justification (such as your eligibility or substantiation of fees and expenses), further proceedings under this section may include an informal conference, oral argument, additional written submissions, pertinent discovery, or an evidentiary hearing.

(d) The adjudicative officer will determine whether the position of the Department or other agency was substantially justified based on the administrative record of the adversary adjudication as a whole.

§ 4.625 How will my application be decided?

The adjudicative officer must issue a decision on the application promptly after completion of proceedings on the application. The decision must include written findings and conclusions on all of the following that are relevant to the decision:

(a) Your eligibility and status as a prevailing party;

(b) The amount awarded, and an explanation of the reasons for any difference between the amount requested and the amount awarded;

(c) Whether the position of the Department or other agency was substantially justified;

(d) Whether you unduly protracted the proceedings; and

(e) Whether special circumstances make an award unjust.

§ 4.626 How will an appeal from a decision be handled?

(a) If the adjudicative officer is an administrative law judge, you or the Department or other agency may appeal his or her decision on the application to the appeals board that would have jurisdiction over an appeal involving the merits of the proceeding. The appeal will be subject to the same regulations and procedures that would apply to an appeal involving the merits of the proceeding. The appeals board will issue the final Departmental or other agency decision on the application.

(b) If the adjudicative officer is a panel of appeals board judges, their decision on the application is final for the Department or other agency.

§ 4.627 May I seek judicial review of a final decision?

You may seek judicial review of a final Departmental or other agency decision on an award as provided in 5 U.S.C. 504(c)(2).

§ 4.628 How will I obtain payment of an award?

(a) To obtain payment of an award against the Department or other agency, you must submit:

(1) A copy of the final decision granting the award; and

(2) A certification that no party is seeking review of the underlying decision in the United States courts, or that the process for seeking review of the award has been completed.

(b) If the award is against the Department:

(1) You must submit the material required by paragraph (a) of this section to the following address:

Director, Office of Financial Management, Policy, Management and

Budget, U.S. Department of the Interior, Washington, DC 20240.

(2) Payment will be made by electronic funds transfer whenever possible. A representative of the Department will contact you for the information the Department needs to process the electronic funds transfer.

(c) If the award is against another agency, you must submit the material required by paragraph (a) of this section to the chief financial officer or other disbursing official of that agency. Agency counsel must promptly inform you of the title and address of the appropriate official.

(d) The Department or other agency will pay the amount awarded to you within 60 days of receiving the material required by this section.

[FR Doc. 06–1146 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–79–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

RIN 3137–AA16

Institute of Museum and Library Services; Technical Amendments To Reflect the New Authorizing Legislation of the Institute of Museum and Library Services

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum and Library Services has amended its grants regulations by removing outdated regulations and making certain technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003. The amendments also reorganize certain sections to provide greater clarity for agency applicants and grantees.

EFFECTIVE DATE: February 2, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street, NW., Ninth Floor, Washington, DC 20036. E-mail: *nweiss@imls.gov.* Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

SUPPLEMENTARY INFORMATION:

I. Technical Amendments and Removal of the Institute's Outdated Regulations

The Institute of Museum and Library Services herein removes outdated regulations and makes minor technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services with The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). These revisions are meant to fulfill the Institute's responsibility to its eligible grant applicants by ensuring that all regulations, policies, and procedures are up-to-date. The regulations removed include regulations relating to programs and requirements no longer in existence at the Institute as a result of both agency practice and The Museum and Library Services Act of 2003. In the interests of economy of administration, and because all of the regulations to be removed are outdated and the technical amendments are minor, they are included in one rulemaking vehicle. The proposed rule was published by the Institute in the **Federal Register** on December 14, 2005. The Institute received no comments suggesting changes to the text of the rule.

II. Matters of Regulatory Procedure

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Institute must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule removes a number of outdated regulations and makes technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this rule removes outdated regulations and make certain technical amendments, the Institute has determined in Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) review that this rule will not have a significant economic impact on a substantial number of small entities because it simply makes technical amendments and removes outdated regulations.

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it removes existing outdated regulations and makes only technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more as adjusted for inflation) in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No rights, property or compensation has been, or will be, taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Institute has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Institute has evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 45 CFR Part 1180

Administrative practice and procedure, Government Contracts, Grant programs—education, Grant programs—Indians, Cooperative agreements, Federal aid programs, Grants administration, Libraries, Museums, Nonprofit organizations, Colleges and universities, Report and recordkeeping requirements, Sunshine Act.

Dated: February 2, 2006.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

■ For the reasons stated in the preamble and under the authority of 20 U.S.C. 9101 *et seq.,* the Institute of Museum and Library Services amends 45 CFR Part 1180 as follows:

PART 1180—GRANTS REGULATIONS

■ 1. The authority citation for 45 CFR Part 1180 is revised to read as follows:

Authority: 20 U.S.C. 9101–9176.

Subpart A [Revised]

■ 2. Revised Subpart A of Part 1180 to read as follows:

PART 1180—GRANTS REGULATIONS

Subpart A—Definitions and Eligibility

Sec.

1180.1 Scope of this part.
1180.2 Definition of a museum.
1180.3 Other definitions.
1180.4 Museum eligibility and burden of proof—Who may apply.
1180.5 Related institutions.
1180.6 Basic materials which an applicant must submit to be considered for funding.

Subpart A—Definitions and Eligibility

§ 1180.1 Scope of this part.

This part establishes rules for the award of grants from funds appropriated under the Museum and Library Services Act, including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in evaluating applications.

§ 1180.2 Definition of a museum.

For the purpose of this part:

(a) Museum means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff:

(1) Owns or uses tangible objects, either animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the general public on a regular basis.

(i) An institution which exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

(ii) An institution which exhibits objects by appointment may meet this requirement if it can establish, in light of the facts under all the relevant circumstances, that this method of exhibition does not unreasonably restrict the accessibility of the institution's exhibits to the general public.

(b) Museums include, but are not limited to, the following types of institutions, if they otherwise satisfy the provision of this section:

(1) Aquariums;
(2) Arboretums;
(3) Botanical gardens;
(4) Art museums;
(5) Children's museums;
(6) General museums;
(7) Historic houses and sites;
(8) History museums;
(9) Nature centers;
(10) Natural history and anthropology museums;
(11) Planetariums;
(12) Science and technology centers;
(13) Specialized museums; and
(14) Zoological parks.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution.

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution which does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination regarding the eligibility of such an institution under this section.

(e) For the purpose of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

§ 1180.3 Other definitions.

The following other definitions apply in this part:

Act means The museum and Library Services Act, Pub. L. 104–208 (20 U.S.C. 9101–9176), as amended.

Board means the National Museum and Services Board established by The Museum and Library Services Act of 2003, Pub. L. 108–81 (20 U.S.C. 9105a).

Collection includes objects owned, used or loaned by a museum as well as those literary, archival and documentary resources specifically required for the study and interpretation of these objects.

Director means the Director of the Institute of Museum and Library Services.

Foundation means the National Foundation on the Arts and the Humanities.

Grantee means the recipient of a grant under the Act.

Institute or *IMLS* means the Institute of Museum and Library Services established under Section 203 of the Act.

Museum services means services provided by a museum, primarily exhibiting objects to the general public, and including but not limited to preserving and maintaining its collections, and providing educational and other programs to the public through the use of its collections and other resources.

§ 1180.4 Museum eligibility and burden of proof—Who may apply.

(a) A museum located in any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federal States of Micronesia, and the Republic of Palau may apply for a grant under the Act.

(b) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(c) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(d) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

§ 1180.5 Related Institutions.

(a) If two or more institutions are under the common control of one agency or institution or are otherwise organizationally related and apply for assistance under the Act, the Director determines under all the relevant circumstances whether they are separate museums for the purpose of establishing eligibility for assistance under these regulations. *See* § 1180.4.

(b) IMLS regards the following factors, among others, as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

§ 1180.6 Basic materials which an applicant must submit to be considered for funding.

(a) *Application.* To apply for a grant, an applicant must submit the designated application form containing all information requested. Failure to submit information required by the application at the time of filing can subject an applicant to rejection of the application without consideration on its merits.

(b) *IRS letter.* An applicant applying as a private, nonprofit institution must submit a copy of the letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the applicable provision of the Internal Revenue Code of 1954, as amended.

■ 3. Amend § 1180.30 as follows:

■ a. Revise the section heading for § 1180.30 to read as set forth below; and

■ b. Remove the phrase ''in the **Federal Register**''.

§ 1180.30 Publication of application notices; content of notices.

* * * * *

■ 4. Revise § 1180.31 to read as follows:

§ 1180.31 Information in application notices.

Application notices generally include:

(a) How an applicant can get an application packet containing detailed information about the program including an application form;

(b) Where an applicant must send its application;

(c) The amount of funds for which an applicant may apply;

(d) Any priorities established by the Institute for that year; and

(e) A reference to the applicable regulations.

■ 5. Amend § 1180.32 as follows:

■ a. Amend paragraph (a) introductory text by removing ''deadline'' and adding in its place ''the deadline''; and

■ b. Add a new paragraph (d) to read as follows:

§ 1180.32 Deadline date for applications.

* * * * *

(d) The Director of IMLS may publish, in applicable application notices and program guidelines, additional ways in which an application can be submitted to the agency electronically.

§ 1180.34 [Removed and Reserved]

■ 6. Remove and reserve § 1180.34.

§ 1180.35 [Amended]

■ 7. Amend § 1180.35 as follows:

■ a. Amend paragraph (a), (b) introductory text, and (e) introductory text by removing ''museums'' and adding in its place ''applicants''; and

■ b. Amend paragraph (b)(2) by removing ''museum'' and adding in its place ''applicant'';.

§ 1180.38 [Removed and Reserved]

■ 8. Remove and reserve § 1180.38.

§ 1180.44 [Amended]

■ 9. Amended § 1180.44 as follows:

■ a. Remove reserved paragraphs (b) through (c);

■ b. Redesignate paragraph (d) as paragrah (b); and

■ c. Amend redesignated paragraph (b) by removing ''of museums''.

§ 1180.45 [Removed and Reserved]

■ 10. Remove and reserve § 1180.45.

■ 11. Remove undesignated center heading ''RECORDS'' from before § 1180.56 and revise § 1180.56 to read as follows:

§ 1180.56 Allowable costs.

(a) Determination of costs allowable under a grant is made in accordance with government-wide cost principles in applicable OMB circulars.

(b) No costs shall be allowed for the purchase of any object to be included in the collection of a museum, except library, literary, or archival material specifically required for a designated activity under a grant under the Act.

■ 12. Revise § 1180.57 to read as follows:

§ 1180.57 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the staff.

(b) The grantee may not use its grant to pay a consultant unless;

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need through using an employee rather than a consultant.

■ 13. Revise § 1180.58 to read as follows:

§ 1180.58 Duration of grants.

The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If the grantee needs additional time to complete the grant, the grantee may apply for an extension of the grant period without additional funds. The Director or the Director's designee may approve this extension at his or her discretion.

■ 14. Add undesignated center heading ''RECORDS'' before § 1180.59; and revise § 1180.59 to read as follows:

§ 1180.59 Records related to grant funds.

A grantee shall, in accordance with applicable OMB circulars, keep records that show accurately and in full:

(a) The amount of funds awarded under the grant;

(b) The exact uses of the funds;

(c) The total amount expended under the grant;

(d) The amount expended under the grant during the grant period provided from non-Federal sources; and

(e) Other records necessary to facilitate an effective audit.

■ 15. Add § 1180.60 to read as follows

§ 1180.60 Records related to compliance.

A grantee shall, in accordance with applicable OMB circulars, keep accurate and full records to show its compliance with specific requirements set forth in the regulations and published notices, or contained in the grant award documents.

■ 16. Add § 1180.61 to read as follows:

§ 1180.61 Records related to performance.

(a) A grantee shall keep records demonstrating the progress and results under the grant and shall provide such records to the Institute upon request.

(b) The grantee shall use the records created pursuant to paragraph (a) of this section to:

(1) Determine progress in accomplishing objectives; and

(2) Revise those objectives, if necessary and authorized under the grant.

■ 17. Revise Subpart D to read as follows:

Subpart D—Museum Conservation Assessment Program

Sec.

1180.70 Guidelines and standards for museum conservation projects.

Subpart D—Museum Conservation Program

§ 1180.70 Guidelines and standards for museum conservation projects.

(a) *Scope.* The guidelines and standards in this subpart apply to all aspects of the IMLS conservation grant program including the submission of applications by museums for conservation grants, to the award, review and approval of such applications by IMLS, and to the carrying out of conservation grants awarded by IMLS.

(b) *Applicability of regulations.* Except as otherwise provided in these guidelines, subparts A–C of this part, as amended, apply to the IMLS conservation grant program.

(c) *Definition.* As used in these guidelines, the term conservation includes, but is not limited to, the following functions, as applied to art, history, natural history, science and technology, and living collections:

(1) Technical examination of materials and surveys of environmental and collection conditions;

(2) Provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, reformatting, nurturing and transportation of objects;

(3) Physical treatment of objects, specimens and organisms, for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and physical compensation for losses; species survival activities; and

(4) Research and training in conservation.

(d) *Applicants.* A museum may apply for and receive only one conservation grant under this program in a fiscal year.

(e) *Types of conservation projects funded.* IMLS considers applications to carry out conservation projects such as:

(1) Projects to develop improved or less costly methods of conservation, or to maintain or improve conservation with respect to one or more collections, including—

(i) Projects involving surveys of conservation needs and

(ii) Projects to establish or maintain optimum environmental conditions.

(2) Projects to conduct research in conservation (including developmental and basic research).

(3) Projects to conduct or obtain training in conservation (including training of persons for careers as professional conservators; training or upgrading of practicing conservators and conservation technicians in the use of new materials and techniques; and training of persons to become conservation technicians).

(4) Projects related to museum conservation needs not regularly addressed by other Federal funding agencies.

(5) Projects to meet the conservation needs of museums which are unable to maintain their own individual conservation facilities. Because grants are made only to museums, organizations which operate regional conservation centers but which are not museums are ineligible for a direct grant. However, a museum or a group of museums may use a grant to obtain services from such a center.

(6) Projects to conserve particular objects in a museum's collection (including plants and animals) or to meet the conservation needs of a particular museum (through such activities as the employment of conservators and the procurement of conservation services or equipment).

(f) *Limits for Federal funding.* (1) The normal amount of a Conservation Project Support grant will be established in the applicable program guidelines. Unless otherwise provide by law, if the Director determines that exceptional circumstance warrant, the Director may award a conservation grant which obligates an amount in Federal funds in excess of the normal maximum award. IMLS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

(2) IMLS makes conservation grants only on a matching basis. This means that at least 50 percent of the costs of a conservation project must be met from non-federal funds. Principles in applicable OMB circulars regarding costs sharing or matching apply.

(g) *Application requirements; priorities; survey required in certain cases.* (1) Application requirements in § 1180.6(a) and (b) apply. An application shall describe when, during the term of the grant, the applicant plans to complete each objective or phase of the project. Where appropriate, IMLS may require an applicant to submit a dissemination plan.

(2) The Director, by notice published in the **Federal Register**, may establish priorities with respect to all or part of the funds available to IMLS for conservation for a fiscal year among the types of projects specified in paragraph (e) of this section.

(3) The Director may, to the extent appropriate, require (by instructions in the application materials) that an applicant which proposes a project to conserve particular objects must show that, prior to the submission of the application, it has carried out a general survey of its conservation needs and priorities and that the project in question is consistent with such survey. In exceptional circumstances, the Director may adjust this requirement. The Director may also (through such instructions) require an applicant for a conservation project to submit additional information, material, or undertakings to carry out the purposes of this part.

(h) *Procedures for review of applications* (1) IMLS uses the procedures stated in this paragraph to review applications for conservation projects.

(2) IMLS evaluates all eligible applications for conservation projects in accordance with applicable criteria. (See paragraph (i) of this section.) The Director expects to use panels of experts to review at least a portion of the applications for conservation grants. Depending upon the number of applications received as well as other factors, the Director may also use field reviewers to evaluate applications before submission of applications to the panels. In addition, the Director may use technical experts to provide technical advice regarding certain applications.

(i) *Criteria.* This paragraph sets forth the general criteria which IMLS uses in evaluating and reviewing applications for conservation projects.

(1) The following programmatic criteria apply to the evaluation and review of conservation grants:

(i) What is the importance of the object or objects to be conserved? What is the significance of the object or objects to the museum's collection and/or audience?

(ii) What is the need for the project, including the relationship of the project to the conservation needs and priorities of the applicant museum as reflected in a survey of conservation needs or similar needs assessment?

(iii) What are the applicant's plans to use and maintain the anticipated results or benefits of the project after the expiration of Federal support?

(iv) Does the applicant plan to devote adequate financial and other resources to the project without inhibiting its ongoing activities?

(2) The following technical criteria apply to the evaluation and review of applications for conservation grants:

(i) What is the nature of the proposed project with respect to project design and management plan?

(ii) To what extent does the application exhibit knowledge of the technical area to which the conservation project relates and employ the most promising or appropriate methods or techniques of conservation? To what extent is the conservation project likely to use, develop or demonstrate improved, more efficient, or more economic methods of conservation?

(iii) Does the project have an adequate budget to achieve its purpose? Is the burden reasonable and adequate in relation to the objectives of the project?

(iv) What are the qualifications of the personnel the applicant plans to use on the project and the proposed time that each person is obligated to commit to the project?

(j) *Grant condition.* An applicant which has received a grant in a prior fiscal year under the IMLS conservation grant program may not receive a grant in a subsequent fiscal year under this section until required reports have been submitted regarding the performance of the previous grant.

(k) *Allowable and unallowable costs.* (1) Section 1180.56 of the IMLS regulations, which applies to conservation grants, sets forth the rules applicable to determining the allowability of costs under IMLS grants and refers applicants and grantees to the OMB circulars containing applicable cost principles which govern Federal grants generally.

(2) In general such costs as compensation for personal services, costs of materials and supplies, rental costs, and other administrative costs specifically related to a conservation project are allowable under a conservation grant in accordance with applicable cost principles.

(3) Costs of alterations, repairs and restoration to an existing facility are allowable when they are related to a conservation project under a conservation grant in accordance with applicable cost principles.

(4) Costs of equipment are generally allowable if related to a conservation project but do require specific approval as indicated in the grant award document.

(5) A grantee may award a stipend to an individual for training in connection with a conservation project.

(6) Costs of new construction are unallowable. For example, a museum may not use a conservation grant to construct a new building or an addition to an existing building to improve the environment in which its collections are housed.

Subpart E—[Removed]

■ 18. Remove subpart E—Assistance to Professional Museum Organizations, consisting of §§ 1180.77 through 1180.78.

Subpart F—[Removed]

■ 19. Remove reserved subpart F.

Subpart G—[Removed]

■ 20. Remove subpart G—Meetings of the National Museum Services Board, consisting of §§ 1180.80 through 1180.91.

Appendix A to Part 1180 [Removed]

■ 21. Remove Appendix A to Part 1180.

[FR Doc. 06–1124 Filed 2–7–06; 8:45 am]

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1182

3137–AA17

Institute of Museum and Library Services; Implementation of the Privacy Act of 1974

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum and Library Services (Institute) has amended its Privacy Act regulations to reflect administrative changes at the agency and to conform to the President's Memorandum of June 1, 1998—Plain Language in Government Writing. These regulations establish procedures by which an individual may determine whether a system of records maintained by the Institute contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. These regulations also establish exemptions from certain Privacy Act requirements for all or part of certain systems of records maintained by the Institute.

EFFECTIVE DATE: February 2, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street, NW., Ninth Floor, Washington, DC 20036. E-mail: *nweiss@imls.gov.* Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

SUPPLEMENTARY INFORMATION: The Institute operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.) The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter E apply only to the Institute. The proposed rule was published by the Institute in the **Federal Register** on November 23, 2005. The Institute received no comments suggesting changes to the text of the rule.

This final rule adds Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute. The new regulations provide additional detail concerning several provisions of the Privacy Act, and are intended to increase understanding of the Institute's Privacy Act policies. The Institute is authorized to propose the new regulations under 5 U.S.C. 552a(f) of the Privacy Act.

I. Matters of Regulatory Procedure

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Institute must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a

material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rules add Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute. The new regulations provide additional detail concerning several provisions of the Privacy Act, and are intended to increase understanding of the Institute's Privacy Act policies. As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this rule adds Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute, the Institute has determined in Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) review that this rule will not have a significant economic impact on a substantital number of small entities.

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it adds Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute. An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more as adjusted for inflation) in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No rights, property or compensation has been, or will be taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Institute has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation With Indian tribes (E.O. 13175)

In accordance with Executive Order 13175, the Institute has evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 45 CFR Part 1182

Privacy.

Dated: February 2, 2006.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

■ For the reasons stated in the preamble, the Institute amends Title 45, Code of Federal Regulations, Subchapter E, by adding Part 1182 to read as follows:

PART 1182—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

1182.1 Purpose and scope of these regulations.
1182.2 Definitions.
1182.3 Inquiries about the Institute's systems of records or implementation of the Privacy Act.
1182.4 Procedures for notifying the public of the Institute's systems of records.
1182.5 Procedures for notifying government entities of the Institute's proposed changes to its systems of records.
1182.6 Limits that exist as to the contents of the Institute's systems of records.
1182.7 Institute procedures for collecting information from individuals for its records.
1182.8 Procedures for acquiring access to Institute records pertaining to an individual.
1182.9 Identification required when requesting access to Institute records pertaining to an individual.
1182.10 Procedures for amending or correcting an individual's Institute record.
1182.11 Procedures for appealing a refusal to amend or correct an Institute record.
1182.12 Fees charged to locate, review, or copy records.
1182.13 Policies and procedures for Institute disclosure of its records.
1182.14 Procedures for maintaining accounts of disclosures made by the Institute from its systems of records.
1182.15 Institute responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems.
1182.16 Procedures to ensure that Institute employees involved with its systems of records are familiar with the requirements and of the Privacy Act.
1182.17 Institute systems of records that are covered by exemptions in the Privacy Act.
1182.18 Penalties for obtaining an Institute record under false pretenses.
1182.19 Restrictions that exist regarding the release of mailing lists.

Authority: 5 U.S.C. 552a(f).

§ 1182.1 Purpose and scope of these regulations.

The regulations in this part set forth the Institute's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Institute. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether an Institute system contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements, prescribe fees to be charged for copying records,

and establish exemptions from certain requirements of the Act for certain Institute systems or components thereof:

§ 1182.2 Definitions.

The definitions of the Privacy Act apply to this part. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal government, including the Executive Office of the President or any independent regulatory agency.

(b) *Business day* means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

(c) *Director* means the Director of the Institute, or his or her designee;

(d) *General Counsel* means the General Counsel of the Institute, or his or her designee.

(e) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(f) *Institute* means the Institute of Museum and Library Services;

(g) *Institute system* means a system of records maintained by the Institute;

(h) *Maintain* means to collect, use, store, or disseminate records, as well as any combination of these recordkeeping functions. The term also includes exercise of control over and, therefore, responsibility and accountability for, systems of records;

(i) *Privacy Act* or *Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(j) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency and contains the individual's name or another identifying particular, such as a number or symbol assigned to the individual, or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(k) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(l) *Subject individual* means the individual to whom a record pertains. Uses of the terms ''I'', ''you'', ''me'', and other references to the reader of the regulations in this part are meant to apply to subject individuals as defined in this paragraph (l); and

(m) *System of records* means a group of records under the control of any agency from which information is retrieved by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual.

§ 1182.3 Inquiries about the Institute's systems of records or implementation of the Privacy Act.

Inquiries about the Institute's systems of records or implementation of the Privacy Act should be sent to the following address: Institute of Museum and Library Services; Office of the General Counsel; 1800 M Street, NW., 9th Floor, Washington, DC 20036.

§ 1182.4 Procedures for notifying the public of the Institute's systems of records.

(a) From time to time, the Institute shall review its systems of records in the **Federal Register,** and publish, if necessary, any amendments to those systems of records. Such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Institute.

(b) At least 30 days prior to publication of information under paragraph (a) of this section, the Institute shall publish in the **Federal Register** a notice of its intention to establish any new routine uses of any of its systems of records, thereby providing the public an opportunity to comment on such uses. This notice published by the Institute shall contain the following:

(1) The name of the system of records for which the routine use is to be established;

(2) The authority for the system;

(3) The purpose for which the record is to be maintained;

(4) The proposed routine use(s);

(5) The purpose of the routine use(s); and

(6) The categories of recipients of such use.

(c) Any request for additions to the routine uses of Institute systems should be sent to the Office of the General Counsel (see § 1182.3).

(d) Any individual who wishes to know whether an Institute system contains a record pertaining to him or her should write to the Office of the General Counsel (see § 1182.3). Such individuals may also call the Office of the General Counsel at (202) 653–4787 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make an inquiry in person. Inquiries should be presented in writing and should specifically identify the Institute systems involved. The Institute will attempt to respond to an inquiry regarding whether a record exists within 10 business days of receiving the inquiry.

§ 1182.5 Procedures for notifying government entities of the Institute's proposed changes to its systems of records.

When the Institute proposes to establish or significantly change any of its systems of records, it shall provide adequate advance notice of such proposal to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals. This report will be submitted in accordance with guidelines provided by the OMB.

§ 1182.6 Limits that exist as to the contents of the Institute's systems of records.

(a) The Institute shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. In addition, the Institute shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Institute shall not be required to update retired records.

(b) The Institute shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 1182.7 Institute procedures for collecting information from individuals for its records.

The Institute shall collect information, to the greatest extent practicable, directly from you when the information may result in adverse determinations about your rights, benefits, or privileges under Federal programs. In addition, the Institute shall inform you of the following, either on the form it uses to collect the information or on a separate form that you can retain, when it asks you to supply information:

(a) The statutory or executive order authority that authorizes the solicitation of the information;

(b) Whether disclosure of such information is mandatory or voluntary;

(c) The principal purpose(s) for which the information is intended to be used;

(d) The routine uses that may be made of the information, as published pursuant to § 1182.4; and

(e) Any effects on you of not providing all or any part of the required or requested information.

§ 1182.8 Procedures for acquiring access to Institute records pertaining to an individual.

The following procedures apply to records that are contained in an Institute system:

(a) You may request review of records pertaining to you by writing to the Office of the General Counsel (see § 1182.3). You also may call the Office of the General Counsel at (202) 653–4787 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make such a request in person. A request for records should be presented in writing and should identify specifically the Institute systems involved.

(b) Access to the record, or to any other information pertaining to you that is contained in the system shall be provided if the identification requirements of § 1182.9 are satisfied and the record is determined otherwise to be releasable under the Privacy Act and these regulations. The Institute shall provide you an opportunity to have a copy made of any such record about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 1182.12.

(c) The Institute will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The institute will acknowledge, within 10 business days, mailed requests or personal requests for documents that are not immediately available, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your record. The Institute may require that you furnish a written statement authorizing discussion of your record in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Institute, access to such records might have an adverse effect upon you. When such a determination has been made, the Institute may refuse to disclose such information directly to you. The Institute will, however, disclose this information to a licensed physician designated by you in writing.

§ 1182.9 Identification required when requesting access to Institute records pertaining to an individual.

The Institute shall require reasonable identification of all individuals who request access to records in an Institute system to ensure that they are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you shall be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Institute systems that contain particularly sensitive and/or detailed personal information, the Institute reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) If you request disclosure by mail, the Institute will request such information as may be necessary to ensure that you are properly identified. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include certification that a duly commissioned notary public of any State or territory (or a similar official, if the request is made outside of the United States) received an acknowledgment of identity from you.

(c) If you are unable to provide suitable documentation or identification, the Institute may require a signed, notarized statement asserting your identity and stipulating that you understand that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

§ 1182.10 Procedures for amending or correcting an individual's Institute record.

(a) You are entitled to request amendments to or corrections of records pertaining to you pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 1182.3).

(b) Your request for amendments or corrections should specify the following:

(1) The particular record that you are seeking to amend or correct;

(2) The Institute system from which the record was retrieved;

(3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and

(4) Your reasons for requesting amendment or correction of the record.

(c) The Institute will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General Counsel agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Institute function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You also will be informed that you may appeal this refusal in accordance with § 1182.11.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

§ 1182.11 Procedures for appealing a refusal to amend or correct an Institute record.

(a) You may appeal a refusal to amend or correct a record to the Director. Such appeal must be made in writing within 10 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 1182.3), should indicate that it is an appeal, and should include the basis for the appeal.

(b) The Director will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Director shall render his or her decision on your appeal within 30

business days of its receipt by the Institute, unless the Director, for good cause shown, extends the 30-day period. Should the Director extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Director determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Institute a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Director's determination under 5 U.S.C. 552a(g)(1)(a).

(f) Whenever you submit a statement of disagreement to the Institute in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your statement of disagreement will be disclosed with the record. If the Institute deems it appropriate, a concise statement of the Director's reasons for denying our appeal also may be disclosed with the record. While you will have access to this statement of the Director's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Director's reasons for denying your appeal.

§ 1182.12 Fees charged to locate, review, or copy records.

(a) The Institute shall charge no fees for search time or for any other time expended by the Institute to review a record. However, the Institute may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (e.g., computer printout where no screen reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of $0.10 per page. Where records are not susceptible to photocopying (e.g., punch cards, magnetic tapes, or oversize materials), you will be charged actual cost as determined on a case-by-case basis. A copying fee totaling $3.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you.

(d) A copying fee shall not be charged or, alternatively, it may be reduced, when the General Counsel determines, based on a petition, that the petitioning individual is indigent and that the Institute's resources permit a waiver of all or part of the fee.

(e) All fees shall be paid before any copying request is undertaken. Payments shall be made by check or money order payable to the ''Institute of Museum and Library Services.''

§ 1182.13 Policies and procedures for Institute disclosure of its records.

(a) The Institute not disclose any record that is contained in a system of records to any person or to another agency, except pursuant to a written request by or with the prior written consent of the subject individual, unless disclosure of the record is:

(1) To those officers or employees of the Institute who maintain the record and who have a need for the record in the performance of their official duties;

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request to the Institute formulated in accordance with the National Foundation on the Arts and the Humanities regulations published at 45 CFR part 1100;

(3) For a routine use as published in the annual notice in the **Federal Register;**

(4) To the Census Bureau for purpose of planning or carrying out a census; survey, or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Institute with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Institute for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. The Institute also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdictions, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the General Accounting Office;

(11) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e); or

(12) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Institute shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(b) Before disseminating any record about any individual to any person other than an Institute employee, the Institute shall make reasonable efforts to ensure that such records are, or at the time they were collected were, accurate, complete, timely, and relevant for Institute purposes. This paragraph (b) does not apply to dissemination made pursuant to the provisions of the

Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 1182.14 Procedures for maintaining accounts of disclosures made by the Institute from its systems of records.

(a) The Office of the General Counsel shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting also shall contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to Institute employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Institute shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Institute shall make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 1182.8. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1182.13(a)(7).

§ 1182.15 Institute responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems.

The Chief Information Officer has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined in this part may be used, held, or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Institute.

(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this category also shall be maintained in locked filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Institute, for routine uses as defined in § 1182.1 as to any given system, or for such other uses as may be provided in this part.

(4) Other than for access within the Institute to persons needing such records in the performance of their official duties or routine uses as defined in § 1182.1, or such other uses as provided in this part, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to the General Counsel.

(5) Access to areas where a system of records is stored will be limited to those persons whose duties require work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a log, as directed by the Chief Information Officer. The log shall be maintained at all times.

(6) The Institute shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within a system of records shall be in accordance with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cards, magnetic tapes, or discs, are not under the personal control of an authorized person, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for in this part.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in the case of tapes or discs, degaussing, in accordance with regulations of the General Services Administration or other appropriate authority.

§ 1182.16 Procedures to ensure that Institute employees involved with its systems of records are familiar with the requirements and of the Privacy Act.

(a) The Director shall ensure that all persons involved in the design, development, operation, or maintenance of any Institute system are informed of all requirements necessary to protect the privacy of subject individuals. The Director also shall ensure that all Institute employees having access to records receive adequate training in their protection, and that records have adequate and proper storage with sufficient security to assure the privacy of such records.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act, and the fact that the Institute may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

§ 1182.17 Institute systems of records that are covered by exemptions in the Privacy Act.

(a) Pursuant to and limited by 5 U.S.C. 552a(j)(2), the Institute system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from the provisions of 5 U.S.C. 552a, except for subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i), insofar as that Institute system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to and limited by 5 U.S.C. 552a(k)(2), the Institute system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that Institute system consists of investigatory material compiled for law

enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

(c) The Institute system entitled ''Office of the Inspector General Investigative Files'' is exempt from the provisions of the Privacy Act noted in this section because their application might alert investigation subjects to the existence or scope of investigations; lead to suppression, alteration, fabrication, or destruction of evidence; disclose investigative techniques or procedures; reduce the cooperativeness or safety of witnesses; or otherwise impair investigations.

§ 1182.18 Penalties for obtaining an Institute record under false pretenses.

(a) Under 5 U.S.C. 552a(i)(3), any person who knowingly and willfully requests or obtains any record from the Institute concerning an individual under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act also may be subject to prosecution under other statutes, including 18 U.S.C. 494, 495, and 1001.

§ 1182.19 Restrictions that exist regarding the release of mailing lists.

The Institute may not sell or rent an individual's name and address unless such action specifically is authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

[FR Doc. 06–1122 Filed 2–7–06; 8:45am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 06–6]

Amendment of the Commission's Rules Regarding Petitions for Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations relating to the procedures to be followed when parties appealing Commission actions file in different courts of appeals. If within ten days after issuance of an order, the Commission receives two or more petitions for review filed with different courts of appeals, it is required to notify the judicial panel on multidistrict litigation, which then randomly selects one of those courts of appeals to consider the petitions for review. The Commission's regulations implement this provision by specifying that a party wishing to avail itself of these procedures must, within ten days after issuance of an order, file with the Commission's Office of General Counsel a copy of its petition for review as filed and date-stamped by the court of appeals. This amendment conforms the Commission's regulations to the Federal Rules of Appellate Procedure by providing that weekends and holidays will not be included when counting this ten-day period.

DATES: Effective March 10, 2006.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 06–6, adopted on January 24, 2006, and released January 26, 2006. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies of filings may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II. 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com,* Web site *http://www.bcpiweb.com.* This document may also be viewed on the Commission's Internet Web at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-6A1.pdf.*

Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.*

Summary of Order

1. By this order, the Commission amends 47 CFR 1.13(a)(2) to eliminate an inconsistency with the Federal Rules of Appellate Procedure (Federal Rules) that arose as a result of the 2002 amendments to the Federal Rules. Section 1.13 of the Commission's rules implements the provisions of 28 U.S.C. 2112. That statutory provision, in relevant part, is applicable to situations where different parties seeking review of the same agency order file petitions for review in different courts of appeals. Under 28 U.S.C. 2112(a), if, ''within ten days after issuance of the order,'' an agency receives two or more petitions for review filed with different courts of appeals, that agency is required to notify the judicial panel on multidistrict litigation, which then randomly selects one of those courts of appeals to consider the petitions for review. Section 1.13(a)(1) of the Commission's rules implements this provision by specifying that a party wishing to avail itself of these procedures must, within ten days after issuance of an order, file with the Commission's Office of General Counsel (OGC) a copy of its petition for review as filed and date-stamped by the court of appeals with which it was filed.

2. The inconsistency which the Commission corrects by this order concerns the manner in which the ten-day period for filing petitions with OGC is computed. Section 1.13(a)(2) of the Commission's Rules provides that ''[c]omputation of time of the ten-day period for filing copies of petitions for review shall be governed by § 1.4 of the Commission's Rules.'' Section 1.4(g), in turn, sets forth the general Commission rule that, unless otherwise provided, intermediate holidays shall not be counted only in determining filing periods of less than seven days. The term holidays is defined to include Saturdays, Sundays, other recognized Federal legal holidays, and other days on which the Commission's offices are closed. 47 CFR. 1.4(e).

3. Because the period for filing petitions for review with OGC pursuant to 28 U.S.C. 2112(a) for invoking the random selection process is not less than seven days, weekends and holidays would appear to be counted in determining the ten-day period under existing § 1.13 of the Commission's rules. Such a determination, however, conflicts with current Federal Rule of Appellate Procedure 26(a)(2). That rule applies ''in computing any period of time specified in these rules or in any local court rule, court order, or applicable statute,'' and now states that computations must ''[e]xclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.'' [1] Thus, Rule 26(a)(2), in contrast to existing 47 CFR 1.13, excludes weekends and holidays in making the relevant ten-day computation under 28 U.S.C. 2112. Because the Commission's Rules should be consistent with, rather than conflict with, the Federal Rules of Appellate Procedure, the Commission amends § 1.13(a)(2) to replace the

[1] Prior to amendments made in 2002, Rule 26(a)(2), consistent with existing § 1.13, provided that weekends and holidays would be excluded when ''the period is less than 7 days, unless stated in calendar days.''

reference to § 1.4 of the Commission's Rules with a reference to Rule 26 of the Federal Rules of Appellate Procedure, thus making clear that the ten-day period under § 1.13 excludes weekends and holidays.[2]

4. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not ''substantially affect the rights or obligations of non-agency parties.''

5. Accordingly, it is ordered, that 47 CFR 1.13 is amended as set forth in the rules changes.[3]

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

■ 2. Section 1.13 is amended by revising paragraph (a)(2) to read as follows:

§ 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a) * * *

(2) Computation of time of the ten-day period for filing copies of petitions for review of a Commission order shall be governed by Rule 26 of the Federal Rules of Appellate Procedure. The date of issuance of a Commission order for purposes of filing copies of petitions for review shall be the date of public notice as defined in § 1.4(b) of the Commission's Rules, 47 CFR 1.4(b).

* * * * *

[FR Doc. 06–1099 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

[2] Rule 26(a)(4) defines legal holidays to mean New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or other various government-declared holidays. It does not, however, define other days that the court is closed as ''holidays.'' Rather, if the act to be done is filing a paper in court, Rule 26(a)(3) excludes from being counted as a day the last day of the filing period when the weather or other conditions makes the clerk's office inaccessible. The Commission will apply the same rule when it is closed on the last day of the filing period. In those cases, the petition must be filed the next business day on which the Commission is open.

[3] Notice and comment is not required to amend a procedural rule. *See* 5 U.S.C. 553(b).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–111; MB Docket No. 05–36, RM–11030; MB Docket No. 05–37, RM–10790]

Radio Broadcasting Services; Lovelady and Lufkin, TX and Oil City, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grant two allotments in Lovelady, Texas and Oil City, Louisiana that require the reclassification of FM Station KYKS, Channel 286C, Lufkin, Texas to specify operation on Channel 286C0. *See* 70 FR 8335, February 18, 2005. The Audio Division, at the request of Charles Crawford, allots Channel 288A at Lovelady, Texas, as the community's second local service. Channel 288A can be allotted to Lovelady in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.8 miles) southwest to avoid a short-spacing to the license site of FM Station KTCJ, Channel 290C3, Centerville, Texas. The reference coordinates for Channel 288A at Lovelady, Texas are 31–03–14 North Latitude and 95–32–34 West Longitude. The Audio Division, at the request of Charles Crawford, allots Channel 285A at Oil City, Louisiana, as the community's second local service. Channel 285A can be allotted to Oil City in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.6 kilometers (9.7 miles) west to avoid a short-spacing to the license site of FM Station KORI, Channel 284C3, Mansfield, Louisiana. The reference coordinates for Channel 285A at Oil City are 32–44–11 North Latitude and 94–08–10 West Longitude.

DATES: Effective March 6, 2006. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 05–36, 05–37, adopted January 18, 2006 and released January 20, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 285A at Oil City.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 288A at Lovelady; and removing Channel 286C and adding Channel 286C0 at Lufkin.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–1063 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–113, MM Docket No. 04–201, RM–10972, RM–11103]

Radio Broadcasting Services; Birmingham, Orrville, Selma, and Shorter, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The staff grants a settlement request filed by Scott Communications, Inc., Alexander Broadcasting Co., and SSR Communications, deletes the allotment of Channel 300A at Shorter, AL, and upgrades, reallots, and changes the community of license for Station WJAM–FM from Channel 300A at Orrville, AL, to Channel 300C3 at Shorter, AL. To prevent the removal of the sole local service at Orrville, the document reallots and changes the community of license for Station WALX(FM) from Channel 265C2 at Selma, AL, to Channel 265C2 at Orrville. The staff also dismisses as moot a petition for reconsideration filed jointly by Scott Communications and Alexander Broadcasting directed at the *Report and Order* in this proceeding. *See* 70 FR 28461 (May 18, 2005). With this action, the proceeding is terminated. *See also* Supplemental Information.

DATES: Effective March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 04–201, adopted January 18, 2006, and released January 20, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the Memorandum Opinion and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

To accommodate the reallotment of Channel 300C3 to Shorter, the document also downgrades and modifies the license of Station WRAX(FM) at Birmingham, AL, from Channel 299C to Channel 299C0. To ensure that local aural service is retained at Orrville, Station WJAM–FM may not commence operating at Shorter until Station WALX(FM) commences operations at Orrville. The reference coordinates for Channel 300C3 at Shorter are 32–21–49 NL and 85–59–48 WL. The reference coordinates for Channel 265C2 at Orrville are 32–20–42 NL and 86–55–02 WL. The reference coordinates for Channel 299C0 at Birmingham are 33–43–52 NL and 86–37–57 WL. This document also waives the provisions of Section 1.420(j) of the Commission's rules, consistent with the *Public Notice* entitled *Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments,* 20 FCC Rcd 10756 (MB 2005).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 299C and adding Channel 299C0 at Birmingham, removing Channel 300A and adding Channel 265C2 at Orrville, removing Channel 265C2 at Selma, and removing Channel 300A and adding Channel 300C3 at Shorter.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–1061 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–112; MB Docket No. 04–277, RM–11034; MB Docket No. 04–278, RM–11035]

Radio Broadcasting Services; Ringwood, OK and Taos Pueblo, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford allots Channel 285A at Ringwood, Oklahoma, as the community's first local aural transmission service in MB Docket No. 04–277; RM–11034. *See* 69 FR 46474, published August 3, 2004. Channel 285A can be allotted to Ringwood in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 10.0 kilometers (6.2 miles) northeast of the community. The reference coordinates for Channel 285A at Ringwood are 36–26–13 North Latitude and 98–09–31 West Longitude. In addition, the Audio Division at the request of Dana J. Puopolo, allots Channel 292C3 at Taos Pueblo, New Mexico, as the community's first local aural transmission service in MB Docket No. 04–278; RM–11035. *See* 69 FR 46474, published August 3, 2004. Channel 292C3 can be allotted to Taos Pueblo in compliance with the Commission's minimum distance separation requirements at city reference coordinates 36–26–19 North Latitude and 105–32–38 West Longitude. Filing windows for Channel 285A at Ringwood, Oklahoma and Channel 292C3 at Taos Pueblo, New Mexico, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective March 6, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–277 and 04–278, adopted January 18, 2006, and released January 20, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–

A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Taos Pueblo, Channel 292C3.

■ 3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Ringwood, Channel 285A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–1060 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–110; MB Docket No. 04–276, RM–11033; MB Docket No. 04–279, RM–11036]

Radio Broadcasting Services; Mooreland, OK and Randsburg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Dana J. Puopolo, allots Channel 271A at Randsburg, California, as the community's first commercial FM transmission service in MB Docket No. 04–276; RM–11033. *See* 69 FR 46474, published August 3, 2004. Channel 271A can be allotted to Randsburg in compliance with the Commission's minimum distance separation requirements at the city reference coordinates of 35–22–06 North Latitude and 117–39–25 West Longitude. Mexican concurrence has been requested. The Audio Division, at the request of Charles Crawford, allots Channel 254A at Mooreland, Oklahoma, as the community's third local FM transmission service in MB Docket No. 04–279; RM–11036. *See* 69 FR 46474, published August 3, 2004. Channel 254A can be allotted to Mooreland in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 13.9 kilometers (8.6 miles) northwest of the community. The reference coordinates for Channel 254A at Mooreland are 36–30–30 North Latitude and 99–20–00 West Longitude. Filing windows for Channel 271A at Randsburg, California and Channel 254A at Mooreland, Oklahoma, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective March 6, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 04–276 and 04–279, adopted January 18, 2006, and released January 20, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Randsburg, Channel 271A.

■ 3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 254A at Mooreland.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–1059 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU47

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for the Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Kootenai River population of the white sturgeon (Acipenser transmontanus) (Kootenai sturgeon) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately, 6.9 river miles (RM) (11.1 river kilometers (RKM)) of the Kootenai River fall within the boundaries of the critical habitat designation located in Boundary County, Idaho. This designation is in addition to the 11.2 miles (18 kilometers) of the Kootenai River already designated as critical habitat for the Kootenai sturgeon.

DATES: This rule becomes effective March 10, 2006. We will accept comments from all interested parties until April 10, 2006. A public hearing will be held on March 16, 2006 (see **ADDRESSES** section below for location of hearing).

ADDRESSES: *Comments:* You may submit comments, identified by RIN 1018–AU47, by any of the following methods:

(1) Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) E-mail: *FW1SPOK_crithab_stur@R1.fws.gov.* Include RIN 1018–AU47 in the subject line.

(3) Fax: 509–891–6748.

(4) Mail: Susan Martin, Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 E Montgomery, Spokane, WA 99206.

(5) Hand Delivery/Courier: You may hand-deliver written documents to our office, at the above address.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Hearing: A public hearing will be at the Kootenai River Inn, 7169 Plaza St, Bonners Ferry, Idaho, on March 16, 2006, from 7 p.m. until 8:30 p.m. An informal informational meeting will precede the hearing from 5 p.m. until 6:30 p.m. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

FOR FURTHER INFORMATION CONTACT: Susan Martin, Field Supervisor, Upper Columbia Fish and Wildlife Office at the above address (telephone: 509–891–6839; facsimile: 509–891–6748).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

To ensure that this action is as accurate and as effective as possible, we hereby solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this rule. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Kootenai sturgeon habitat; whether areas included in the designation that are occupied and do not contain the features that are essential to the conservation of the species; or whether areas included as occupied are not occupied and why. Specific information is also sought on areas not occupied at the time of listing which are essential to the conservation of the species and why those areas should be considered essential to the conservation of the species;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on the critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) Any information on why the canyon reach (see Background section below) should or should not be designated as critical habitat; and,

(7) In its May 25, 2005 order, discussed below, the court focused on the effect of substrate on ultimate breeding success, and this interim rule reflects the court's focus. The best available science, however, demonstrates that breeding success is dependent on a number of variables in addition to substrate. As discussed below, water temperature, depth, and velocity all appear to play a role in triggering spawning. Thus, a combination of appropriate substrates and water conditions appear necessary for significant breeding success.

- Do all of the areas designated contain all of the PCEs required for successful breeding and recruitment (*i.e.*, both the triggering of spawning by the adults and the survival of eggs and larval sturgeon)?
- If so, do any of the habitat features in these areas require special management?
- In particular years, there has been, albeit inadequate, recruitment. Please provide comment on any perceived or known bases for that recruitment and how it might inform our designation of this critical habitat.
- What is the geographic origin of those recruited sturgeon?

Background and Previous Federal Actions

For a description of Federal actions concerning Kootenai sturgeon that occurred prior to our September 6, 2001, designation of critical habitat, refer to that rule (66 FR 46548).

On February 21, 2003, the Center for Biological Diversity filed a complaint against the Corps and the Service (CV 03–29–M–DWM) in Federal Court in the District of Montana, alleging among other things, that designated critical habitat for the Kootenai sturgeon failed to include areas which included rocky substrate and therefore would not allow the Kootenai sturgeon to recover. Plaintiffs alleged there are more appropriate cobble spawning areas outside of designated critical habitat that should have been included, and that it was arbitrary and capricious for the Service not to include these areas in critical habitat.

On May 25, 2005, the District Court of Montana ruled in favor of plaintiffs, and remanded the critical habitat designation to the Service for reconsideration with a due date of December 1, 2005. The Service filed a motion to alter or amend the judgment, and the Court extended the deadline for releasing a new critical habitat designation to February 1, 2006. In the interim, the Court ruled that the 2001 designation of critical habitat remains in effect. The Kootenai sturgeon is 1 of 18 land-locked populations of white sturgeon known to occur in western North America (U.S. Fish and Wildlife Service 1999). Kootenai sturgeon occur in Idaho, Montana, and British Columbia and are restricted to approximately 167.7 river miles (RM) (270 river kilometers (RKM)) of the Kootenai River extending from Kootenai Falls, Montana (31 RM (50 RKM) below Libby Dam) downstream to the outflow of Kootenay Lake, British Columbia at Corra Linn Dam. For more information on the Kootenai sturgeon, refer to the final listing rule published in the **Federal Register** on September 6, 1994 (59 FR 45989), the Recovery Plan for the Kootenai River Population of the White Sturgeon (U.S. Fish and Wildlife Service 1999), and our final rule designating critical habitat, published in the **Federal Register** on September 6, 2001 (66 FR 46548).

The sturgeon has been experiencing declining populations since the late 1970s when we first began monitoring. The declines are believed to be due to recruitment failure largely related to lack of appropriate spawning and rearing habitat. The Service has been consulting with the U.S. Army Corps of Engineers on the operation of Libby Dam to determine what measures can be used to prevent jeopardizing the continued existence of the species. As a result of this consultation, the Corps has undertaken a number of conservation actions designed to address the spawning and rearing habitat deficiencies in the river. Those actions are designed to address both the physical habitat in the river itself as well as changes to the operation of the dam which could improve spawning and rearing conditions.

In order to successfully recruit new individuals into the sturgeon population, the sturgeon must spawn, the eggs must settle in an area that supports their viability, and the mobile

embryos that emerge from the eggs must have appropriate habitat in which to grow.

The trigger for Kootenai sturgeon spawning appears to be unrelated to successful incubation and mobile embryo survival. As a result, Kootenai sturgeon currently spawn in areas unsuitable for incubation and mobile embryo success. This has resulted in sturgeon spawning in areas with substrates that are unsuitable for egg and mobile embryo viability in the 14 years we have been monitoring sturgeon spawning. It is unclear what precisely is triggering spawning in areas unsuited to egg and embryo viability. However, to date, data indicate that Kootenai Sturgeon successful recruitment to the juvenile stage occurs when mean water column velocity is 3.3 ft/s (1.0 m/s) or greater.

Although rocky substrates do not appear to be essential for spawning site selection, they appear to be essential to the viability of eggs and the survival of free embryos. Rocky substrates provide surfaces for sturgeon eggs to attach. In addition the rocky substrate provides inter-gravel spaces for free embryo development. In areas with no such substrate or where sand and gravel occur, eggs have been found with sand and silt adhering to them and this is believed to prevent proper incubation and hatching. The linear downstream extent of rocky substrate from spawning sites is also important because eggs and free embryos are dispersed downstream by the current. For similar white sturgeon populations this distance appears to be at least 5 mi (8 km) of continuous rocky substrate.

For these reasons, we believe that all 3 characteristics, water depths of at least 5 meters, flows with a minimum mean water column velocity of at least 3.3 fps, stable, temperatures of roughly 50 degrees F in May through July with no sudden drops in temperature exceeding 3.6 degrees F, and rocky substrate for at least 5 miles are necessary for successful spawning that leads to recruitment into the adult population. Because the behavior of sturgeon results in spawning in areas that are not able to support egg incubation and embryo survival all three physical and biological components need to be present in the same place at the same time for successful spawning and recruitment.

We agree with the court that rocky substrate is necessary for successful sturgeon recruitment. Appropriate depths, timing, temperature and flow velocities are also essential for successful spawning. Finally, that these physical characteristics occur simultaneously and in the same location is also essential. The current plight of the Kootenai sturgeon appears to be caused by current separation (in time or location) of one or more of these physical characteristics of successful spawning and recruitment habitat from the others. A prerequisite for sturgeon conservation may be ending this separation and conservation actions currently underway for the sturgeon may be able to remedy this disconnect.

However, the ultimate means for conservation of a species are only tangentially related to the legal question of what areas qualify as critical habitat under the statutory definition in ESA § 3(5). Under that definition, specific areas within the geographical area occupied by the species at the time of listing are critical habitat if (1) they contain physical or biological features essential to the conservation of the species and (2) which may require special management. The courts in other challenges to critical habitat designations have been uniform in holding that any occupied area must contain the essential features—speculation that those features may be present in the future has been explicitly rejected as a sufficient basis for designation.

The court has required that we designate this area, however we believe it may not meet the statutory definition as there may not be sufficient PCEs to provide for essential life functions, in this case successful spawning. The information the Service has to date indicates that not all of the PCEs required for successful spawning may exist in any of the designated areas at the same time. We have designated critical habitat as the court directed and we are seeking public comment as to whether there is other data demonstrating that these elements actually exist in the designated areas.

We have specifically requested public comment on these difficult issues. After public comment, we may revise the designation to delete any areas that we determine, based on the best available science, do not meet the statutory definition of ''critical habitat.'' Below we present relevant information regarding the basis of the statements and findings in this rule.

Geomorphic Reaches

The Kootenai River, from Kootenai Falls to the Canadian border is comprised of three geomorphic reaches (Snyder and Minshall 1994; Barton *et al.* 2004; Berenbrock 2005a): (1) The canyon reach, which extends from Kootenai Falls at to below the confluence with the Moyie River; (2) the braided reach, which begins at the end of the canyon reach and extends downstream to Bonners Ferry. The meander reach, extends from RM 151.8 (RKM 244.5) to the confluence with Kootenay Lake in British Columbia. The uppermost portion of meander reach, from the lower end of the braided reach to Shorty's Island, was designated as critical habitat in 2001 (66 FR 46548).

The canyon reach, beginning at Kootenai Falls, is characterized by rocky substrates and a relatively high water surface gradient. Downstream from the canyon reach the valley broadens and the river forms a low-gradient braided reach as it flows through multiple shallow channels over gravel and cobbles (Barton *et al.* 2005). The meander reach (including the currently designated unit) is characterized by sandy substrate, a low water-surface gradient and a series of deep holes. The meander reach includes the 11.2 mi (18 km) of currently designated critical habitat from RM 152.6 (RKM 246) downstream to RM 141.4 (RKM 228). The uppermost segment of the meander reach is relatively shallow under the current hydrologic regime. A deep hole (49.9 feet (ft) (15.2 meters (m))) exists near Ambush Rock at approximately RM 151.9 (RKM 244.6) (Barton *et al.* 2005), and this hole is frequented by sturgeon in spawning condition.

Spawning Site Selection

We have no documentation regarding Kootenai sturgeon spawning locations prior to systematic surveying efforts initiated in 1991. Since 1991, sturgeon eggs have been recovered in the Kootenai River from below Shorty's Island (Paramagian *et al.* 1995) to the canyon reach at RM 162.6 (RKM 261.6) (Paragamian *et al.* 2001; Rust and Wakkinen 2004). Despite intensive sampling for the past 14 years, the only documentation of sturgeon eggs above the transition zone is in 2003 when five sturgeon eggs were found on sampling mats at RM 162.6 (RKM 261.6), during a year when sturgeon were experimentally moved to this reach to see if they would spawn there (Rust and Wakkinen 2004). These eggs were collected too early in development to determine if fertilization had occurred. Successful recruitment to the juvenile stage is rare within the designated critical habitat. When successful recruitment occurs, it appears to be correlated with years of high flows.

The rest of the eggs have also been documented in the lower 5 mi (8 km) of the designated critical habitat. There is evidence from movement of radio and/or sonic tagged individuals that approximately one-third of the sturgeon in spawning condition migrate to the

transition zone, but few have remained to spawn there. Most (the other two-thirds) of the sturgeon in spawning condition simply remain in the meander reach.

Research on Kootenai sturgeon suggests that water depth and velocity are the primary factors influencing spawning location and that temperature influences spawning timing. Substrate does not appear to be a factor in current spawning site selection, as the sturgeon readily spawns over substrates that are not conducive to survival for early life-stages (*i.e.*, areas without rocky substrate). These factors, and what we know about them, are discussed in more detail below.

Water Depth

Of 209 radio contacts with tagged Kootenai sturgeon in spawning condition, 75 percent were within the lower one-third of the water column, and they tended to be found even closer to the bottom during the actual spawning period (Paragamian and Duehr 2005). Egg capture locations between 1991 and 1998 indicate that all but three spawning events occurred over sand substrate between RM 141.6 (RKM 228) and an undefined point upstream of RM 149.4 (RKM 240.5), in waters usually greater than 16.5 ft (5 m) in depth (Paragamian *et al.* 2001, Barton *et al.* 2005).

As the spawning season progresses the sturgeon tend to spawn further upstream in the meander reach (Paragamian *et al.* 2001), river depth also increases there due to cumulative flows and backwater influence from Kootenay Lake (Hoffman 2005a). McDonald (2005b) determined that it was not the average velocity, but depth that was most closely related to spawning location among Kootenai sturgeon.

Water Velocity

Paragamian *et al.* (2001) observed mean water column velocities between RM 141.6 and 149.4 (RKM 228 and 240.5) during spawning events and in 2002, Paragamian *et al.* (2002) hypothesized that spawning sturgeon may select sites further upstream with greater water velocities as depth increases due to the backwater from Kootenai Lake. Parsley and Beckman (1994) suggested, based on information from four lower Columbia River sites where white sturgeon successfully reproduce, that optimal spawning habitat may occur when mean water column velocity is 3.3 ft/s (1.0 m/s) or greater. Based on these studies it appears that white sturgeon use velocity as a cue for spawning.

The hydraulic energy and turbulent flow fields often associated with high water velocity are necessary to maintain exposed rocky substrate essential for maintaining clean interstitial space within the substrate (shelter). Under higher water velocities free embryos may seek shelter by initiating the hiding phase up to two days earlier (Brannon *et al.* 1985), and thus avoid being transported by the current to sites without rocky substrate for shelter. In the absence of suitable water velocities Kootenai sturgeon remain vulnerable to predation and survival is predictably low (Parsley and Beckman 1991, Miller and Beckman 1996).

Water Temperature

The water temperatures during white sturgeon spawning are fairly narrow and well known. White sturgeon spawning in the Kootenai River occurs most commonly when water temperatures are around 50 degrees Fahrenheit (°F) (10.0 degrees Celsius (°C)) (Paragamian and Wakkinen 2002). Sudden drops of temperatures greater than 3.6 °F (2.0 °C) negatively affect egg fertilization (Lewandowski 2004).

Rocky Substrate

Although rocky substrates do not appear to be essential for spawning site selection, they appear to be essential to the viability of eggs and the survival of free embryos. Rocky substrates provide fixed surfaces for demersal (sinking, heavier than water), adhesive sturgeon eggs (Stockley 1981) to attach and maintain location during egg incubation, and inter-gravel spaces for the free embryo hiding phase (Brannon *et al.* 1985; Parsley *et al.* 2002; Coutant 2004). The linear downstream extent of rocky substrate from spawning sites is important for the species because these rocky substrates provide both attachment surfaces for eggs and hiding cover for free embryos that are redistributed, by the current, downstream. For white sturgeon populations below Bonneville and Ice Harbor Dams on the Columbia River, where white sturgeon spawn and successfully recruit, this distance appears to be at least 5 mi (8 km) of continuous rocky substrate. Based on this, we conclude that rocky substrate distributed continuously along a sufficient length of the Kootenai River is essential for successful Kootenai sturgeon recruitment.

The meander reach has a relatively low stream gradient, and substrates are composed primarily of sand and other fine materials overlying lacustrine (of, relating to, or formed in a lake) clay (Barton 2003, unpublished data; Barton *et al.* 2004). Exposed, naturally deposited gravel is confined to a few small sites along the banks and streambed believed to be associated with old tributary outflows (McDonald 2005), and localized areas where steep river banks have been artificially armored with cobbles and boulders to control erosion (Bettin in litt. 2005). Spawning Kootenai sturgeon do not appear to exhibit consistent spawning site fidelity to these few sites in the meander reach with rocky substrates (Barton 2004a; Hoffman in litt. 2005b).

A significant reach of river bank armor (cobble) currently exists along the right bank of the Kootenai River in the vicinity of RM 142.8 (RKM 230) (Bettin in litt. 2005). Spawning has been documented near this armored river bank and upstream in areas where conditions meet the sturgeon's spawning requirements of flows, depth, and temperature but rocky substrates are lacking (Paragamian *et al.* 2002; Hoffman 2005a).

Our original critical habitat designation in 2001 assumed that a ''buried gravel/cobble geomorphic reach'' existed throughout the river bed within the meander reach from approximately RM 151.8 (RKM 244.5) at Bonner's Ferry downstream to the mouth of Deep Creek, a distance of 2.8 mi (4.5 km) (Barton 2004a). However, a more extensive sediment analysis during the summer of 2004 revealed that gravel/cobble in this area was relatively scarce with the exception of a 0.25 mi (0.4 km) reach of buried gravel within the meander reach below the mouth of Myrtle Creek (Barton 2004a).

Exposed gravel/cobble does exist within the transition zone between the braided reach and the lower meander reach from approximately RM 151.8 (RKM 244.5) upstream to RM 152.7 (RKM 246). On three occasions eggs have been collected in this transition zone (Paragamian *et al.* 2001), meaning that spawning occurred there, or directly upstream and eggs were redistributed by the current to this area. Due to the difficulty of tracking individuals during early life stages, it is unclear if any eggs deposited in the transition zone or upstream have survived to become juveniles. Other populations of sturgeon that are known to have successful recruitment (*e.g.*, the outflows at Bonneville and Ice Harbor Dams on the Columbia River) have at least 5 mi (8 km) of suitable rocky substrate before transitioning into sandy substrate. This 0.6 mi (1 km) reach of exposed gravel/cobble, currently designated as critical habitat in the Kootenai River, is insufficient for dispersing free embryos and young fish

in the hiding phase. This critical habitat designation adds 6.9 river miles (RM) (11.1 river kilometers (RKM)) of the Kootenai River, known as the braided reach which contains rocky substrate, however, not all the requirements for successful spawning and/or adequate recruitment may currently exist in this reach.

U.S. Army Corps of Engineers Conservation Actions

To promote fertilized egg survivorship and successful recruitment, the Corps has provided various augmentation releases from Libby Dam since 1991. These releases seem to have provided the habitat features that supported limited successful spawning and recruitment, especially in 1991 when the augmentation releases lasted more than 40 days (the longest augmentation flows of any year) and natural runoff was high. Based on capturing juveniles in gill nets and aging them by counting growth patterns in fin-ray sections, 14 sturgeons were recruited in 1991. These 14 sturgeons are out of a total of 26 sturgeons (54 percent) that were recruited between 1991 to 1997 (Beamesderfer 2005). Thus, the duration and timing of augmentation flows are likely correlated to increased recruitment success in the Kootenai River. The mechanism for this relationship is that higher flows provide protection to sturgeon eggs from predators that can not forage on a sustained basis in such high velocity waters (Faler *et al.* 1988; Miller and Beckman 1996).

The Corps has proposed physical modifications to the meander reach that are intended to provide suitable hard substrate where sturgeon now spawn. These sites will continue to be monitored to assess the effectiveness of these conservation efforts.

Interim Rule

We are promulgating this interim rule to meet the court-ordered deadline for issuing a new designation of critical habitat for the Kootenai sturgeon by February 1, 2006. On June 9, 2005, we filed a motion to alter or amend the court's May 25, 2005, judgment. In the declaration, which accompanied our motion, we explained that the timeline given by the court to issue a new final rule was insufficient to complete a legally proper and well-justified revision of critical habitat. In our declaration, we described in detail the 20-month schedule needed to perform the complex analysis and review involved in preparing a new proposed revision of critical habitat, preparation and finalization of a new economic analysis, compliance with the implementing regulations of the ESA requirement for a 60 day comment period on the proposed rule, and the additional steps required to finalize the new revision. In an order issued July 15, 2005, the court rejected our proposed schedule and ordered us to promulgate and submit a final critical habitat designation to the **Federal Register** for immediate publication by February 1, 2006. The court in its July 15, 2005, order specifically stated it was leaving it to the Service to determine the most efficient procedure for legal promulgation of a new critical habitat designation.

Under these circumstances, we have determined under 5 U.S.C. 553(b)(3)(B) that we have good cause to issue this rule without prior opportunity for public comment because prior notice and public procedure would be impracticable (which is also a reason listed under 553(b)(3)(B) of the APA). From the time required to research this rule, we did not have sufficient time to issue a proposed rule, open a reasonable comment period, and subsequently issue a final rule prior to the court-imposed deadline. Therefore, without issuance of an interim rule, we would be in violation of the court order.

Although this interim final rule does constitute a final rule, and therefore has regulatory effect, it also opens a comment period on the substance of the rule. Following public comment, we will consider all comments received and issue a new final rule that will replace this interim final rule. That new final rule may vary from this interim final rule, to the extent consistent with APA and ESA, and will address the comments received. Thus, in effect, this interim final rule will serve as the proposed rule for the later final rule, and the Service will treat this interim final rule as the proposed rule for the purpose of complying with ESA § 4(b)(5).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features exist and may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but which was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data

available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial information available in determining habitats that contain the features that are essential to the conservation of the Kootenai sturgeon. We relied upon information in our prior rulemaking, our recovery plan, and more recent information on the biological needs of the species summarized in the Background section above. We are designating critical habitat only in areas presently occupied by the species at the time of listing.

We have also reviewed available information that pertains to habitat requirements of this species. The materials included data and analysis in section 7 consultations and gathered by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses, and agency reports, original data sets, and data analyses and accounts of involved scientists and resource managers.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Specific Primary Constituent Elements for the Kootenai Sturgeon

We have identified the primary constituent elements of Kootenai sturgeon critical habitat based on our knowledge of life history, biology, and ecology of the Kootenai sturgeon and the habitat requirements necessary to sustain the essential life history functions of the species. We are changing the PCEs to better fit with our current understanding of the features needed to support the sturgeon's life history functions,

As noted earlier, this designation focuses on spawning and rearing habitats which are limiting factors to sturgeon conservation. All of the following primary constituent elements must be present in order for successful spawning, incubation and survival to occur. These primary constituent elements are:

(1) During the spawning season of May into July, a flow regime that periodically (not necessarily annually) produces flood flows capable of producing intermittent depths of at least 5 meters (Paragamian and Duehr 2005, Barton *et al.* 2005), and mean water column velocities of at least 3.3 ft/s (1.0 m/s) (Anders *et al.* 2002, Schafter 1997, Berenbrock 2005) throughout, but not uniformly within the braided reach.

(2) Stable, temperatures of roughly 50 degrees F in May into July with no sudden drops in temperature exceeding 3.6 degrees F at Bonners Ferry during the spawning season and water temperatures suitable for natural rates of development of embryos.

(3) Presence of approximately 5 miles of continuous submerged rocky substrates for normal free embryo redistribution behavior and downstream movement (Brannon *et al.* 1985).

(4) A flow regime that limits sediment deposition and maintains appropriate rocky substrate for sturgeon egg adhesion, incubation, escape cover, and free embryo development (Stockley 1981, Parsley *et al.* 1993, Parsley and Beckman 1994).

The presence of PCE components related to flow, temperature, and depth is dependent in large part to the amount and timing of precipitation in any given year. These parameters vary during and between years and, at times, some or all of the parameters are not present in the area designated as critical habitat. In addition, in general, all PCEs are not necessary to provide for all biological processes. As noted earlier for spawning and rearing habitat, all the identified PCEs must be present at the same time and in the same place. However, because even in the critical habitat the specific conditions in riparian systems are variable due to a number of factors such as weather, this designation does not require that these parameters must be available year-round. Rather, the designation means that sufficient PCE components to support successful spawning must be present and protected during May into July, the time of the year when the PCE components are needed to fulfill the requirements to ensure successful spawning, which are the particular conservation need for which the reach was designated.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain the primary constituent elements which may require special management considerations or protections. Threats to the braided reach include shallow water depths, low water velocities, and sudden changes in water temperature in ways that that

adversely affect breeding behavior (*see* U.S. Fish and Wildlife Service 1994 final listing rule for the sturgeon).

Each of the areas designated contain PCEs that provide for one or more of the life history functions of the sturgeon. In some cases, the PCEs may exist as a result of ongoing Federal actions. However, the Service does not foresee that continued operations of Libby Dam in a manner consistent with past management would result in destruction or adverse modification of critical habitat. These conditions are part of the current baseline conditions.

Critical Habitat Designation

We are revising our 2001 final critical habitat designation by adding the braided reach to existing Kootenai sturgeon critical habitat. The braided reach is 6.9 mi (11.1 km) long and is entirely within Boundary County, Idaho. This designation is in addition to the 11.2 RM (18 RKM) of the meander reach currently designated as critical habitat. The critical habitat areas described below constitute our best assessment of additional areas determined to be occupied at the time of listing, that may contain the primary constituent elements essential to the conservation of the Kootenai sturgeon, and that may require special management or protections.

Land Ownership

Upon statehood in 1890, the State of Idaho claimed ownership of the bed of the Kootenai River and its banks up to ordinary high-water lines. Based upon early U.S. Forest Service (USFS) maps from 1916, U.S. Geological Survey maps from 1928, and the confining effects of the private levees completed by the Corps in 1961, it appears that the ordinary high-water lines originally delineating State lands on the Kootenai River in the upper meander reach and braided reach are essentially unchanged. Because of the scale of the available maps, it is possible that minor river channel changes have occurred since Statehood, and that some small portions of private lands now occur within the ordinary high-water lines. However, we understand that most of the lands where these changes may have occurred lie within the flowage and seepage easements purchased by the Federal government under Public Law 93–251, section 56, passed in 1974 (Ziminske 1999). In addition, when the river meanders, the ''government lot'' or parcel owners abutting State-owned riverbed/banks may request parcel boundary adjustments to the new ordinary high-water line, and corresponding adjustments in taxable acreage. The lateral extent of the State-owned riverbed/banks along the steep levees may be closely approximated today through the Corps definition of ordinary high-water line cited above. Thus, we believe the area we previously designated as critical habitat, and the areas we are now designating as critical habitat are within lands owned by the State of Idaho.

Unit Description

We present a brief description of the designated unit, and reasons why it meets the definition of critical habitat for the Kootenai sturgeon, below.

Unit 1 (Braided Reach)

This unit begins at RM 159.7 (RKM 257.0), below the confluence with the Moyie River, and extends downstream within the Kootenai River to RM 152.7 (RKM 245.9), at Bonners Ferry. Within this unit the valley broadens, and the river forms an intermediate-gradient braided reach as it courses through multiple shallow channels over gravel and cobbles (Barton 2004a). This unit was occupied by the sturgeon at the time of listing, and is currently occupied by foraging and migrating sturgeon. Spawning has not been documented here. Gravel and cobble are exposed along the bottom of the Kootenai River in the braided reach and are exposed intermittently in the upstream part of the transition zone (Barton 2004a). The braided reach provides temperatures, depths, and velocities required to trigger spawning only intermittently, if at all, for three reasons. The construction of Libby Dam resulted in average peak flows at Bonner's Ferry declining from approximately 75,000 cfs to 35,000 cfs, or by approximately 53 percent. In addition, the average elevation of Kootenay Lake and the backwater effect have been reduced in much of the braided reach by about 7.2 ft (2.2 m). Finally, a large portion of the braided reach has become wider and shallower due to loss of energy and bed load accumulation (the accumulation of large stream particles, such as gravel and cobble carried along the bottom of the stream) (Barton 2005a, unpublished data). The increase in bed load is a result of the broadening of the braids and velocity reductions. We have one area of concern regarding whether this reach contains critical habitat, and it is the subject of our request for comment. That is, are the velocities necessary to trigger spawning current produced by the operation of Libby Dam. Modeling done by the USGS indicates that the maximum mean water column velocity is 2.6 fps, which is approximately 25% less than that required in our PCEs for sturgeon. We believe other than velocity, we have data demonstrating that the temperatures, depth, and substrate requirements are currently met by the operation of the Dam.

Effect of Critical Habitat Designation

Section 7 Consultation

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Kootenai sturgeon or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal

agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Each of the areas designated in this rule are believed to contain sufficient PCEs to provide for one or more of the life history functions of the Kootenai sturgeon.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat also may jeopardize the continued existence of the Kootenai sturgeon. Federal activities that, when carried out, may adversely modify critical habitat for the Kootenai sturgeon include, but are not limited to:

(1) Actions which would affect flows in ways that would reduce the value of the PCEs essential to the conservation of the species. For example, flood control and hydroelectric operations may destroy or adversely modify critical habitat by altering riverbed substrate composition, or by reducing flows, water velocity, cumulative backwater effects, and water depths essential for normal breeding behavior, migration, breeding site selection, shelter, dispersal, survival of incubating eggs and developing free embryos.

(2) Actions which would significantly change water temperature in a manner that is not compatible with the conservation needs of the Kootenai sturgeon. For example, changes in existing flood control or hydroelectric operations may adversely modify water temperatures within critical habitat necessary for normal breeding behavior.

(3) Actions that would significantly affect channel morphology or geometry in a manner that is not compatible with the conservation needs of the Kootenai sturgeon. Such activities could include, but are not limited to: Changes in land management activities accelerating sediment releases into the Kootenai River; channelization; levee reconstruction; stream bank stabilization; gravel removal; and road, railroad, bridge, pipeline, or utility construction.

(4) Actions that are likely to significantly alter water chemistry in an adverse manner. Such activities could include the release of chemicals or biological pollutants into the waters in, or upstream of, critical habitat.

Exclusions Under Section 4(b)(2) of the Act

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for the Kootenai sturgeon are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the Kootenai sturgeon, and the designation does not include any Tribal lands or trust resources. We have conducted an economic analysis and will determine whether there are any areas suitable for exclusion as we consider its results and the public comments received on this interim rulemaking.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

We conducted an economic analysis to estimate the potential economic effect of the designation. This analysis has been made available for public review on the date of the publication of this rule and we will accept comments on the draft analysis until the comment period closes.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Kootenai River white sturgeon. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The geographic area of analysis includes one new unit designated as critical habitat and a unit previously designated as critical habitat in 2001. Future costs (2006 through 2025) associated with conservation activities for the sturgeon is estimated to range from $370 million to $790 million on a present value basis and $690 million to $1.2 billion expressed in undiscounted dollars. Annualized impacts associated with the conservation related impacts range from $35 million to $74 million. The activity most potentially affected is the operations of Libby Dam. However, all but $20,000 to $30,000 in post-designation anticipated costs (undiscounted dollars) are joint costs; the sturgeon water flows and almost all of the resulting potential impacts will likely occur whether or not the new braided reach unit, or a portion thereof, is added to the existing designation.

A copy of the economic analysis with supporting documents are included in our administrative record and may be available for downloading from the Internet at *FW1SPOK_crithab_stur@R1.fws.gov* or by contacting the Upper Columbia Fish and Wildlife Office directly (see **ADDRESSES** section above).

For the purpose of this interim final rule, we have considered the economic and other relevant impacts of the designation based on currently available information, and are not excluding any areas from the designation at this time. We will reconsider the issue before promulgating the final rule that will replace this interim final rule.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we have sought the expert opinions of five

appropriate and independent specialists regarding this interim rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have sent peer reviewers copies of this rule. We have invited these peer reviewers to comment on the specific assumptions and conclusions regarding the designation of critical habitat.

We have considered all comments and information received on this revision of the final rule during this peer review process. However, based on comments received during the public review process the final decision may differ from this interim rule.

Public Hearing

The Act provides for a public hearing on this rule, if requested. Given the high likelihood of requests, we have scheduled a public hearing to be held on February 22, 2006, at the Kootenai River Inn, 7169 Plaza St, Bonners Ferry, ID. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503–231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful? (5) What else could we do to make the rule easier to understand?

Send a copy of any comments on how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect Kootenai River white sturgeon. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate

consultation for ongoing Federal activities.

Approximately 30 small agriculture operations could be impacted by conservation measures for the sturgeon. These operations represent approximately seven percent of the number of small farms operating within the county. The geographic area of analysis includes one new unit (Unit 1: Braided Reach) designated as critical habitat and the unit previously designated as critical habitat in 2001 (Unit 2: Meander Reach). However, the flow-related agriculture impacts are joint costs; the sturgeon flows and resulting impacts will occur whether or not the proposed unit (Unit 1), or a portion thereof, is added to the existing designation. Considering these conservation-related impacts are also co-extensive with the listing, there are unlikely to be burdens to small agricultural operations from the designation of Unit 1. We have therefore determined that this rule will not have a significant economic impact on a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on Kootenai River white sturgeon and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a project proponent could modify a project or take measures to protect Kootenai River white sturgeon. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designated critical habitat for the Kootenai River white sturgeon is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal

mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. Four small local governments, Libby, Montana (population 2,626), Bonners Ferry, Idaho (population 2,515), Troy, Montana (population 957), and Moyie Springs, Idaho (population 656), are located either adjacent to, or in the vicinity of the existing and proposed critical habitat. All four of the local governments have populations that fall within the criteria (fewer than 50,000 residents) for ''small entity.'' There is one record of a section 7 consultation between Bonners Ferry and the Service since the sturgeon was listed in 1994. This was an informal consultation on the installation of residential water meters. The proposed work will not occur within waterways or riparian areas and will not affect the sturgeon. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we will request information from, and coordinate development of this rule with appropriate State resource agencies in Idaho. The designation of critical habitat in areas currently occupied by the Kootenai sturgeon imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have revised the final rule designating critical habitat in accordance with the provisions of the Endangered Species Act. This rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kootenai sturgeon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no tribal lands were occupied by Kootenai sturgeon at the time of listing, and no tribal lands that are unoccupied are essential to the conservation of Kootenai sturgeon. Therefore, no tribal lands are involved with this rule. However, because of the significant involvement by the Kootenai Tribe of Idaho (KTOI) in the conservation aquaculture program and other aspects of Kootenai sturgeon recovery, we will consult on a government-to-government basis with

the KTOI during the public comment period.

References Cited

A complete list of all references cited in this designation is available upon request from the Supervisor, Upper Columbia Fish and Wildlife Office (see **ADDRESSES** section above).

Author

The primary author of this notice is Bob Hallock, Upper Columbia Fish and Wildlife Office (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Sturgeon, White'' under ''FISHES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Sturgeon, white	*Acipenser transmontanus*.	U.S.A. (AK, CA, ID, MT, OR, WA), Canada (BC).	U.S.A. (ID, MT), Canada (BC), (Kootenai R. system).	E	549	17.95(e)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(e), revise the entry for ''KOOTENAI RIVER POPULATION OF WHITE STURGEON (*Acipenser transmontanus*)'' under ''FISHES'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

White Sturgeon (*Acipenser transmontanus*); Kootenai River Population

(1) Critical habitat units are depicted for Boundary County, Idaho, on the map below.

(2) The primary constituent elements of critical habitat for the Kootenai sturgeon are:

(i) During the spawning season of May through July, a flow regime that periodically (not necessarily annually) produces flood flows capable of producing intermittent depths of at least 5 meters (Paragamian and Duehr 2005, Barton *et al.* 2005), and mean water column velocities of at least 3.3 ft/s (1.0 m/s) (Anders *et al.* 2002, Schafter 1997, Berenbrock 2005) throughout, but not uniformly within the braided reach.

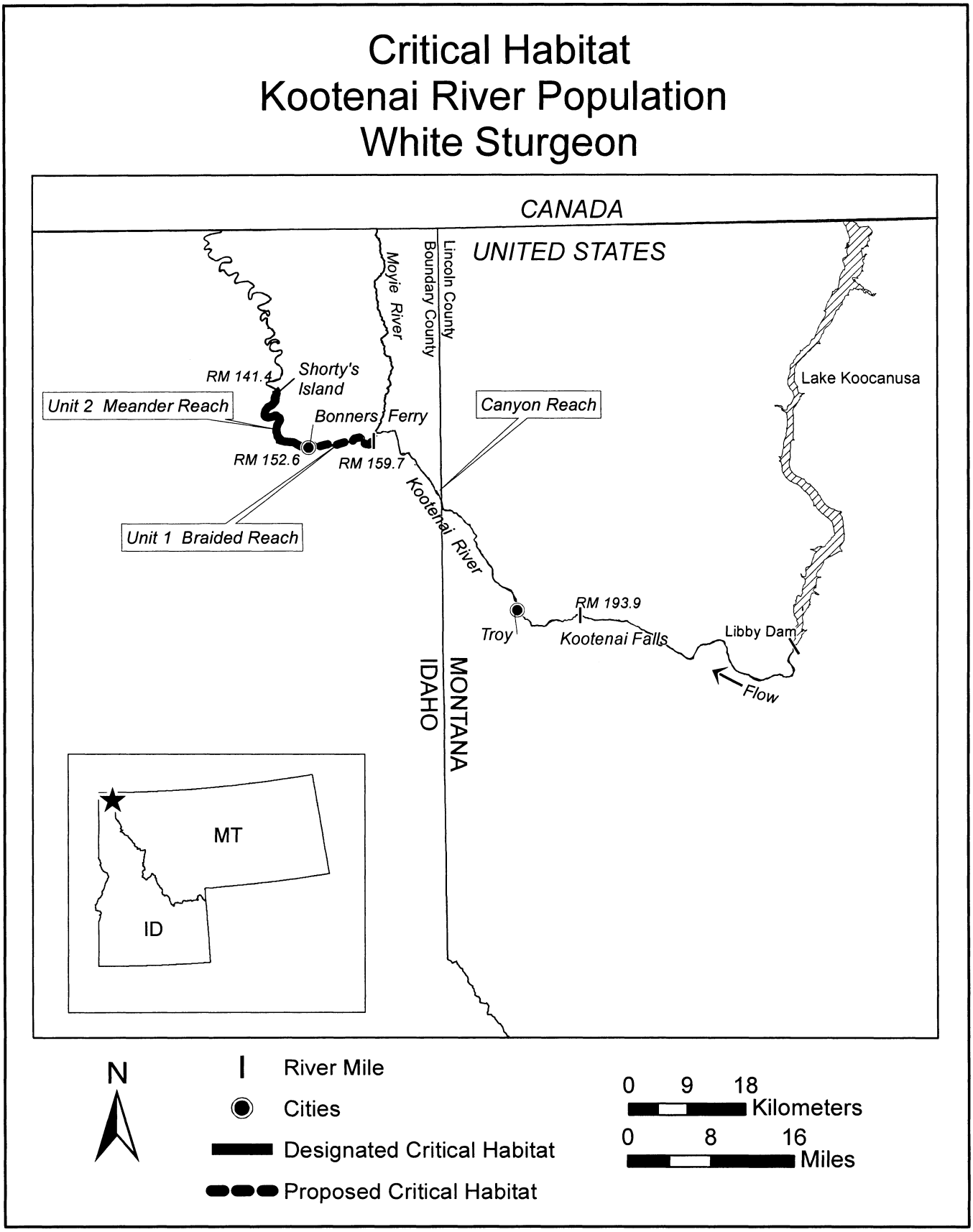
(ii) Stable, temperatures of roughly 50 degrees F in May into July with no sudden drops in temperature exceeding 3.6 degrees F at Bonners Ferry during the spawning season and water temperatures suitable for natural rates of development of embryos.

(iii) Presence of approximately 5 miles of continuous submerged rocky substrates for normal free embryo redistribution behavior and downstream movement (Brannon et al. 1985).

(iv) A flow regime that limits sediment deposition and maintains appropriate rocky substrate for sturgeon egg adhesion, incubation, escape cover, and free embryo development (Stockley 1981, Parsley et al. 1993, Parsley and Beckman 1994).

(3) Note: Map 1 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(4) Unit 1: Braided Reach, Boundary County, Idaho

Kootenai River from RM 159.7 (RKM 257) to RM 152.6 (RKM 245.9), from ordinary high water line to opposite bank ordinary high water mark as defined in 33 CFR 329.11.

(5) Unit 2: Meander Reach, Boundary County, Idaho

Kootenai River from RM 152.6 (RKM 245.9) to RM 141.4 (RKM 228), from ordinary high water line to opposite bank ordinary high water mark as defined in 33 CFR 329.11.

* * * * *

Dated: February 1, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–1091 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6025–26; I.D. 020106B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1794 nm² (6153 km²), northeast of Boston, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 10, 2006, through 2400 hours February 24, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 29, 2006, an aerial survey reported a sighting of four right whales in the proximity 42° 40′ N. lat. and 70° 03′ W. long. This position lies northeast of Boston, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43° 00′ N., 70° 33′ W. (NW Corner)
43° 00′ N., 69° 32′ W.
42° 20′ N., 69° 32′ W.
42° 20′ N., 70° 33′ W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear

modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps the year-round Western Gulf of Maine Closure Area for Northeast Multispecies found at 50 CFR 648.81(e). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of Northern Inshore State Lobster Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area and Northern Nearshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within portions of Stellwagen Bank/Jeffreys Ledge Restricted Area and Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22–lb (10.0–kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 10, 2006, through 2400 hours February 24, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and

actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 3, 2006.

John Oliver,

Deputy Assistant Administrator for Operations,National Marine Fisheries Service.

[FR Doc. 06–1169 Filed 2–3–06; 1:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 26
Wednesday, February 8, 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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

Procurement of Commodities for Foreign Donation; Public Meeting

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule; notice of a public meeting.

SUMMARY: The Department of Agriculture (USDA) will conduct a public meeting to discuss the proposed rule, Procurement of Commodities for Foreign Donation, published in the **Federal Register** on December 16, 2005 (70 FR 74717).

DATES: The meeting is scheduled for February 21, 2006, from 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held in Washington, DC in USDA's Jamie L. Whitten Building, Room 107A, 1400 Independence Avenue, SW., Washington, DC 20250. The Jamie L. Whitten Building is located near the Smithsonian Metro Station. Requests to address the meeting must be submitted by February 15, 2006 by any of the following methods:

E-mail: *paul.cacciatore@kcc.usda.gov*.

Fax: (202) 690–0767.

Mail: Send to Director, Commodity Procurement Policy and Analysis Division (CPPAD), FSA, USDA, Room 5755-S, Stop 0551, 1400 Independence Avenue, SW., Washington, DC 20250–0551.

FOR FURTHER INFORMATION CONTACT: Paul Cacciatore, USDA, FSA, 1400 Independence Avenue, SW., Stop 0551, Washington, DC 20250–0551; Telephone: 202–720–5074, Fax: 202–690–0767; E-mail: *paul.cacciatore@kcc.usda.gov*. Persons with disabilities who require special accommodations to attend or participate in the meeting should contact Paul Cacciatore by February 15, 2006.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2005, the Commodity Credit Corporation (CCC) published a proposed rule, Procurement of Commodities for Foreign Donation, in the **Federal Register** (70 FR 74717). The proposed rule would adopt new procedures to be used by CCC in the evaluation of bids in connection with the procurement of commodities for donation overseas. In general, CCC proposes to amend the existing regulations to provide for the simultaneous review of commodity and ocean freight offers when evaluating lowest landed cost options in connection with the procurement of commodities. This proposed rule would enhance bidding opportunities for potential vendors while allowing CCC to more efficiently acquire commodities.

Comments on the proposed rule were due on or before January 17, 2006. In response to public requests, CCC reopened and extended the comment period for 45 days until March 9, 2006, via a document published in the **Federal Register** January 23, 2006 (71 FR 3442). The Agency believes the request for additional time to comment on the proposed rule is reasonable and will allow the rulemaking to proceed in a timely manner. Further, CCC has determined that a public meeting should be held to provide for open discussion on the proposed rule.

II. Registration

To register, contact the Public Meeting Coordinator by e-mail at *paul.cacciatore@kcc.usda.gov*, by phone at (202) 720–5074, or by fax at (202) 690–0767. The following information must be provided when registering to attend the meeting: Name, company name and address, telephone and fax numbers, e-mail addresses and special needs information. A staff member will confirm your registration by e-mail, fax or phone. You may also register in person at the meeting.

III. Speaker Presentations

Persons who wish to address the meeting must register using the registration procedures described above. At the time of registration, those wishing to address the meeting, must provide a brief, written statement regarding the nature of the information they intend to present.

Those attendees who wish to address the meeting but did not pre-register, will be permitted to sign up at the meeting, on a first-come, first-served basis. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the Public Meeting Coordinator and the meeting moderator regarding how many speakers can be accommodated. Speakers will be limited to approximately five minutes and must provide their name, company name and address, contact information as well as provide a brief, written statement regarding the nature of the information they intend to present.

The meeting will be transcribed and the transcription, together with any written submissions, made part of the rule-making record.

IV. Written Comments on the Proposed Rule

Written comments on the proposed rule may be submitted at the meeting or, by March 9, 2006, by the following methods:

E-mail: Send comments to *Richard.Chavez@usda.gov*.

Fax: Submit comments by facsimile transmission to: (202) 690–2221.

Mail: Send comments to: Director, Commodity Procurement Policy & Analysis Division, Farm Service Agency, United States Department of Agriculture (USDA), Rm. 5755-S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.

Hand Delivery or Courier: Deliver comments to above address.

Federal Rulemaking Portal: Go to *http//www.regulations.gov* Follow the online instructions for submitting comments.

V. General Information

The meeting will be held in a Federal government building. Therefore, Federal security measures will be in force. In planning your arrival, we recommend allowing extra time to clear security. The main entrance to the USDA building will be at the North entrance on Jefferson Drive. In order to enter the building, participants must bring government-issued photo identification. Entry may be denied to persons without proper identification.

In addition, all persons entering the building must pass through a metal detector. All items brought to the meeting, whether personal or for the

purposes of demonstration or support of a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or support of a presentation.

Signed at Washington, DC, February 1, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency, and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 06–1193 Filed 2–6–06; 8:56 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23819; Directorate Identifier 2005–NM–223–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, 747–200C, 747–200F, 747–300, 747–400, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–200B, 747–200C, 747–200F, 747–300, 747–400, and 747SP series airplanes. This proposed AD would require doing a detailed inspection of the left and right longeron extension fittings, and corrective action if necessary. This proposed AD results from cracking found in the longeron extension fitting at body station 1480 due to accidental damage during production. We are proposing this AD to detect and correct cracking in the longeron extension fitting, which could result in rapid decompression of the airplane and possible in-flight breakup of the airplane fuselage.

DATES: We must receive comments on this proposed AD by March 27, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23819; Directorate Identifier 2005–NM–223–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that a crack was found in the longeron extension fitting at body station 1480, on a Boeing Model 747–400 series airplane. (The airplane had accumulated 12,676 total flight cycles.) Investigation revealed that the crack occurred where a drill start had been made accidentally during airplane production. Cracking in the longeron extension fitting could extend and lead to reduced structural integrity of the bulkhead structure at body station 1480. This condition, if not corrected, could result in rapid decompression of the airplane and possible in-flight breakup of the airplane fuselage.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005. The service bulletin describes procedures for doing a detailed inspection of the left and right longeron extension fittings for damage and corrective action if necessary. The corrective action includes the following:

- Repairing any damage found to a longeron extension fitting, which includes removing any visibly damaged material, doing a high frequency eddy current inspection of the cut edge of the gusset for cracks and removing any damage if necessary, and making an insurance cut to remove any possible crack tip.
- If damage cannot be repaired in accordance with the service bulletin, replacing the damaged longeron extension fitting with a new longeron extension fitting.

The service bulletin refers to Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, or Revision 1, dated July 6, 2000, as an additional source of service information for replacing a damaged longeron fitting with a new longeron extension fitting.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described

previously. The proposed AD would also require sending the inspection results to the Manager, Seattle Aircraft Certification Office, FAA, if applicable.

Interim Action

This is considered to be interim action. The inspection reports that would be required by this proposed AD will enable the FAA to obtain better insight into the nature, cause, and extent of the cracking. Once we have received the inspection reports, we may consider further rulemaking to include additional airplanes.

Costs of Compliance

There are about 126 airplanes of the affected design in the worldwide fleet. This AD affects about 25 airplanes of U.S. registry The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,625, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–23819; Directorate Identifier 2005–NM–223–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200B, 747–200C, 747–200F, 747–300, 747–400, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005.

Unsafe Condition

(d) This AD results from cracking found in the longeron extension fitting at body station 1480 due to accidental damage during production. We are issuing this AD to detect and correct cracking in the longeron extension fitting, which could result in rapid decompression of the airplane and possible in-flight breakup of the airplane 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.

Detailed Inspection

(f) At the applicable compliance time specified in paragraph (f)(1) or (f)(2) of this AD, do a detailed inspection of the left and right longeron extension fittings for damage, and before further flight do the corrective action if applicable, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005.

Note 1: Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005, refers to Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, or Revision 1, dated July 6, 2000, as an additional source of service information for replacing a damaged longeron fitting with a new longeron extension fitting.

(1) For airplanes that have accomplished the inspection of the splice area for cracking as specified in Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, or Revision 1, dated July 6, 2000: Inspect in accordance with paragraph (f) of this AD before the airplane has accumulated 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes that have not accomplished the inspection of the splice area for cracking as specified in Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, or Revision 1, dated July 6, 2000: Inspect in accordance with paragraph (f) of this AD before the airplane has accumulated 10,000 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever is later.

Reporting Requirement

(g) If any damage is found to any longeron extension fitting during the inspection required by paragraph (f) of this AD: Submit a report of the findings of the inspection required by paragraph (f) of this AD to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 917–6590, at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. The report must include the airplane serial number and line number, identify the operator of the affected airplane, specify whether the cracking is within the limits given in the service bulletin, and specify if the cracking was found on the left or right or both longeron extension fittings. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 20 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 20 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle 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.

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

Issued in Renton, Washington, on January 27, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1679 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23817; Directorate Identifier 2005–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777 airplanes. This proposed AD would require repetitive inspections for corrosion or missing corrosion inhibiting compound of the fuselage skin under the forward and aft wing-to-body fairings for certain airplanes, or the fuselage skin under the forward wing-to-body fairings only for other airplanes; and corrective action if necessary. The proposed AD would also provide an optional preventive modification of the wing-to-body fairing panels, which would terminate the repetitive inspections. This proposed AD results from several reports indicating that significant levels of corrosion were found on the external surface of the fuselage skin under the forward and aft wing-to-body fairings. We are proposing this AD to detect and correct corrosion, and prevent subsequent fatigue cracks, on the fuselage skin under the forward and aft wing-to-body fairings, which could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by March 27, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23817; Directorate Identifier 2005–NM–176–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received several reports indicating that significant levels of corrosion were found on the external surface of the fuselage skin under the forward and aft wing-to-body fairings. The depth of the corrosion was up to 67 percent of the original skin thickness, and corrosion was found on some airplanes as early as four years after original delivery of the airplane. During an evaluation done by the manufacturer it was determined that water can enter the wing-to-body area through the seal and drain holes in the fairings, causing corrosion. Inadequate or missing corrosion-inhibiting compound (CIC) on the fuselage skin also contributes to early corrosion. This condition, if not corrected, could result in corrosion and subsequent fatigue cracks on the fuselage skin under the forward and aft wing-to-body fairings, and consequent rapid decompression of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–53A0044, dated July 28, 2005. The service bulletin describes procedures for repetitive detailed inspections for corrosion or missing CIC of the fuselage skin under the forward and aft wing-to-body fairings for Group 1 airplanes, or the fuselage skin under the forward wing-to-body fairings only for Group 2 airplanes; and corrective action if necessary. The corrective action includes performing a detailed inspection to determine the extent of the corrosion, removing any corrosion found, and applying CIC. The service bulletin also describes procedures for an optional preventive modification of the wing-to-body fairing panels. The modification involves applying sealant to certain fasteners, removing and replacing the seal, installing scuppers, and applying CIC on the fuselage skin. Accomplishing the

actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between Proposed AD and Alert Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 385 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 140 airplanes of U.S. registry.

The proposed inspection would take about 8 work hours per airplane for Group 1 airplanes, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $520 per airplane, per inspection cycle.

The proposed inspection would take about 4 work hours per airplane for Group 2 airplanes, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $260 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–23817; Directorate Identifier 2005–NM–176–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –300, and –300ER series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 777–53A0044, dated July 28, 2005.

Unsafe Condition

(d) This AD results from several reports indicating that significant levels of corrosion were found on the external surface of the fuselage skin under the forward and aft wing-to-body fairings. We are issuing this AD to detect and correct corrosion, and prevent subsequent fatigue cracks, on the fuselage skin under the forward and aft wing-to-body fairings, which could result in rapid decompression of the airplane.

Compliance

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

Repetitive Inspections

(f) At the latest of the compliance times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable: Perform a detailed inspection of the fuselage skin under the wing-to-body fairings for corrosion or missing corrosion inhibiting compound (CIC) by doing all the applicable actions specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0044, dated July 28, 2005. Repeat the inspection thereafter at intervals not to exceed 1,500 days until the requirements of paragraph (h) are accomplished.

(1) Before the accumulation of 1,500 days since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(2) Within 1,500 days after accomplishing the latest zonal or surveillance inspection before the effective date of this AD that is equivalent to the detailed inspection specified in paragraph (f) of this AD.

(3) Within 750 days after the effective date of this AD.

Corrective Action

(g) If any corrosion or missing CIC is found during any inspection required by paragraph (f) of this AD, before further flight, do a detailed inspection to determine the full extent of the corrosion; repair before further flight by doing all the applicable actions specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0044, dated July 28, 2005. Where the alert service bulletin specifies to contact Boeing for repair instructions: Repair before further flight, according to a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Optional Terminating Action

(h) Accomplishing the preventive modification of the wing-to-body fairing panels in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0044, dated July 28, 2005, terminates the repetitive inspections required by paragraph (f) of this AD for the modified area only.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle 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.

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

Issued in Renton, Washington, on January 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1681 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23803; Directorate Identifier 2005–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 747–400, –400D, and –400F series airplanes. The existing AD currently requires revising the airplane flight manual (AFM) to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. This proposed AD would require installing new integrated display software in the integrated display units and electronic flight instrument system/engine indication and crew alerting system interface units (EIUs) of the flight deck. This proposed AD also would require revising the AFM to include procedures to prevent dry operation of the center wing and horizontal stabilizer fuel tanks; for maintaining minimum fuel levels; and for de-fueling fuel tanks. For certain airplanes, the proposed AD also requires removing G13 pin ground wires of a certain wire integration unit of the EIUs at certain connector locations. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to reduce the potential for ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by March 27, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–23803; Directorate Identifier 2005–NM–238–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

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

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent

ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

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

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

Relevant Rulemaking

On December 23, 2002, we issued AD 2002–24–52, amendment 39–12993 (68 FR 14, January 2, 2003), for all Boeing Model 747–400, –400D, and –400F series airplanes. That AD requires revising the airplane flight manual (AFM) to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. That AD resulted from reports indicating that two fuel pumps showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. We issued that AD to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank.

Other Relevant Rulemaking

We also issued the following ADs:

OTHER RELEVANT RULEMAKING

AD—	Requires—	And—	And—
2001–12–21, amendment 39–12277 (66 FR 33170, June 21, 2001).	Revising the AFM to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps.	For certain airplanes, prohibits operation of the horizontal stabilizer tank transfer pumps in flight.	For certain airplanes, requires installing improved fuel pumps, which terminates the AFM revision.
2001–21–07, amendment 39–12478 (66 FR 54652, October 30, 2001).	For certain airplanes, revising the AFM.	For all airplanes, performing repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and doing corrective actions if necessary.	Reworking of certain components, which ends the repetitive inspection requirements.
2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002).	Removing currently required AFM revisions, inserting new AFM revisions, and installing placards to alert the flightcrew to the operating restrictions.	Prohibits installation of any uninspected pumps.	Permits the AFM revision and placard to be removed under certain conditions.

Actions Since Existing ADs Were Issued

The preambles to ADs 2002–24–52 and 2002–19–52 explain that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

We have reviewed the following service bulletins:

SERVICE BULLETINS

Boeing Alert Service Bulletin—	For Model—
747–31A2350, Revision 1, dated March 17, 2005	747–400 and 747–400F series airplanes.
747–31A2351, Revision 1, dated March 17, 2005	747–400, 747–400D, and 747–400F series airplanes.
747–31A2352, Revision 1, dated March 17, 2005	747–400 and 747–400F series airplanes.

The service bulletins describe procedures for installing new integrated display software in the integrated display units (IDUs) and electronic flight instrument system (EFIS)/engine indication and crew alerting system (EICAS) interface units (EIU) of the flight deck. The new software provides new IDS EICAS fuel system messages. These messages alert the flightcrew when to shut the fuel pumps off. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Each service bulletin described previously refers to Rockwell Collins Service Bulletins IDS–7000–31–49, IDS–7000–31–50, or IDS–7000–31–51; all dated June 28, 2004; as applicable; as an additional source of service information for installing the new software.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2002–24–52 to continue to require revising the AFM to require the flightcrew to maintain certain minimum fuel levels in

the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. The proposed AD also would require:

- Accomplishing the actions specified in the Boeing service information described previously;
- Revising the Limitations section of the AFM to include procedures to prevent dry operation of the center wing and horizontal stabilizer fuel tanks; for maintaining minimum fuel levels; and for de-fueling fuel tanks; and
- For certain airplanes: Removing G13 pin ground wires of the wire integration unit on the E2–6 electronic shelf of the left, center, and right electronics interface units at certain connector locations.

After installing the new software and incorporating the new AFM revisions, the AFM revision required by AD 2002–24–52 and certain AFM revisions required by ADs 2001–12–21, 2001–21–07, and 2002–19–52 may be removed.

Change to Existing AD

This proposed AD would retain all the requirements of AD 2002–24–52. Since AD 2002–24–52 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2002–24–52	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g).
paragraph (b)	paragraph (h).

Costs of Compliance

There are about 520 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision (required by AD 2002–24–52).	1	$65	None	$65	101	$6,565.
Installation of new IDS software (new proposed action).	3	65	$100	295	101	$29,795.
Removal of G–13 pin ground wires (new proposed action).	1	65	None	65	0	$65 if an affected airplane is imported and placed on the U.S. Register in the future.
AFM revision (new proposed action).	1	65	None	65	101	$6,565.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12993 (68 FR 14, January 2, 2003) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–23803; Directorate Identifier 2005–NM–238–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 27, 2006.

Affected ADs

(b) This AD supersedes AD 2002–24–52. In addition, after accomplishing the requirements of paragraphs (h) and (k) of this AD, the airplane flight manual (AFM)

requirements specified in table 1 of this AD may be removed.

TABLE 1.—AFFECTED ADS

AFM requirements of—	Of—
(1) Paragraph (a)	AD 2001–12–21, amendment 39–12277.
(2) Paragraph (a)	AD 2001–21–07, amendment 39–12478.
(3) Paragraph (c)	AD 2002–19–52, amendment 39–12900.
(4) Paragraphs (f) and (g)	This AD.

Applicability

(c) This AD applies to airplanes identified in table 2 of this AD, certificated in any category.

TABLE 2.—APPLICABILITY

Boeing model—	As identified in Boeing Service Bulletin—
(1) 747–400, 747–400D, and 747–400F series airplanes	747–31A2351, Revision 1, dated March 17, 2005.
(2) 747–400 and 747–400F series airplanes	747–31A2350, Revision 1, dated March 17, 2005.
(3) 747–400 and 747–400F series airplanes	747–31A2352, Revision 1, dated March 17, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential for ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss 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.

Restatement of Requirements of AD 2002–24–52

Airplane Flight Manual (AFM) Revision

(f) Within 4 days after receipt of emergency AD 2002–24–51, instead of complying with the requirements of paragraph (d) of AD 2002–24–51, revise the Limitations section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

CERTIFICATE LIMITATIONS

Fueling and use of the horizontal stabilizer tank (if installed) is prohibited.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected ON during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected OFF at or before CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected ON during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected OFF at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Note: With CWT override/jettison pumps selected OFF and CWT fuel quantity greater than 6,000 pounds (2,800 kilograms), the FUEL OVRD CTR L & R EICAS messages will be displayed. Do not accomplish the associated non-normal procedure.

Both CWT override/jettison pump switches must be selected OFF at or before CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected OFF when either CWT override/jettison fuel pump low pressure light illuminates.

Warning: Do not reset a tripped fuel pump circuit breaker.

Warning: Do not cycle CWT override/jettison pump switches from ON to OFF to ON with any continuous low pressure indication present.

Note: The center wing tank may be emptied normally during an emergency fuel jettison.

Note: In a low fuel situation, both CWT override/jettison pumps may be selected ON and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, accomplish the FUEL OVRD CTR L, R non-normal procedure.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling any fuel tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to OFF at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations.''

(g) If an operator has already complied with AD 2002–24–51, it can comply with paragraph (f) of this AD by deleting the phrase ''if a placard prohibiting its use is installed'' from the first paragraph of the AFM revision required by paragraph (d) of AD 2002–24–51.

New Actions Required by This AD

Installation of New Integrated Display System (IDS) Software

(h) Within 6 months after the effective date of this AD, install new IDS software in the integrated display units and electronic flight instrument system/engine indication and crew alerting system interface units of the flight deck, in accordance with the Accomplishment Instructions of the applicable service bulletin in table 3 of this AD.

TABLE 3.—REVISION 1 OF SERVICE BULLETINS

For model—	Boeing service bulletin—
(1) 747–400, 747–400D, and 747–400F series airplanes	747–31A2351, Revision 1, dated March 17, 2005.
(2) 747–400 and 747–400F series airplanes	747–31A2350, Revision 1, dated March 17, 2005.

TABLE 3.—REVISION 1 OF SERVICE BULLETINS—Continued

For model—	Boeing service bulletin—
(3) 747–400 and 747–400F series airplanes	747–31A2352, Revision 1, dated March 17, 2005.

Note 1: Each service bulletin identified in table 3 of this AD refers to Rockwell Collins Service Bulletins IDS–7000–31–49, IDS–7000–31–50, or IDS–7000–31–51; all dated June 28, 2004; as applicable; as an additional source of service information for installing the new IDS software.

(i) Installing new IDS software before the effective date of this AD in accordance with the applicable service bulletin in table 4 of this AD, is acceptable for compliance with the requirements of paragraph (h) of this AD.

TABLE 4.—ORIGINAL SERVICE BULLETINS

For model—	Boeing service bulletin—
(1) 747–400, 747–400D, and 747–400F series airplanes	747–31A2351, dated September 3, 2004.
(2) 747–400 and 747–400F series airplanes	747–31A2350, dated September 3, 2004.
(3) 747–400 and 747–400F series airplanes	747–31A2352, dated September 3, 2004.

Removal of Pin Ground Wires

(j) For airplanes on which FR–HiTEMP fuel pumps have been incorporated in accordance with Boeing Service Bulletin 747–28–2258, dated December 19, 2003; or Revision 1, dated August 11, 2005: Before further flight after installing the new IDS software required by paragraph (h) of this AD, remove the G13 pin ground wires of the wire integration unit on the E2–6 electronic shelf of the left, center, and right electronics interface units, that correspond to the connector locations in table 5 of this AD, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Chapter 20–41–03 of the Boeing 747–400 Aircraft Maintenance Manual is one approved method.

TABLE 5.—CONNECTOR LOCATION

Connector	Location
DM7353CA	Left EIU.
DM7352CA	Center EIU.
DM7351CA	Right EIU.

AFM Revision

(k) Concurrently with the requirements of paragraph (h) of this AD, revise the Limitations section of the AFM to include the following (this may be done by inserting a copy of this AD into the AFM):

Certification Limitations

Center Wing Tank (CWT): The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

The CWT must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected ON during takeoff.

If the FUEL LOW CTR L or R message is displayed both CWT override/jettison pumps must be selected OFF.

If the FUEL PRESS CTR L or R message is displayed, the corresponding CWT override/jettison pump must be selected OFF.

Horizontal Stabilizer Tank (HST): The following additional limitations must be followed if the HST is fueled and used:

The HST fuel quantity indication system must be operative to dispatch with HST mission fuel.

If the FUEL PMP STB L or R message is displayed while on the ground both HST pumps must be selected OFF.

If the FUEL LOW STAB L or R message is displayed in flight the corresponding HST pump must be selected OFF.

If the FUEL PRESS STAB L or R is displayed the corresponding HST pump must be selected OFF.

The remaining fuel in the HST must be considered unusable, and the effects of that unusable fuel on balance (CG) must be considered.

Warning: Do not reset a tripped fuel pump circuit breaker.

Defueling: Prior to defueling any fuel tanks, perform a lamp test of the respective Fuel Pump Low Pressure indication lights. When defueling, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to OFF at the first indication of fuel pump low pressure. When defueling with passengers on board, fuel pump switches must be selected OFF at or above approximately 7,000 pounds (3,200 kilograms) for the CWT, 3,000 pounds (1,400 kilograms) for main tanks, and 2,100 pounds (1,000 kilograms) for the HST.

Alternative Methods of Compliance (AMOCs)

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

(2) 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.

Issued in Renton, Washington, on January 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1682 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23820; Directorate Identifier 2005–NM–249–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes; and Model DHC–8–200 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) that applies to certain Bombardier Model DHC–8–102, –103, and –106 airplanes; and Model DHC–8–200 and –300 series airplanes. The existing AD currently requires performing a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repairing, if necessary; installing additional tie-mounts and tie-wraps; applying sealant to rivet heads; and modifying electrical wires in certain sections. This proposed AD would, for certain airplanes, eliminate the requirement to modify electrical wires in certain sections. This proposed AD results from a report indicating that the modification of electrical wires does not need to be done on certain airplanes subject to the existing AD. We are proposing this AD to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

DATES: We must receive comments on this proposed AD by March 10, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–23820; Directorate Identifier 2005–NM–249–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On January 29, 2004, we issued AD 2004–03–15, amendment 39–13459 (69 FR 7111, February 13, 2004), for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. That AD requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; application of sealant to rivet heads; and modification of the electrical wires in certain sections. That AD resulted from a report of an uncommanded engine shutdown during flight. We issued that AD to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

Actions Since Existing AD Was Issued

Paragraph (b) of AD 2004–03–15 requires all airplanes subject to the AD to modify the electrical wires in the cable trough below the cabin floor at Sections X510.00 to X580.50, in accordance with Bombardier Service Bulletin 8–53–80, Revision 'A,' dated July 25, 2000. Since we issued AD 2004–03–15, we have received a report indicating that Bombardier Model DHC–8–300 series airplanes should not be required to do this modification.

We have reviewed Canadian airworthiness directive CF–1998–08R2, dated July 12, 2000, which AD 2004–03–15 refers to as the parallel Canadian airworthiness directive. Canadian airworthiness directive CF–1998–08R2 identifies Model DHC–8–300 series airplanes as being subject only to Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998, not to Bombardier Service Bulletin 8–53–80, Revision 'A.' (Paragraph (a) of AD 2004–03–15 refers to Bombardier Service Bulletin S.B. 8–53–66 as the appropriate source of service information for the actions required by that paragraph.)

FAA's Determination and Requirements of the Proposed AD

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

This proposed AD would revise AD 2004–03–15 and would retain the requirements of the existing AD. This proposed AD would eliminate the requirement to modify electrical wires in certain sections on Model DHC–8–300 series airplanes. The actions would be required to be done in accordance with the service information specified in the existing AD, except as discussed under ''Difference Between This Proposed AD and Service Bulletin'' in the notice of proposed rulemaking for AD 2004–03–15.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2004–03–15. Since AD 2004–03–15 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–03–15	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).

Also, we have revised the range of airplane serial numbers (S/Ns) stated in paragraphs (f)(1) and (f)(2) of this proposed AD. Paragraphs (a)(1) and (a)(2) of AD 2004–03–15 specify the compliance times for inspections in accordance with Bombardier Service Bulletin 8–53–66, as required by paragraph (a) of that AD. Paragraph (a)(1) of AD 2004–03–15 states the compliance time for S/Ns 3 through 519 inclusive (excluding S/N 462). Paragraph (a)(2) states the compliance

time for S/Ns 520 through 540 inclusive. We have determined that the airplane having S/N 519 was incorrectly included in paragraph (a)(1) of AD 2004–03–15. That airplane is a Model DHC–8–300 series airplane and should be subject to the compliance time in paragraph (a)(2) of AD 2004–03–15. Therefore, we have revised paragraphs (f)(1) and (f)(2) of this proposed AD to move S/N 519 into paragraph (f)(2) of this proposed AD. (This change results in a slight extension of the compliance time for the airplane having S/N 519.)

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Costs of Compliance

This new AD adds no new costs to affected operators; in fact, it reduces the costs for some airplanes that are not subject to the modification of certain wiring.

We estimate that 173 airplanes of U.S. registry will be subject to the inspection, installation of additional tie-mounts and tie-wraps, and application of sealant to rivet heads that are currently required by AD 2004–03–15. These actions take between 80 and 100 work hours per airplane, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the estimated cost of these actions on U.S. operators is between $899,600 and $1,124,500, or between $5,200 and $6,500 per airplane.

We estimate that 103 airplanes of U.S. registry are subject to the modification of certain wiring that is currently required by AD 2004–03–15. This action takes approximately 10 work hours per airplane, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the estimated cost of the modification on U.S. operators is $66,950, or $650 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13459 (69 FR 7111, February 13, 2004) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–23820; Directorate Identifier 2005–NM–249–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 10, 2006.

Affected ADs

(b) This AD revises AD 2004–03–15.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, and –106 airplanes; and Model DHC–8–200 and DHC–8–300 series airplanes; certificated in any category serial numbers 3 through 540 inclusive, excluding serial number 462.

Unsafe Condition

(d) This AD results from a report indicating that the modification of electrical wires does not need to be done on certain airplanes subject to the existing AD. We are issuing this AD to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

Compliance

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

Requirements of AD 2004–03–15

One-Time Inspection, Corrective Action, and Modification

(f) Perform a one-time general visual inspection to detect chafing of electrical wires in the cable trough below the cabin floor; install additional tie-mounts and tie-wraps; and apply sealant to rivet heads (reference Bombardier Modification 8/2705); in accordance with Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998, at the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable. If any chafing is detected during the inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''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.''

(1) For airplanes having serial numbers 3 through 518 inclusive, excluding serial number 462: Inspect within 36 months after October 27, 1998 (the effective date of AD 98–20–14, amendment 39–10781).

(2) For airplanes having serial numbers 519 through 540 inclusive: Inspect within 36 months after November 10, 1999 (the effective date of AD 99–21–09, amendment 39–11352, which superseded AD 98–20–14), or at the next ''C'' check, whichever occurs first.

Modification

(g) For Model DHC–8–102, –103, and –106 airplanes; and Model DHC–8–200 series airplanes: Within 36 months after March 19, 2004 (the effective date of AD 2004–03–15), modify the electrical wires in the cable trough below the cabin floor at Sections X510.00 to X580.50 (including performing a general visual inspection and any applicable repair), in accordance with Part III, paragraphs 1 through 9 and 12 through 20, of the Accomplishment Instructions of Bombardier Service Bulletin 8–53–80, Revision ''A,'' dated July 25, 2000. Any applicable repair must be done before further flight. Accomplishment of these actions before March 19, 2004, in accordance with Bombardier Service Bulletin 8–53–80, dated December 22, 1999, is considered acceptable for compliance with the actions required by this paragraph.

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–1998–08R2, dated July 10, 2000, also addresses the subject of this AD.

Issued in Renton, Washington, on January 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1683 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23798; Directorate Identifier 2005–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This proposed AD would require replacing all domed anchor nuts at all attachment locations of the upper fuel access panels of the center wing in the wet bay location with new nuts. This proposed AD results from reported cases of corroded dome anchor nuts at the attachment locations of the upper surface of the fuel access panel of the center wing. We are proposing this AD to prevent corrosion or perforation of domed anchor nuts, which could result in arcing and ignition of fuel vapor in the center wing fuel tank during a lightning strike and consequent explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by March 10, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7525; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23798; Directorate Identifier 2005–NM–162–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400 series airplanes. TCCA advises that, during ''2C'' checks, there have been a number of reported cases of corrosion of dome anchor nuts at the attachment locations of the upper surface of the fuel access panel of the center wing. In some cases, the dome anchor nuts were severely corroded and perforated. This condition, if not corrected, could result in arcing and ignition of fuel vapor in the center wing fuel tank during a lightning strike and consequent explosion of the fuel tank.

Relevant Service Information

Bombardier has issued Service Bulletin 84–57–10, Revision ''A,'' dated March 14, 2005. The service bulletin describes procedures for replacing all domed anchor nuts at all attachment locations of the upper fuel access panels of the center wing in the wet bay location with new, corrosion-resistant anchor nuts. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The TCCA mandated the service information described previously, or Bombardier Service Bulletin 84–57–11,

dated February 25, 2004, or Revision ''A,'' dated March 9, 2004; and Bombardier Service Bulletin 84–57–12, dated March 11, 2005. The TCCA also issued Canadian airworthiness directive CF–2005–08R1, issued August 10, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in Bombardier Service Bulletin 84–57–10, Revision ''A,'' dated March 14, 2005.

Differences Between the Proposed AD and the Canadian Airworthiness Directive

Instead of doing the replacement specified in Bombardier Service Bulletin 84–57–10, Revision ''A,'' dated March 14, 2005, Canadian airworthiness directive mandates the inspections, installation, and corrective actions if necessary specified in Bombardier Service Bulletin 84–57–11, dated February 25, 2004, or Revision ''A,'' dated March 9, 2004; and Bombardier Service Bulletin 84–57–12, dated March 11, 2005. The TCCA allows those actions because of the limited availability of new, corrosion-resistant anchor nuts.

Since issuance of the Canadian airworthiness directive, the TCCA has advised us that corrosion-resistant anchor nuts are now available. Therefore, this proposed AD would require only the replacement specified in Bombardier Service Bulletin 84–57–10. In addition, the Canadian airworthiness directive requires the replacement within 9 months after April 27, 2005 (the effective date of the Canadian airworthiness directive). However, this proposed AD would require the replacement within 3 months after the effective date of the AD. Deterioration of anchor nuts over time can cause the anchor nuts to become perforated, which could result in a potential source of ignition in a fuel tank and consequent fire or explosion. Therefore, we have determined that a compliance time of 3 months after the effective date of this AD is the maximum time allowable for all affected airplanes to continue to operate without compromising safety. TCCA agrees with our decision to mandate that replacement and to shorten the compliance time, which will align closer to their compliance date. Bombardier has been contacted, and they can support the part requirements.

Costs of Compliance

This proposed AD would affect about 20 airplanes of U.S. registry. The proposed actions would take about 62 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $300 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $86,600, or $4,330 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–23798; Directorate Identifier 2005–NM–162–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers 4001, and 4003 through 4115 inclusive.

Unsafe Condition

(d) This AD results from reported cases of corroded dome anchor nuts at the attachment locations of the upper surface of the fuel access panel of the center wing. We are issuing this AD to prevent corrosion or perforation of domed anchor nuts, which could result in arcing and ignition of fuel vapor in the center wing fuel tank during a lightning strike and consequent explosion of the fuel tank.

Compliance

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

Replacement With Corrosion Resistant Anchor Nuts

(f) At the applicable time in Table 1 of this AD, replace all domed anchor nuts at all attachment locations of the upper fuel access panels of the center wing in the wet bay location with new, corrosion-resistant anchor nuts. Do all the actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–10, Revision 'A,' dated March 14, 2005.

TABLE 1.—COMPLIANCE TIME

For airplanes having serial number(s)	On which the inspection(s) specified in	Do the replacement
(1) 4108 through 4115 inclusive.	None	Within 48 months after the date of issuance of the original standard Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness, or within 2 months after the effective date of this AD, whichever occurs later.
(2) 4001, and 4003 through 4107 inclusive.	Bombardier Service Bulletin 84–57–11, dated February 25, 2005; or Revision 'A,' dated March 9, 2005; have been done before the effective date of this AD.	Within 24 months after those inspections, or within 2 months after the effective date of this AD, whichever occurs later.
	Bombardier Service Bulletin 84–57–12, dated March 11, 2005, has been done before the effective date of this AD.	Within 48 months after that inspection, or within 2 months after the effective date of this AD, whichever occurs later.
	Bombardier Service Bulletin 84–57–11, dated February 25, 2005, or Revision 'A,' dated March 9, 2005; or Bombardier Service Bulletin 84–57–12, dated March 11, 2005; has not been done before the effective date of this AD.	Within 3 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(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

(h) Canadian airworthiness directive CF–2005–08R1, issued August 10, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on January 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1684 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23816; Directorate Identifier 2005–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Aerospatiale Model ATR42 airplanes. This proposed AD would require one-time inspections to detect discrepancies (*e.g.*, cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, and repair if necessary. This proposed AD results from a report of cracking on the upper skin and ribs of the outer wing box on an in-service airplane. We are proposing this AD to detect and correct these discrepancies, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by March 10, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23816; Directorate Identifier 2005–NM–247–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association,

business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Aerospatiale Model ATR42 airplanes. The DGAC advises that cracking has been found on the upper skin and ribs of the outer wing box on an in-service airplane. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Bulletin ATR42–57–0064, dated December 16, 2004. The service bulletin describes procedures for doing an external detailed visual inspection for discrepancies of the upper skin panels of the outer wing box on the left and right wing, from rib 24 to rib 29. Discrepancies include cracking of the skin, cracked sealant, loose/sheared fasteners, and distortion. The service bulletin also describes procedures for doing an internal inspection following the external inspection. The internal inspection is to look for discrepancies of the rib feet from rib 24 to rib 29 and is conducted using one of two inspection methods: A borescopic inspection through access doors, or a detailed visual inspection after removing the leading edge of the wing. The service bulletin also describes procedures for sending inspection results to the manufacturer, and repairing any discrepancies using an ''approved solution.'' Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–191, dated December 22, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed in ''Differences Between the Proposed AD, the Service Bulletin, and the French Airworthiness Directive.''

Differences Between the Proposed AD, the Service Bulletin, and the French Airworthiness Directive

The French airworthiness directive and the service bulletin specify to contact the manufacturer for an approved solution for repairing discrepancies found during the internal inspection; and do not specify that repairs are required if discrepancies are found during the external inspection. This proposed AD would require repairing those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DGAC approve would be acceptable for compliance with this proposed AD.

The French airworthiness directive and the service bulletin specify to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Clarification of Inspection Language

The French airworthiness directive and the service bulletin specify doing a detailed visual inspection for discrepancies. In this proposed AD we refer to this inspection as a ''detailed inspection.'' Note 1 of this proposed AD defines a detailed inspection.

Costs of Compliance

This proposed AD would affect about 14 airplanes of U.S. registry. The proposed actions would take about 6 work hours per airplane if the internal borescopic inspection method is chosen, and about 44 work hours per airplane if the internal detailed inspection method (with the leading edge removed) is chosen. Both estimates include the time necessary for the external detailed inspection. The average labor rate is $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $5,460 and $40,040, or either $390 or $2,860 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket No. FAA–2006–23816; Directorate Identifier 2005–NM–247–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Aerospatiale Model ATR42–200, –300, –320, and –500 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of cracking on the upper skin and ribs of the outer wing box on an in-service airplane. We are issuing this AD to detect and correct discrepancies (*e.g.*, cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, which could result in reduced structural integrity 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.

External Inspection and Repair

(f) Before the accumulation of 4,000 total flight cycles, or within 3 months after the effective date of this AD, whichever is later: Do an external detailed inspection for discrepancies of the upper skin panels of the outer wing box on the left and right wing, from rib 24 to rib 29. Do the inspection in accordance with Part A of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–57–0064, dated December 16, 2004.

(1) If any discrepancy is found: Before further flight, do the actions in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Geénérale de l'Aviation Civile (DGAC) (or its delegated agent).

(ii) Do the internal inspection in accordance with paragraph (g) of this AD.

(2) If no discrepancy is found: Within 4 months after doing the external detailed inspection, do the internal inspection in accordance with paragraph (g) of this AD.

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

Internal Inspection and Repair

(g) At the applicable time specified in paragraph (f)(1)(ii) or (f)(2) of this AD: Inspect for discrepancies of the rib feet from rib 24 to rib 29 using one of the inspection methods specified in paragraph (g)(1) or (g)(2) of this AD. Do the inspection in accordance with Part B of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–57–0064, dated December 16, 2004. If any discrepancy is found during any inspection required by this paragraph: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent).

(1) A borescopic inspection through access doors.

(2) A detailed inspection after removing the leading edge of the wing.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2004–191, dated December 22, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on January 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1685 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23818; Directorate Identifier 2005–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require repetitive measurements of the rudder and elevator freeplay, repetitive lubrication of rudder and elevator components, and related investigative/corrective actions if necessary. This proposed AD results from reports of freeplay-induced vibration of the rudder and the elevator. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are proposing this AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by March 27, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office,

1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23818; Directorate Identifier 2005–NM–228–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of freeplay-induced vibration of the rudder and the elevator on Model 767 airplanes. Excessive corrosion and wear of components and/or interfaces allow excessive freeplay movement of the control surfaces and can cause excessive vibration of the airframe during flight. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. When divergent flutter occurs, the amplitude of each cycle or oscillation is larger than the last one and the surface can quickly reach its structural load limits. Excessive vibration of the airframe, if not corrected, could result in loss of control of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–27–0197, dated October 27, 2005 (for Model 767–200, –300, and –300F series airplanes); and Boeing Special Attention Service Bulletin 767–27–0198, dated October 27, 2005 (for Model 767–400ER series airplanes). The service bulletins describe procedures for repetitive measurements of the rudder freeplay and the elevator freeplay for each of the three power control actuators (PCAs) that move the rudder and elevator. If the freeplay exceeds certain specified limits, the service bulletins describe procedures for doing applicable related investigative and corrective actions. Related investigative actions include doing a general visual inspection for wear of the affected components such as the rudder and elevator hinge bolts, bearings, and bushings; elevator and rudder hinges; and hinge bearings, reaction links, hanger link bearings, and rod end assemblies. Corrective actions include repairing or replacing the affected part if necessary and repeating the freeplay measurement and any related investigative and corrective actions until the maximum freeplay is within acceptable limits. The service bulletins also describe procedures for repetitive lubrication of the rudder and elevator components such as the rudder and elevator hinges; and rudder and elevator PCA reaction links, hanger links, and rod end assemblies. The service bulletins note that, if the freeplay measurement and a lubrication cycle are due at the same time, the freeplay measurement must be completed before the lubrication. The repetitive interval for the lubrication varies depending on the type of grease used. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and the Service Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting inspections results to the manufacturer, this proposed AD would not require that action.

Costs of Compliance

There are about 979 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. No parts are necessary to accomplish either action.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour $	Cost per airplane $	Number of U.S.-registered airplanes	Fleet cost $
Freeplay measurement	8	65	520, per measurement cycle	423	219,960, per measurement cycle.
Lubrication	27	65	1,755, per lubrication cycle	423	42,365, per lubrication cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–23818; Directorate Identifier 2005–NM–228–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 27, 2006.

Affected ADs

(b) None

Applicability

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

Unsafe Condition

(d) This AD results from reports of freeplay-induced vibration of the rudder and the elevator. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 767–200, –300, and –300F series airplanes: Boeing Special Attention Service Bulletin 767–27–0197, dated October 27, 2005; and

(2) For Model 767–400ER series airplanes: Boeing Special Attention Service Bulletin 767–27–0198, dated October 27, 2005.

Repetitive Measurements

(g) Within 18 months after the effective date of this AD: Measure the rudder and elevator freeplay. Repeat the measurement thereafter at intervals not to exceed 12,000 flight hours or 36 months, whichever occurs first. Do all actions required by this paragraph in accordance with the applicable service bulletin.

Related Investigative and Corrective Actions

(h) If any measurement found in paragraph (g) of this AD exceeds any applicable limit specified in the service bulletin: Before further flight, do the applicable related investigative and corrective actions in accordance with the applicable service bulletin.

Repetitive Lubrication

(i) Within 9 months after the effective date of this AD: Lubricate the rudder and elevator components specified in the service bulletin. Repeat the lubrication thereafter at the applicable interval in paragraph (i)(1) or (i)(2) of this AD. Do all actions required by this paragraph in accordance with the applicable service bulletin.

(1) For airplanes on which BMS 3–33 grease is not used: At intervals not to exceed 3,000 flight hours or 9 months, whichever occurs first.

(2) For airplanes on which BMS 3–33 grease is used: At intervals not to exceed 6,000 flight hours or 18 months, whichever occurs first.

Concurrent Repetitive Cycles

(j) If a freeplay measurement required by paragraph (g) of this AD and a lubrication cycle required by paragraph (i) of this AD are due at the same time or will be accomplished during the same maintenance visit, the freeplay measurement and applicable related investigative and corrective actions must be done before the lubrication is accomplished.

No Reporting Required

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

Alternative Methods of Compliance (AMOCs)

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

(2) 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.

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

Issued in Renton, Washington, on January 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1686 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23815; Directorate Identifier 2005–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737 airplanes. This proposed AD would require repetitive measurement of the freeplay of both

aileron balance tabs; repetitive lubrication of the aileron balance tab hinge bearings and rod end bearings; and related investigative and corrective actions if necessary. This proposed AD results from reports of freeplay-induced vibration of the aileron balance tab. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are proposing this AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by March 27, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23815; Directorate Identifier 2005–NM–222–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received three reports of freeplay-induced vibration of the aileron balance tab on Boeing Model 737 airplanes. Excessive corrosion and wear of components and/or interfaces allows excessive freeplay movement of the control surfaces and can cause excessive vibration of the airframe during flight. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. When divergent flutter occurs, the amplitude of each cycle or oscillation is larger than the previous one and the surface can quickly reach its structural limits. Excessive vibration of the airframe, if not corrected, could result in loss of control of the airplane.

Relevant Service Information

We have reviewed the following Boeing service bulletins:

- For Boeing Model 737–100, –200, –200C, –300, –400, –500 series airplanes: Boeing Special Attention Service Bulletin 737–27–1272, dated September 29, 2005.
- For Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes: Boeing Special Attention Service Bulletin 737–27–1273, dated September 29, 2005.

The service bulletins describe procedures for repetitive measurement of the freeplay of both aileron balance tabs. If the freeplay exceeds certain specified limits, the service bulletins describe procedures for doing applicable related investigative and corrective actions. These related investigative and corrective actions include doing a visual inspection for wear of the affected components such as bearings, bolts, and bushings; and repairing or replacing the affected part if necessary. The corrective actions also include repeating the freeplay measurement and applicable related investigative and corrective actions until the freeplay is within acceptable limits. The service bulletins also describe procedures for repetitive lubrication of the aileron balance tab hinge bearings and rod end bearings. The service bulletins note that if the freeplay measurement and a lubrication cycle are due at the same time, the freeplay measurement must be satisfactory before the lubrication is done. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 5,651 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. No parts are necessary to accomplish either action.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour $	Cost per airplane $	Number of U.S.-registered airplanes	Fleet cost $
Freeplay measurement	8	65	520, per measurement cycle	2,280	1,185,600, per measurement cycle.
Lubrication	4	65	260, per lubrication cycle	2,280	592,800, per lubrication cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–23815; Directorate Identifier 2005–NM–222–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from three reports of freeplay-induced vibration of the aileron balance tab. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Boeing Model 737–100, –200, –200C, –300, –400, –500 series airplanes: Boeing Special Attention Service Bulletin 737–27–1272, dated September 29, 2005.

(2) For Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes: Boeing Special Attention Service Bulletin 737–27–1273, dated September 29, 2005.

Repetitive Measurements

(g) Within 18 months after the effective date of this AD: Measure the freeplay of both aileron control balance tabs. Repeat the measurement thereafter at the applicable interval in paragraph (g)(1) or (g)(2) of this AD. Do all actions required by this paragraph in accordance with the applicable service bulletin.

(1) For Boeing Model 737–100, –200, and –200C series airplanes: At intervals not to exceed 6,000 flight hours or 24 months, whichever occurs first.

(2) For Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes: At intervals not to exceed 8,000 flight hours or 24 months, whichever occurs first.

Related Investigative and Corrective Actions

(h) If any measurement found in paragraph (g) of this AD is outside the acceptable limits specified in the service bulletin: Before further flight, do the applicable related investigative and corrective actions in accordance with the applicable service bulletin.

Repetitive Lubrication

(i) Within 9 months after the effective date of this AD: Lubricate the aileron balance tab components specified in the applicable service bulletin. Repeat the lubrication thereafter at the applicable interval in paragraph (i)(1), (i)(2), or (i)(3) of this AD. Do all actions required by this paragraph in accordance with the applicable service bulletin.

(1) For Boeing Model 737–100, –200, and –200C series airplanes: At intervals not to exceed 3,000 flight hours or 9 months, whichever occurs first.

(2) For Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes, on which BMS 3–33 grease is not used: At intervals not to exceed 3,000 flight hours or 9 months, whichever occurs first.

(3) For Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes, on which BMS 3–33 grease is used: At intervals not to exceed 4,000 flight hours or 12 months, whichever occurs first.

Concurrent Repetitive Cycles

(j) If a freeplay measurement required by paragraph (g) of this AD and a lubrication cycle required by paragraph (i) of this AD are

due at the same time or will be accomplished during the same maintenance visit, the freeplay measurement and applicable related investigative and corrective actions must be done before the lubrication is accomplished.

Alternative Methods of Compliance (AMOCs)

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

(2) 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.

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

Issued in Renton, Washington, on January 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1687 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22876; Directorate Identifier 2005–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; RECARO Aircraft Seating GmbH & Co. (RECARO) Model 3410 Seats

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain RECARO Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats. This proposed AD would require replacing the existing attachment bolts for the seat belts with longer attachment bolts. This proposed AD results from a report of short attachment bolts that don't allow enough thread to properly secure the locknuts. We are proposing this AD to prevent a seat belt from detaching due to a loose locknut and attachment bolt, which could result in injury to an occupant during emergency conditions.

DATES: We must receive any comments on this proposed AD by April 10, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact RECARO Aircraft Seating GmbH & Co. K, Technical Publications, Daimlerstrasse 21, 74523 Schwäbisch Hall, Germany; Telephone 49 791 503 7183; fax 49 791 503 7220, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7161; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22876; Directorate Identifier 2005–NE–39–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DOT Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket management Facility receives them.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified us that an unsafe condition may exist on certain RECARO aircraft seats. The LBA advises that it received a report of loose bolts at the attachment point of the seat belt. Certain RECARO aircraft seats might use an attachment bolt that is too short to allow enough threads to secure the locknut properly, which could result in injury to an occupant during emergency condition.

Relevant Service Information

We have reviewed and approved the technical contents of RECARO Service Bulletin (SB) SB–No.: 3410–25MR477, Revision 3, dated May 17, 2004. SB–No.: 3410–25MR477 describes procedures for replacing the bolt and nut. The LBA classified this SB as mandatory and issued airworthiness directive D–2004–151R1, dated June 6, 2004, in order to ensure the airworthiness of these RECARO seats in Germany.

FAA's Determination and Requirements of the Proposed AD

These seats, manufactured in Germany, are installed in airplanes that are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the LBA kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available

information, and determined that AD action is necessary for products of this type that are installed in airplanes certificated for operation in the United States. For this reason, we are proposing this AD, which would require replacing the bolt that attaches the seat belt to the seat with a new, longer bolt. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 3,101 seats installed in airplanes of U.S. registry. We also estimate that it would take about 0.10 work hour per seat to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $10 per seat. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $51,166.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

RECARO Aircraft Seats GmbH & Co.: Docket No. FAA–2005–22876; Directorate Identifier 2005–NE–39–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by April 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain RECARO Aircraft Seats GmbH & Co. (RECARO) Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats. These seats are installed on, but not limited to, Boeing 737–200 series, 747–400 series, 777–200 and 777–300 series; and Airbus Industries A319–100 series, A320–200 series, and A321–200 series airplanes.

Unsafe Condition

(d) This AD results from a report of short attachment bolts that don't allow enough thread to secure the locknuts properly. We are issuing this AD to prevent a seat belt from detaching due to a loose locknut and attachment bolt, which could result in injury to an occupant during emergency conditions.

Compliance

(e) You are responsible for having the actions required by this AD performed within 60 days after the effective date of this AD, unless the actions have already been done.

Replacing the Attachment Bolt

(f) For RECARO Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats with a serial number listed in section 1.A. Effectivity of RECARO service bulletin SB–No.: 3410–25MR477, Revision 3, dated May 17, 2004, replace the seat belt attachment bolt and nut. Use section 2. Accomplishment Instructions of RECARO service bulletin SB–No.: 3410–25MR477, Revision 3, dated May 17, 2004.

Alternative Methods of Compliance

(g) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Luftfahrt-Bundesamt airworthiness directive D–2004–151R1, dated June 6, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on February 1, 2006.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–1688 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–122380–02]

RIN 1545–AY05

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes modifications of the regulations governing practice before the IRS (Circular 230). These proposed regulations affect individuals who practice before the IRS. The proposed amendments modify the general standards of practice before the IRS. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronically generated comments must be received by April 10, 2006. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, June 21, 2006 at 10 a.m., in the auditorium of the Internal Revenue Service building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by April 10, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122380–02), room 5203, Internal Revenue Service, PO Box

7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–122380–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–122380–02). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Brinton T. Warren at (202) 622–7800; concerning submissions of comments and the public hearing, Robin Jones at (202) 622–7180; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals. Pursuant to section 330 of title 31, the Secretary has published the regulations in Circular 230 (31 CFR part 10). These regulations authorize the Director of the Office of Professional Responsibility to act upon applications for enrollment to practice before the IRS, to make inquiries with respect to matters under the Office of Professional Responsibility's jurisdiction, to institute proceedings to impose a monetary penalty or to censure, suspend or disbar a practitioner from practice before the IRS, to institute proceedings to disqualify appraisers, and to perform other duties necessary to carry out these functions.

Circular 230 has been amended periodically. For example, on June 20, 1994 (59 FR 31523), the regulations were amended to provide standards for tax return preparation by practitioners, to limit the use of contingent fees by practitioners in tax return or refund claim preparation and to provide expedited rules for suspension from practice before the IRS.

On December 19, 2002 (67 FR 77724), the Treasury Department and the IRS issued an advance notice of proposed rulemaking (2002 ANPRM) requesting comments on amendments to the regulations relating to the Office of Professional Responsibility, unenrolled practice, eligibility for enrollment, sanctions and disciplinary proceedings, contingent fees and confidentiality agreements. This document proposes amendments reflecting the Treasury Department and the IRS consideration of the comments received in response to the 2002 ANPRM and reflecting amendments to section 330 of title 31 made by the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (the Jobs Act). The proposed regulations include conforming amendments to reflect the final regulations relating to best practices, covered opinions and other written advice published as TD 9165 on December 20, 2004 (69 FR 75839) and as TD 9201 on May 19, 2005 (70 FR 28824), but do not otherwise address those final regulations.

Explanation of Provisions

Over 60 written comments were received in response to the 2002 ANPRM. All comments were considered and are available for public inspection upon request. A number of these comments are summarized below. Comments relating to matters about which the Treasury Department and the IRS declined to propose changes are not generally discussed. The scope of these regulations is limited to practice before the IRS. These regulations do not alter or supplant ethical standards that might otherwise be applicable to practitioners.

Director of the Office of Professional Responsibility

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to the name of the office and appointment of the Director. In January of 2003, the Office of Professional Responsibility was established and replaced the office of the Director of Practice. This change, which was supported by many commentators, reflects the office's commitment to ensuring the integrity of the tax system and recognition of tax professionals as an integral part of effective tax administration. The proposed regulations change references to the Office of the Director of Practice to the Office of Professional Responsibility. The Director of the Office of Professional Responsibility is appointed by the Secretary, or his or her delegate. The text of the regulations also will be changed to eliminate references to the Office of the Secretary to reflect the prior transfer of the Office of Professional Responsibility to the IRS. See 47 FR 29918 (July 9, 1982).

Definitions—Practice Before the Internal Revenue Service

On October 22, 2004, the President signed the Jobs Act. Section 822(b) of the Act amends section 330 of title 31 of the United States Code by adding a provision that recognizes the Secretary's authority to impose standards for written advice rendered with respect to any entity, transaction plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion. Accordingly, § 10.2(d) of the proposed regulations is modified to clarify that the rendering of this written advice is practice before the IRS subject to Circular 230 when it is provided by a practitioner.

Who May Practice

The Advisory Committee for Tax Exempt/Governmental Entities recently suggested that individuals who provide technical services to plan sponsors to maintain the tax qualified status of their retirement plans (retirement plan administrators) should be authorized to practice provided they demonstrate the competency to do so. The Treasury Department and the IRS are considering this proposal and invite public comments even though text is not proposed in this notice of proposed rulemaking. The Advisory Committee's proposal suggests limiting the practice by this group of individuals to representation relating to filing applications for determination letters, Forms 5500, employee plan audits, and negotiating with the IRS with respect to voluntary compliance matters.

In addition, the Advisory Committee proposes procedures for enrollment similar to the current Enrolled Agent program (see §§ 10.4–10.6), including an examination to determine competency, a renewal process and continuing professional education requirements. For more information relating to practice by retirement plan administrators, see *Establishing the Enrolled Retirement Plan Agent Under Circular 230,* Advisory Committee for Tax Exempt/Governmental Entities (June 2005). The Treasury Department and the IRS also invite comments on proposals relating to limited practice by other individuals that the public believes competent to represent taxpayers before the IRS, and whether the Director of the Office of Professional Responsibility should have the authority to regulate these individuals through IRS notice procedures.

Enrollment Procedures

Section 10.5 of the regulations sets forth the applicable procedures relating to the enrollment of an enrolled agent. The proposed regulations provide that applicants for enrollment must utilize forms and comply with procedures established and published by the Office of Professional Responsibility. The proposed regulations permit the Office of Professional Responsibility to change the ''Application for Enrollment To Practice Before the IRS'' and other requirements pertaining to the procedures to apply for enrollment.

Section 10.6 of the regulations sets forth the procedures for renewal of enrollment to practice before the IRS. Under the current regulations, the Director of the Office of Professional Responsibility must maintain a list of enrolled agents, including those who are active, inactive and sanctioned. This requirement is combined with the roster requirements of § 10.90 in the proposed regulations to clarify that all rosters, including those related to enrolled agents, will be maintained and made available for public inspection in the time and manner prescribed by the Secretary.

The proposed regulations clarify the requirements to maintain active enrollment to practice before the IRS. An enrolled agent must apply for renewal of enrollment between November 1 and January 31 of the relevant period described in § 10.6(d). The effective date of renewal is the first day of the third month following the close of the period for renewal, *i.e.*, April 1. An enrolled agent must complete 72 hours of continuing professional education during each enrollment cycle, with a minimum of 16 hours (including two hours of ethics) during each enrollment year. The enrollment year is each calendar year, *i.e.*, January 1 to December 31, in the enrollment cycle. The enrollment cycle is the three successive enrollment years preceding the April 1 effective date of renewal. Thus, an enrolled agent whose social security number ends with 0 must renew enrollment between November 1, 2006, and January 31, 2007. The enrolled agent must have completed 72 hours of continuing professional education between January 1, 2004, and December 31, 2006, with at least 16 hours (including two hours of ethics) during each calendar year. Similarly, the proposed regulations require sponsors of continuing education courses to renew their status as qualified sponsors every three years.

The proposed regulations require that a qualifying course enhance professional knowledge in Federal taxation or Federal tax related matters and be consistent with the Internal Revenue Code and effective tax administration.

Limited Practice Before the IRS

In the 2002 ANPRM, the Treasury Department and IRS solicited comments relating to limited practice by unenrolled return preparers. Most commentators opposed expanding the authority of the Director of the Office of Professional Responsibility to include the authority to modify the scope of limited practice by unenrolled preparers without further amendment to Circular 230. Most commentators agreed that the Director of the Office of Professional Responsibility should not be given the authority to determine the eligibility for limited practice by unenrolled preparers.

Section 10.7(c)(1)(viii) currently authorizes an individual, who is not otherwise a practitioner, to represent a taxpayer during an examination if that individual prepared the return for the taxable period under examination. The proposed regulations revoke this authorization because it is inconsistent with the requirement that all individuals permitted to practice before the IRS demonstrate their qualifications to advise and assist persons in presenting their cases to the IRS.

Under the proposed regulations, an unenrolled return preparer may not represent a taxpayer unless otherwise authorized by § 10.7(c)(1)(i)–(vii). These individuals no longer may negotiate with the IRS on behalf of a taxpayer during an examination and no longer may bind a taxpayer to a position during an examination. For example, an unenrolled return preparer may not sign a Form 872, ''Consent To Extend Time To Assess Tax,'' with regard to the tax return prepared for that individual. In addition, an unenrolled return preparer may not agree to any adjustment to the taxpayer's reported tax liability.

Individuals who are not eligible to practice and who prepare an original return may assist in the exchange of information with the IRS regarding a taxpayer's return if the taxpayer has specifically authorized the preparer to receive confidential tax information from the IRS. Revocation of the authority for limited practice will not preclude a return preparer from assisting a taxpayer in responding to questions regarding the taxpayer's return. The proposed regulations do not preclude an unenrolled return preparer from accompanying a taxpayer to an examination, provided the taxpayer authorizes the IRS to disclose confidential tax information to the unenrolled return preparer.

Practice by Former Government Employees, Their Partners and Their Associates

Section 10.25 sets forth rules governing practice by former government employees, their business partners and their associates. These rules were first promulgated in 1976 to address discrepancies between the Government-wide post-employment statute, 18 U.S.C. 207, its implementing regulations and the codes of professional responsibility (*e.g.*, ABA Model Rules of Professional Conduct, AICPA Code of Professional Conduct and individual state rules of professional conduct) applicable to practitioners who appear before the IRS.

Section 10.25 of the proposed regulations has been conformed with the terminology used in 18 U.S.C. 207, and 5 CFR parts 2637 and 2641 (or superseding regulations), by eliminating the definitions of *official responsibility* in § 10.25(a)(5), *participate or participation* in § 10.25(a)(6), and *transaction* in § 10.25(a)(8) and substituting the term *particular matter involving specific parties* in § 10.25(a)(4) (formerly § 10.25(a)(8)).

The proposed regulations also eliminate the prohibition in § 10.25(b)(3) against assisting in the representation in matters in which the former employee had official responsibility during the former employee's last year of service. Existing statutes, regulations and codes of professional responsibility are adequate to protect against conflicts of interest and protect the integrity of the tax system, including the prohibition on representation in 18 U.S.C. 207.

Section 10.25(b)(2) of the proposed regulations continues to prohibit former employees who personally and substantially participated in a matter while in Government service from representing or assisting in the representation in the same matter while in private practice. In these matters, the former employee's firm may represent the taxpayer in the matter if the former employee is isolated from the matter and isolation statements are filed with the Office of Professional Responsibility in accordance with § 10.25(c).

Contingent Fees

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to contingent fees. Most commentators opposed further limitations on contingent fees under § 10.27. The Treasury Department and the IRS continue to believe that a rule

restricting contingent fees for preparing tax returns supports voluntary compliance with the Federal tax laws by discouraging return positions that exploit the audit selection process. Additionally, a broader prohibition against contingent fee arrangements is appropriate in light of concerns regarding attorney and auditor independence. The recent shift toward even greater independence, including rules adopted by the Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board, also support expanding the prohibition on contingent fees with respect to Federal tax matters.

Under section 10.27 of the proposed regulations, a practitioner generally is precluded from charging a contingent fee for services rendered in connection with any matter before the Service, including the preparation or filing of a tax return, amended tax return or claim for refund or credit. A practitioner may, however, charge a contingent fee for services rendered in connection with the IRS's examination of, or challenge to, an original tax return. Practitioners also may charge a contingent fee for services rendered in connection with the IRS's examination of, or challenge to, an amended return or claim for refund or credit filed prior to the taxpayer receiving notice of the examination of, or challenge to the original tax return. A written notice of examination would include the written notice furnished to taxpayers subject to the Coordinated Industry Case procedures requesting a statement showing additional tax due (or an adequate disclosure with respect to an item or position) to avoid the imposition of certain accuracy—related penalties if no other written notice of examination is received. Contingent fees also may be charged for services rendered in connection with a judicial proceeding arising under the Federal tax laws.

Conflicting Interests

Section 10.29 of the regulations prohibits a practitioner from representing conflicting interests before the IRS, except with the express consent of all directly interested parties after full disclosure. Section 10.29 is generally consistent with Rule 1.7 of the ABA Model Rules of Professional Conduct (Model Rules), which was amended just prior to the July 26, 2002 amendment to the regulations.

Section 10.29 of the proposed regulations clarifies that a practitioner is required to obtain consents in writing from each affected client in order to represent the conflicting interests. The written consent may vary in form. The practitioner may prepare a letter to the client outlining the conflict, as well as the possible implications of the conflict, and submit the letter to the client for the client to countersign. Unlike the Model Rules, which permit affected clients to provide informed consent orally if the consent is contemporaneously documented by the practitioner in writing, an oral consent followed by a confirmation letter authored by the practitioner will not satisfy § 10.29 unless the confirmation letter is countersigned by the client.

Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

Section 10.34 sets forth standards applicable to advice with respect to tax return positions and applicable to preparing or signing returns. Section 10.34 of the proposed regulations sets forth standards applicable to practitioners who advise clients with respect to documents, affidavits and other papers submitted to the IRS. The proposed regulations also provide separate standards for papers that take a position with respect to Federal tax matters and standards for advising a client to file papers involving procedural or factual matters.

Under the proposed regulations, a practitioner may not advise a client to take a position on a submission to the IRS unless the position is not frivolous. A practitioner also may not advise a client to submit a document to the IRS that is meant primarily for delay; is frivolous or groundless; or contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation. With regard to factual matters, a practitioner may rely upon information furnished by the taxpayer with respect to tax returns and documents, affidavits and other papers, unless the information appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete. These standards would supplement the existing requirement in § 10.22 that practitioners exercise due diligence in preparing, or assisting in the preparation of, tax returns and other documents relating to IRS matters.

Sanctions

In accordance with section 822(a) of the Jobs Act, proposed § 10.50 authorizes the Secretary to impose a monetary penalty against a practitioner if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in part 10, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

Under the proposed regulations, the monetary penalty may be imposed in addition to, or in lieu of, any other sanction. If a practitioner acts on behalf of the practitioner's employer, firm or other entity and the employer, firm or other entity knew or should have known of the practitioner's conduct, the Secretary may impose a monetary penalty on the employer, firm or other entity. The Treasury Department and the IRS will issue procedures relating to the imposition of the monetary penalty through separate published guidance.

The proposed regulations also contain conforming amendments to other provisions relating to sanctions.

Incompetence and Disreputable Conduct

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to whether the definition of disreputable conduct should include the willful failure of a preparer who is a practitioner to sign a return. Many commentators supported expanding the definition of disreputable conduct to specifically include the willful failure of a practitioner who is a tax return preparer to sign a return.

Section 10.51 of the regulations defines disreputable conduct for which a practitioner may be sanctioned. Section 10.51 of the proposed regulations modifies the definition of disreputable conduct to include willful failure to sign a tax return prepared by the practitioner. The definition of disreputable conduct also includes the disclosure or use of returns or return information by practitioners in a manner not authorized by the Code, a court of competent jurisdiction, or an administrative law judge in a proceeding instituted under § 10.60.

Supplemental Charges

Section 10.65 provides that the Director of the Office of Professional Responsibility may file supplemental charges against a practitioner or appraiser. Section 10.65 of the proposed regulations provides that the Director may file supplemental charges against a practitioner by amending the complaint to reflect the additional charges if the practitioner is given notice and an opportunity to prepare a defense to the supplemental charges.

Hearings and Discovery

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to expanding discovery and providing greater procedural protections in disciplinary

proceedings. Most commentators supported expanding the use of discovery in disciplinary proceedings. Most commentators also supported providing further procedural protections such as a guarantee of the right to cross-examine witnesses.

These proposed regulations redesignate the provisions relating to hearings, evidence and depositions and discovery. Proposed § 10.71 addresses discovery, proposed § 10.72 addresses hearings and proposed § 10.73 addresses evidence.

1. Motions and Requests

Section 10.68 of the regulations sets forth procedures for filing a motion or request with the Administrative Law Judge presiding over a disciplinary proceeding. The regulations provide that a party is not presumed to oppose a motion for decision by default for failure to file a timely answer or for failure to prosecute. The proposed regulations amend § 10.68 to expressly allow a party to file a motion for summary adjudication if there is no genuine issue as to any material fact.

2. Discovery in Disciplinary Proceedings

Section 10.71 of the proposed regulations clarifies the discovery methods available to the parties in preparation for a disciplinary hearing. The Administrative Law Judge may authorize discovery if the party seeking discovery establishes that it is necessary and relevant. Discovery methods include depositions upon oral examination and requests for admission. The Administrative Law Judge should weigh factors such as the ultimate relevancy and anticipated costs to determine the least burdensome method in ordering discovery.

Discovery is not permitted if the information is privileged or the information relates to mental impressions, conclusions or legal theories of any attorney, party, or other representative of a party prepared in anticipation of a proceeding.

To address practitioners' due process rights without creating a formal court proceeding, the proposed regulations require the Director of the Office of Professional Responsibility to turn over the documentation used in support of a complaint filed with the Administrative Law Judge. Under § 10.63(d) of the proposed regulations, this information must be served on the practitioner or appraiser, or the representative, within 10 days of serving the complaint. This requirement, however, is only an initial disclosure of the evidence of record at the time of the complaint. Supplemental evidence developed during preparation for the hearing is not prohibited from being introduced.

Under § 10.62(c) of the proposed regulations, the Director of the Office of Professional Responsibility must notify the practitioner or appraiser of the time for answering the complaint, which cannot be less than 30 days. When determining the time for answering the complaint, the Director will take into account the amount of the evidence in support of the complaint and the complexity of the charges to allow the practitioner or appraiser time to prepare an adequate answer in defense to the complaint.

3. Hearings

Section 10.72 of the regulations sets forth the procedures for an administrative hearing pursuant to Circular 230. The Administrative Law Judge should conduct the hearing within 180 days of the time for filing of the answer, absent circumstances requiring that, in the interest of justice, the hearing be held at a later date. The proposed regulations amend § 10.72 to allow each party to a disciplinary proceeding, as may be required for a full and true disclosure of the facts, to question, in the presence of the Administrative Law Judge, a person whose statement is offered by the opposing party. The proposed regulations incorporate the requirements of the Administrative Procedure Act (5 U.S.C. 556(d)). The proposed regulations do not prohibit a party from presenting evidence contained in a deposition if all parties to the proceeding were given an opportunity for full examination and cross-examination of the witness under § 10.71. The proposed regulations generally require pre-hearing memoranda. The Administrative Law Judge may determine that pre-hearing memoranda are not necessary or, by order, require other information with respect to the disciplinary proceeding.

4. Publicity of Disciplinary Proceedings

Currently, disciplinary proceedings brought pursuant to Circular 230 are closed to the public unless the Administrative Law Judge grants a practitioner's request that the proceedings be public. The proposed regulations amend § 10.72(d) to provide that all hearings, reports, evidence and decisions in a disciplinary proceeding be available for public inspection. The proposed regulations mandate procedures to protect the identities of any third party taxpayers contained in returns and return information obtained pursuant to section 6103(l)(4) for use in an action or proceeding under subpart D. The procedures to protect the identities of third party taxpayers also must be observed with respect to discovery matters.

The Administrative Law Judge must issue a protective order in the event that redactions of taxpayer identifiers render documents unintelligible or may still permit indirect identification of the taxpayer. The Administrative Law Judge may, for good cause, order proceedings closed to the public or may order nondisclosure of materials associated with the proceeding, such as in the case in which disclosure is prohibited by 18 U.S.C. 1905 or section 6103. The Administrative Law Judge also may order limited access to materials which are confidential or sensitive in some other way.

The proposed regulations provide that, at the conclusion of a proceeding, the Secretary, or his or her delegate, shall ensure that all returns and return information, including the names, addresses or other identifying details of third party taxpayers, are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to such documents being made available for further public inspection.

Decision of Administrative Law Judge

Section 10.76 of the regulations sets forth the requirements for the decision of the Administrative Law Judge. The proposed regulations amend § 10.76 to provide that the Administrative Law Judge should render a decision within 180 days after the conclusion of the hearing. If a party files a motion for summary adjudication, the Administrative Law Judge should rule on the motion within 60 days after a written response to the motion for summary adjudication or, if no written response is filed, 90 days after the motion for summary adjudication is filed.

The proposed regulations provide that the decision of the Administrative Law Judge will become the final decision of the agency 45 days after the date the decision is served on the parties. The Secretary may, however, either in response to a petition for review filed by a party or on the Secretary's own initiative, intervene and order review of the Administrative Law Judge's decision before the decision becomes final. The petition for review must be filed within 30 days of the date the decision is served on the parties.

If the Secretary grants a petition or otherwise orders review, the Secretary must notify the parties within 45 days from the date the Administrative Law Judge's decision is served on the parties.

The notice must state that (1) the decision is under review, (2) no final agency decision has been made, (3) any action of the Administrative Law Judge is inoperative, and (4) a final decision of the agency made by the Secretary is required before judicial review can be obtained. The Secretary will not review an interlocutory order or ruling, *e.g.*, a discovery request ruling, of the Administrative Law Judge prior to the rendering of a decision by the Administrative Law Judge that would dispose of the proceeding.

Expedited Suspension

Section 10.82 of the regulations authorizes the Director of the Office of Professional Responsibility to suspend immediately a practitioner who has engaged in certain conduct. The proposed regulations extend the expedited process to practitioners who are in egregious noncompliance with their tax obligations or have been adjudicated as having advanced arguments, relating to the practitioner's own tax obligations or the obligations of the client, primarily for delay.

The Treasury Department and the IRS are aware of a number of practitioners who are not in compliance with their own Federal tax obligations, but continue to represent taxpayers, and of situations in which practitioners advance frivolous or obstructionist positions relating to their own tax obligations and the obligations of their clients. Under the proposed regulations, a practitioner who is not compliant with the practitioner's own Federal tax obligations may be subject to expedited disciplinary proceedings. In addition, a practitioner who has been found by a court of competent jurisdiction to have advanced frivolous arguments or advanced arguments primarily for delay, either relating to a taxpayer's tax liability or relating to the practitioner's own tax liability, will be subject to an expedited disciplinary proceeding.

Proposed Effective Date

These regulations are proposed to apply on the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The general requirements of these regulations are substantially the same as the requirements of the regulations that these regulations replace. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations clarify those obligations in response to public comments, replace certain terminology to conform with the terminology used in 18 U.S.C. 207, and 5 CFR parts 2637 and 2641 (or superseding regulations), make modifications to reflect amendments to section 330 of title 31 made by the Jobs Act, and make other modifications to reflect concerns about greater independence, transparency and due process. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing is scheduled for June 21, 2006, at 10 a.m., and will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by April 10, 2006 and an outline of the topics to be discussed and the time to be devoted to each topic by April 10, 2006. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Brinton T. Warren and Heather L. Dostaler of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Accordingly, 31 CFR part 10 is proposed to be amended to read as follows:

Proposed Amendments to the Regulations

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for 31 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330, as amended by Pub. L. 108–357, Sec. 822.

Part 10 [Nomenclature change]

Par. 2. In part 10, remove the language ''Director of Practice'' and add, in its place, the language ''Director of the Office of Professional Responsibility'' in each of the following sections and paragraphs:

§ 10.4(a), (b) introductory text, (b)(1), (b)(2);

§ 10.5(c), (d), (e);

§ 10.6(b), (g)(2)(iii), (g)(2)(iv), (g)(4), (j)(1), (j)(2), (j)(4), (k)(1), (k)(2), (n);

§ 10.7(c)(2)(iii), (d);

§ 10.20(b), (c);

§ 10.62(a), (b);

§ 10.63(c);

§ 10.64(a);

§ 10.66;

§ 10.69(a)(1), (b);

§ 10.73(a);

§ 10.81;

§ 10.82(a), (c) introductory text, (c)(3), (d), (e), (f)(1), (g).

Par. 3. Section 10.1 is revised to read as follows:

§ 10.1 Director of the Office of Professional Responsibility.

(a) *Establishment of office.* The Office of Professional Responsibility is established in the Internal Revenue Service. The Director of the Office of

Professional Responsibility is appointed by the Secretary of the Treasury, or his or her delegate.

(b) *Duties.* The Director of the Office of Professional Responsibility acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to practitioners (and employers, firms or other entities, if applicable) and appraisers; and performs other duties as are necessary or appropriate to carry out his or her functions under this part or as are otherwise prescribed by the Secretary of the Treasury, or his or her delegate.

(c) *Acting Director of the Office of Professional Responsibility.* The Secretary of the Treasury, or his or her delegate, will designate an officer or employee of the Treasury Department to act as Director of the Office of Professional Responsibility in the absence of the Director or a vacancy in that office.

(d) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 4. Section 10.2 is revised to read as follows:

§ 10.2 Definitions.

(a) As used in this part, except where the text provides otherwise—

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(b) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 5. Section 10.5 is amended by revising paragraphs (a) and (b) and adding paragraph (f) to read as follows:

§ 10.5 Application for enrollment.

(a) *Form; address.* An applicant for enrollment must apply as required by forms or procedures established and published by the Office of Professional Responsibility, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled and is the address to which all correspondence concerning enrollment will be sent.

(b) *Fee.* The applicant must pay the fee established and published by the Office of Professional Responsibility. This fee will be reflected on applicable forms and will be retained regardless of whether the applicant is granted enrollment.

* * * * *

(f) *Effective date.* This section is applicable to enrollment applications received on or after the date that final regulations are published in the **Federal Register**.

Par. 6. Section 10.6 is amended by:

1. Removing paragraph (a).

2. Redesignating paragraph (c) as paragraph (a).

3. Adding a new paragraph (c).

4. Revising paragraphs (d) introductory text, (d)(5), (d)(6), (d)(7), (e), (f)(1), (f)(2)(iv)(A), (g)(5), (k)(7) and (l).

5. Adding a new paragraph (p).

The revisions and additions read as follows:

§ 10.6 Enrollment.

* * * * *

(c) *Change of address.* An enrolled agent must send notification of any change of address to the address specified by the Director of the Office of Professional Responsibility. This notification must include the enrolled agent's name, prior address, new address, social security number or tax identification number and the date.

(d) *Renewal of enrollment.* To maintain active enrollment to practice before the Internal Revenue Service, each individual is required to have his or her enrollment renewed. Failure to receive notification from the Director of the Office of Professional Responsibility of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

* * * * *

(5) The Director of the Office of Professional Responsibility will notify the individual of his or her renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee may be charged for each application for renewal of enrollment filed with the Director of the Office of Professional Responsibility.

(7) Forms required for renewal may be obtained by sending a written request to the Director of the Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or from such other source as the Director of the Office of Professional Responsibility will publish in the Internal Revenue Bulletin (*see* 26 CFR 601.601(d)(2)) and on the Internal Revenue Service Web page (*http://www.irs.gov*).

(e) *Condition for renewal: continuing professional education.* In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of the Office of Professional Responsibility, that he or she has satisfied the following continuing professional education requirements.

(1) *Definitions.* For purposes of this section—

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

(iii) The *effective date of renewal* is the first day of the third month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment effective after December 31, 2006*—(i) *Requirements for enrollment cycle.* A minimum of 72 hours of continuing education credit must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year.* A minimum of 16 hours of continuing education credit, including 2 hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle*—(A) *In general.* Subject to

paragraph (2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete 2 hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics.* An individual who receives initial enrollment during an enrollment cycle must complete 2 hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(f) *Qualifying continuing education*—(1) *General.* To qualify for continuing education credit, a course of learning must—

(i) Be a qualifying program designed to enhance professional knowledge in Federal taxation or Federal tax related matters, *i.e.*, programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax preparation software and taxation or ethics;

(ii) Be a qualifying program consistent with the Internal Revenue Code and effective tax administration; and

(iii) Be sponsored by a qualifying sponsor.

(2) * * *

(iv) *Credit for published articles, books, etc.* (A) Continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, tax preparation software, and taxation or ethics, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service. The publication must be consistent with the Internal Revenue Code and effective tax administration.

* * * * *

(g) * * *

(5) *Sponsor renewal*—(i) *In general.* A sponsor maintains its status as a qualified sponsor during the sponsor enrollment cycle.

(ii) *Renewal period.* Each sponsor must file an application to renew its status as a qualified sponsor between May 1 and July 31, 2008. Thereafter, applications for renewal will be required between May 1 and July 31 of every subsequent third year.

(iii) *Effective date of renewal.* The effective date of renewal is the first day of the third month following the close of the renewal period.

(iv) *Sponsor enrollment cycle.* The sponsor enrollment cycle is the three successive calendar years preceding the effective date of renewal.

* * * * *

(k) * * *

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

(l) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

* * * * *

(p) *Effective date.* This section is applicable to enrollment effective on or after the date that final regulations are published in the **Federal Register**.

Par. 7. Section 10.7 is amended by:

1. Removing paragraph (c)(1)(viii).
2. Revising paragraph (c)(2)(ii).
3. And adding paragraph (g).

The revisions and additions read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

* * * * *

(c) * * *

(2) * * *

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under § 10.50.

* * * * *

(g) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 8. Section 10.22 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 10.22 Diligence as to accuracy.

* * * * *

(b) *Reliance on others.* Except as provided in §§ 10.34 and 10.35, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 9. Section 10.25 is revised to read as follows:

§ 10.25 Practice by former Government employees, their partners and their associates.

(a) *Definitions.* For purposes of this section—

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly, or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a special government employee as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Particular matter involving specific parties* is defined at 5 CFR 2637.201(c), or superseding post-employment regulations issued by the U.S. Office of Government Ethics.

(5) *Practitioner* includes any individual described in § 10.2(a)(5).

(6) *Rule* includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rule making or as Treasury decisions; revenue rulings; and revenue procedures published in the Internal Revenue Bulletin (see 26 CFR § 601.601(d)(2)).

(b) *General rules.* (1) No former Government employee may, subsequent to his or her Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may,

subsequent to his or her Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after his or her Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after his or her Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his or her Government employment, the former government employee had official direct responsibility. This paragraph (b)(4) does not, however, preclude such former employee from appearing on his or her own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific parties involving the application or interpretation of such a rule with respect to that particular matter, provided that such former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation.* (1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the Director of the Office of Professional Responsibility.

(d) *Pending representation.* The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.

(e) This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 10. Section 10.27 is revised to read as follows:

§ 10.27 Fees.

(a) *In general.* A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.

(b) *Contingent fees.* (1) Except as provided in paragraphs (b)(2) and (3) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to—

(i) An original tax return; or

(ii) An amended return or claim for refund or credit filed prior to the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.

(3) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

(c) *Definitions.* For purposes of this section—

(1) *Contingent fee* is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) *Matter before the Internal Revenue Service* includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 11. Section 10.29 is revised to read as follows:

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client in his or her practice before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if—

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if—

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by the affected client, at the time the existence of the conflict of interest is known by the practitioner.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer

or employee of the Internal Revenue Service on request.

(d) This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 12. Section 10.34 is revised to read as follows:

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns.* A practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless—

(1) The practitioner determines that the position satisfies the realistic possibility standard; or

(2) The position is not frivolous.

(b) *Documents, affidavits and other papers.* (1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service—

(i) The purpose of which is to delay or impede the administration of the Federal tax laws;

(ii) That is frivolous or groundless; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation.

(c) *Advising clients on potential penalties.* (1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to—

(i) A position taken on a tax return if—

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) *Definitions.* For purposes of this section—

(1) *Realistic possibility.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.

(2) *Frivolous.* A position is frivolous if it is patently improper.

(f) *Effective date.* This section is applicable to tax returns, documents, affidavits and other papers filed on or after the date that final regulations are published in the **Federal Register**.

§ 10.35 [Amended]

Par. 13. In § 10.35(b)(1) remove the language ''§ 10.2(e)'' and add the language ''§ 10.2(a)(5)'' in its place.

Par. 14. Section 10.50 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of § 10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

* * * * *

(c) *Authority to impose monetary penalty*—(1) *In general.* (i) The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or his or her delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of such conduct.

(2) *Amount of penalty.* The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) *Coordination with other sanctions.* Subject to paragraph (c)(2) of this section—

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to penalties imposed under paragraph (c)(1)(i) of this section.

(d) *Effective date.* This section is applicable to conduct occurring on or after the date that final regulations are published in the **Federal Register**.

Par. 15. Section 10.51 is revised to read as follows:

§ 10.51 Incompetence and disreputable conduct.

(a) *Incompetence and disreputable conduct.* Incompetence and disreputable conduct for which a practitioner may be sanctioned under § 10.50 includes, but is not limited to—

(1) Conviction of any criminal offense under the Federal tax laws;

(2) Conviction of any criminal offense involving dishonesty or breach of trust;

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service; and

(4) Giving false or misleading information, or participating in any way

in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term *information.*

(5) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure to properly or promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant or actuary by any duly constituted authority of any State, territory, possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false or circulating or publishing malicious or libel matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(13) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when such signature is required by the Federal tax laws.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under § 10.60.

(b) *Effective date.* This section is applicable to conduct occurring on or after the date that final regulations are published in the **Federal Register**.

Par. 16. Section 10.52 is revised to read as follows:

§ 10.52 Violations subject to sanction.

(a) A practitioner may be sanctioned under § 10.50 if the practitioner—

(1) Willfully violates any of the regulations (other than § 10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of § 10.51(a)(13)) violates § 10.34, 10.35, 10.36 or 10.37.

(b) This section is applicable to conduct occurring on or after the date that final regulations are published in the **Federal Register**.

Par. 17. Section 10.60 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 10.60 Institution of proceeding.

(a) Whenever the Director of the Office of Professional Responsibility determines that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of the Office of Professional Responsibility may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for a sanction described in § 10.50. A proceeding is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

* * * * *

(d) This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 18. Section 10.61 is revised to read as follows:

§ 10.61 Conferences.

(a) *In general.* The Director of the Office of Professional Responsibility may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary sanction*—(1) *In general.* In lieu of a proceeding being instituted or continued under § 10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under § 10.50.

(2) *Discretion; acceptance or declination.* The Director of the Office of Professional Responsibility may, in his or her discretion, accept or decline the offer described in paragraph (b)(1) of this section. In any declination, the Director of the Office of Professional

Responsibility may state that he or she would accept the offer described in paragraph (b)(1) of this section if it contained different terms. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 19. Section 10.62 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 10.62 Contents of complaint.

* * * * *

(c) *Demand for answer.* The Director of the Office of Professional Responsibility must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of the Office of Professional Responsibility to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective date.* This section is applicable to complaints brought on or after the date that final regulations are published in the **Federal Register**.

Par. 20. Section 10.63 is amended by:

1. Revising paragraph (a)(4).

2. Redesignating paragraph (d) as paragraph (e).

3. Adding new paragraphs (d) and (f).

The revisions and additions read as follows:

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) * * *

(4) For purposes of this section, ''respondent'' means the practitioner, employer, firm or other entity, or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner, employer, firm or other entity, or appraiser.

* * * * *

(d) *Service of evidence in support of complaint.* Within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner described in paragraphs (a)(2) and (3) of this section.

* * * * *

(f) *Effective date.* This section is applicable to complaints brought on or after the date that final regulations are published in the **Federal Register**.

Par. 21. Section 10.65 is revised to read as follows:

§ 10.65 Supplemental charges.

(a) *In general.* The Director of the Office of Professional Responsibility may file supplemental charges, by amending the complaint, against the respondent, if, for example—

(1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or

(2) It appears that the respondent has knowingly introduced false testimony during the proceedings against the respondent.

(b) *Hearing.* The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 22. Section 10.68 is revised to read as follows:

§ 10.68 Motions and requests.

(a) *Motions*—(1) *In general.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in § 10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

(2) *Summary adjudication.* Either party may move for a summary adjudication upon all or any part of the legal issues in controversy. If the non-moving party opposes summary adjudication in the moving party's favor, the non-moving party must file a written response within 30 days unless ordered otherwise by the Administrative Law Judge.

(3) *Good Faith.* A party filing a motion for extension of time, a motion for postponement of a hearing, or any other non-dispositive or procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

(c) *Oral motions; oral argument.* (1) The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions.

(2) The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

(d) *Orders.* The Administrative Law Judge should issue written orders disposing of any motion or request and any response thereto.

(e) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 23. Section 10.70 is amended by revising paragraphs (a) and (b)(6) and adding paragraph (c) to read as follows:

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the sanction (as described in § 10.50) of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) * * *

(6) Take or authorize the taking of depositions or answers to requests for admission;

* * * * *

(c) This section is applicable on the date that final regulations are published in the **Federal Register**.

§ 10.73 [Removed]

Par. 24. Section 10.37 is removed.

§ 10.72 [Redesignated as § 10.73]

Par. 25. Section 10.72 is redesignated as § 10.73.

§ 10.71 [Redesignated as § 10.72]

Par. 26. Section 10.71 is redesignated as § 10.72.

Par. 27. New § 10.71 is added to read as follows:

§ 10.71 Discovery.

(a) *In general.* Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of § 10.72(d)(2) and (3). Within 10 days of receipt of the answer, the Administrative Law Judge will notify the parties of the right to request discovery and the timeframes for filing a request. A request for discovery, and objections, must be filed in accordance with § 10.68. In response to a request for discovery, the Administrative Law Judge may order:

(1) Depositions upon oral examination; or

(2) Answers to requests for admission.

(b) *Depositions upon oral examination.* (1) A deposition must be taken before an officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in Federal tax law matters.

(2) In ordering a deposition, the Administrative Law Judge will require reasonable notice to the opposing party as to the time and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.

(3) Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken. Travel expenses of the deponent shall be borne by the party requesting the deposition, unless otherwise authorized by Federal law or regulation.

(c) *Requests for admission.* Any party may serve on any other party a written request for admission of the truth of any matters which are not privileged and are relevant to the subject matter of this proceeding. Requests for admission shall not exceed a total of 30 (including any subparts within a specific request) without the approval from the Administrative Law Judge.

(d) *Limitations.* Discovery shall not be authorized if—

(1) The request fails to meet any requirement set forth in paragraph (a) of this section;

(2) It will unduly delay the proceeding;

(3) It will place an undue burden on the party required to produce the discovery sought;

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

(6) It is privileged or otherwise protected from disclosure by law;

(7) It relates to mental impressions, conclusions, or legal theories of any party, attorney, or other representative, of a party prepared in anticipation of a proceeding; or

(8) It is available generally to the public, equally to the parties, or to the party seeking the discovery through another source.

(e) *Failure to comply.* Where a party fails to comply with an order of the Administrative Law Judge under this section, the Administrative Law Judge may, among other things, infer that the information would be adverse to the party failing to provide it, exclude the information from evidence or issue a decision by default.

(f) *Other discovery.* No discovery other than that specifically provided for in this section is permitted.

(g) *Effective date.* This section is applicable to proceedings initiated on or after the date that final regulations are published in the **Federal Register**.

Par. 28. Newly designated § 10.72 is amended by:

1. Revising paragraph (a).

2. Redesignating paragraphs (b), (c) and (d) as paragraphs (d), (e) and (f), respectively.

3. Adding new paragraphs (b) and (c).

4. Revising newly designated paragraph (d).

5. Adding a new paragraph (g).

The additions and revisions read as follows:

§ 10.72 Hearings.

(a) *In general*—(1) *Presiding officer.* An Administrative Law Judge will preside at the hearing on a complaint filed under § 10.60 for the sanction of a practitioner, employer, firm or other entity, or appraiser.

(2) *Time for hearing.* Absent a determination by the Administrative Law Judge that, in the interest of justice, a hearing must be held at a later time, the Administrative Law Judge should, on notice sufficient to allow proper preparation, schedule the hearing to occur no later than 180 days after the time for filing the answer.

(3) *Procedural requirements.* (i) Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation.

(ii) Hearings will be conducted pursuant to 5 U.S.C. 556.

(iii) A hearing in a proceeding requested under § 10.82(g) will be conducted de novo.

(iv) An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless—

(A) The Director of the Office of Professional Responsibility withdraws the complaint;

(B) A decision is issued by default pursuant to § 10.64(d);

(C) A decision is issued under § 10.82(e);

(D) The respondent requests a decision on the written record without a hearing; or

(E) The Administrative Law Judge issues a decision under § 10.68(d) or by virtue of ruling on another motion that disposes of the case prior to the hearing.

(b) *Cross-examination.* A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge determines that the deposition has been obtained in compliance with the rules of this subpart D.

(c) *Prehearing memorandum.* Unless otherwise ordered by the Administrative Law Judge, each party shall file, and serve on the opposing party or the opposing party's representative, prior to any hearing, a prehearing memorandum containing—

(1) A list (together with a copy) of all proposed exhibits to be used in the party's case in chief;

(2) A list of proposed witnesses, including a synopsis of their expected testimony, or a statement that no witnesses will be called;

(3) Identification of any proposed expert witnesses, including a synopsis of their expected testimony and a copy of any report prepared by the expert or at his or her direction; and

(4) A list of undisputed facts.

(d) *Publicity of proceedings*—(1) *In general.* Except as provided in paragraph (d)(3) of this section, all hearings before the Administrative Law Judge, all pleadings filed with the Administrative Law Judge, all evidence received by the Administrative Law Judge, and all reports and decisions of the Administrative Law Judge in a proceeding under subpart D will, subject to paragraph (d)(3) of this section, be public and open to inspection. Copies of these documents may, at the Secretary's discretion, be made publicly available on the Internal Revenue Service Web page (*http://www.irs.gov*) or through other means.

(2) *Returns and return information*—(i) *Disclosure to practitioner or appraiser.* Pursuant to section

6103(l)(4)(A) of the Internal Revenue Code, the Secretary, or his or her delegate, may disclose returns and return information, upon written request, to any practitioner or appraiser, or to the authorized representative of such practitioner or appraiser, whose rights are or may be affected by an administrative action or proceeding under subpart D, but solely for use in such action or proceeding and only to the extent that the Secretary, or his or her delegate, determines that such returns or return information are or may be relevant and material to the action or proceeding.

(ii) *Disclosure to officers and employees of the Department of Treasury.* Pursuant to section 6103(l)(4)(B) of the Internal Revenue Code, the Secretary may disclose returns and return information to officers and employees of the Department of the Treasury for use in any action or proceeding under subpart D, to the extent necessary to advance or protect the interests of the United States.

(iii) *Use of returns and return information.* Recipients of returns and return information under this paragraph (d)(2) may use such returns or return information solely in the action or proceeding, or in preparation for the action or proceeding, with respect to which the disclosure was made.

(iv) *Procedures for disclosure of returns and return information*—(A) *Requests for information.* The practitioner or appraiser, or his or her authorized representative, may request returns or return information for use in the action or proceeding, or preparation for such action or proceeding in accordance with the requirements of 6103(l)(4)(A) of the Internal Revenue Code. The practitioner or appraiser, or his or her authorized representative, may not obtain returns or return information from the Internal Revenue Service for use in a disciplinary proceeding under subpart D through any other process or procedure.

(B) *Responding to requests for information.* The Secretary will respond to a properly constituted written request for returns or return information made pursuant to paragraph (d)(2)(iv)(A) of this section by providing—

(*1*) To the extent authorized by section 6103(l)(4)(A) of the Internal Revenue Code, returns or return information requested by the practitioner or appraiser, coded for identifying all third party taxpayers;

(*2*) A key to the coded information;

(*3*) A letter informing the practitioner or appraiser, and his or her authorized representative, of the restrictions on the use and disclosure of the returns and return information, the applicable damages remedy under section 7431 of the Internal Revenue Code, and that unauthorized disclosure of information provided by the Internal Revenue Service under this paragraph (d)(2) is also a violation of this part.

(C) *Filing documents.* The parties must redact from all documents filed with the Administrative Law Judge (including attachments and exhibits) any names, addresses or other identifying details of third party taxpayers and replace such information with the code assigned to the corresponding taxpayer.

(D) *Oral testimony.* The parties shall provide a key to the coded third party returns and return information described in paragraph (d)(2)(iv)(B) of this section to each person giving oral testimony before the Administrative Law Judge, but only to the extent relevant to the person's testimony. The Administrative Law Judge should direct all persons giving oral testimony to use the code during such testimony, or, if impractical, issue a protective order in accordance with paragraph (d)(3) of this section.

(3) *Protective measures*—(i) *Mandatory protective order.* If redaction of names, addresses, and other identifying information of third parties would render documents unintelligible for use in the proceeding or may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that such identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not disclosed to, or open to inspection by, the public.

(ii) *Authorized orders.* (A) Upon motion by a party or any other affected person, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect any person in the event disclosure of information is prohibited by law, privileged, confidential, or sensitive in some other way, including, but not limited to, one or more of the following—

(*1*) That disclosure of information be made only on specified terms and conditions, including a designation of the time or place;

(*2*) That certain matters not be inquired into, or that the inquiry be limited to certain matters or to any other extent;

(*3*) That the hearing or deposition be conducted with no one present except persons designated by the Administrative Law Judge;

(*4*) That a deposition or any written materials be sealed, and be opened only by order of the Administrative Law Judge;

(*5*) That a trade secret or other information not be disclosed, or be disclosed only in a designated way; and

(*6*) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only as directed by the Administrative Law Judge.

(B) If a discovery request has been made, then the movant shall attach as an exhibit to a motion for a protective order under this section a copy of any discovery request in respect of which the motion is filed.

(iii) *Denials.* If a motion for a protective order is denied in whole or in part, then the Administrative Law Judge may, on such terms or conditions as he or she deems just, order any party or person to comply with, or respond in accordance with, the procedure involved.

(iv) *Conclusion of Proceedings.* At the conclusion of a proceeding the Secretary, or his or her delegate, shall ensure that all returns and return information, including the names, addresses or other identifying details of third party taxpayers, are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to such documents being made available for further public inspection.

* * * * *

(g) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 29. Newly designated § 10.73 is amended by:

1. Revising paragraph (b)

2. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

3. Adding new paragraphs (c) and (g).

4. Revising newly designated paragraph (d).

The revisions and additions read as follows:

§ 10.73 Evidence.

* * * * *

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.71 may be admitted into evidence in any proceeding instituted under § 10.60.

(c) *Requests for admission.* Any matter admitted in response to a request for admission under § 10.71 is conclusively established unless the Administrative Law Judge on motion permits withdrawal or modification of the admission. Any admission made by a party is for the purposes of the

pending action only and is not an admission by such party for any other purpose, nor may it be used against such party in any other proceeding.

(d) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

* * * * *

(g) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 30. Section 10.76 is revised to read as follows:

§ 10.76 Decision of Administrative Law Judge.

(a) *In general*—(1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in § 10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Director of the Office of Professional Responsibility, with a copy to the Director's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* The decision of the Administrative Law Judge will become the final decision of the agency 45 days after the date the Administrative Law Judge's decision is served on the parties unless, either in response to a petition for review to the Secretary, or his or her delegate, filed by a party, or on his or her own initiative, the Secretary, or his or her delegate, provides the written notice described in § 10.77(e) to the parties.

(e) *Effective date.* This section is applicable to proceedings initiated on or after the date that final regulations are published in the **Federal Register**.

Par. 31. Section 10.77 is revised to read as follows:

§ 10.77 Petition for review of decision of Administrative Law Judge.

(a) *Petition for review.* Any party to the proceeding under subpart D may file a petition for review of the decision of the Administrative Law Judge with the Secretary, or his or her delegate.

(1) *Briefs.* The petition must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions.

(2) *Publicity of review*—(i) *In general.* All petitions and briefs, any responses thereto, filed with the Secretary, or his or her delegate, and all decisions of the Secretary, or his or her delegate, will be public and open to inspection. Copies of these documents may, at the Secretary's discretion, be made publicly available on the Internal Revenue Service Web page (*http://www.irs.gov*) or through other means.

(ii) *Returns and return information.* The parties must delete from all documents filed with the Secretary, or his or her delegate, (including attachments and exhibits) and the Secretary, or his or her delegate, will delete from the decision any names, addresses or other identifying details of third party taxpayers and replace the information with the code assigned to third party taxpayers in accordance with § 10.72(d).

(b) *Time and place for filing of petition for review.* The petition for review, and brief, must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the petition to the Secretary or his or her delegate who decides appeals. A copy of the petition for review must be sent to any non-petitioning party. If the Director of the Office of Professional Responsibility files a petition for review, he or she shall certify to the respondent that the petition has been filed along with a copy of the petition.

(c) *Discretionary review.* In determining whether to grant review of the decision of the Administrative Law Judge, the Secretary, or his or her delegate, may consider whether the petition for review shows that—

(1) A prejudicial error was likely committed in the conduct of the proceeding; or

(2) The decision—

(i) Likely contains a finding or conclusion of material fact or conclusion of law that is clearly erroneous; or

(ii) The Secretary, or his or her delegate, determines that such error should be reviewed.

(d) *Secretary review other than pursuant to a petition for review.* The Secretary, or his or her delegate, may, on his or her own initiative, order review of any Administrative Law Judge decision within 45 days of the date of the decision.

(e) *Notice of review.* If the Secretary, or his or her delegate, grants a petition for review or orders review on his or her own initiative, the Secretary, or his or her delegate, will notify the parties, within 45 days from the date the decision of the Administrative Law Judge is served on the parties, that—

(1) The decision of the Administrative Law Judge has been taken under review by the Secretary, or his or her delegate;

(2) No final agency decision has been made;

(3) The action of the Administrative Law Judge, including the decision and order, is inoperative pending review by the Secretary, or his or her delegate; and

(4) A final decision of the agency to be made by the Secretary is required before judicial review can be obtained.

(f) *Deemed denial.* A petition for review will be deemed to be denied where the Secretary, or his or her delegate, issues no notice of review.

(g) *Interlocutory review.* The Secretary will not review an Administrative Law Judge's ruling prior to the Administrative Law Judge rendering a decision that would dispose of the entire proceeding.

(h) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 32. Section 10.78 is revised to read as follows:

§ 10.78 Decision on review.

(a) *Scope of review.* If the Secretary, or his or her delegate, provides written notice to the parties pursuant to § 10.77 that a decision of the Administrative Law Judge is under review, the Secretary, or his or her delegate, may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the decision by the Administrative Law Judge and may make any findings and conclusions that in his or her judgment are proper and on the basis of the record. The decision of the Administrative Law Judge will not be reversed unless it is established that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision will be provided by the Secretary, or his or her delegate, contemporaneously to the Director of the Office of Professional Responsibility and the respondent or their authorized representatives.

(b) *Record on review.* The Director of the Office of Professional Responsibility must provide the entire record, including copies of any petition for review, brief, and any reply brief, to the Secretary, or his or her delegate, within 30 days of the date the Secretary, or his or her delegate, provides written notice to the parties pursuant to § 10.77 that a decision of the Administrative Law Judge is under review. The Director of the Office of Professional Responsibility shall certify to the respondent that such documents have been so provided.

(c) *Reply and supplemental briefs.* The Secretary, or his or her delegate, may order the filing of a reply brief that responds to the petition for review, either before the period for notice of review expires or after a notice of review is issued. The Secretary, or his or her delegate, may order the parties to file supplemental briefs on any or all issues.

(d) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 33. Section 10.82 is amended by revising paragraph (b) and adding paragraph (h) to read as follows:

§ 10.82 Expedited suspension.

* * * * *

(b) *To whom applicable.* This section applies to any practitioner who, within five years of the date a complaint instituting a proceeding under this section is served:

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in § 10.51(a)(11).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions imposed on the practitioner pursuant to § 10.79(d).

(4) Has demonstrated a pattern of egregious conduct by—

(i) Failing to file a return or pay a tax, required annually by the Internal Revenue Code, during three of the five immediately proceeding taxable years; or

(ii) Failing to file a return or pay a tax, required more frequently than annually by the Internal Revenue Code, during four of the seven immediately proceeding tax periods; and

(iii) Is not in compliance with his or her Federal tax obligations at the time the notice of suspension is issued under paragraph (f) of this section.

(5) Has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to a taxpayer's tax liability or relating the practitioner's own tax liability, for—

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

* * * * *

(h) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 34. Section 10.90 is revised to read as follows:

§ 10.90 Records.

(a) *Roster.* The Director of the Office of Professional Responsibility will maintain, and may make available for public inspection in the time and manner prescribed by the Secretary, or his or her delegate, rosters of—

(1) Enrolled agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under § 10.61;

(2) Individuals (and employers, firms or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed; and

(3) Disqualified appraisers.

(b) *Other records.* Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable disclosure rules of the Internal Revenue Service and the Treasury Department.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 35. Section 10.91 is revised to read as follows:

§ 10.91 Saving provision.

Any proceeding instituted under this part prior to July 26, 2002, for which a final decision has not been reached or for which judicial review is still available will not be affected by these revisions. Any proceeding under this part based on conduct engaged in prior to the effective dates of these revisions, which is instituted after that date, shall apply subpart D and E or this part as revised, but the conduct engaged in prior to the effective date of these revisions shall be judged by the

regulations in effect at the time the conduct occurred.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 2, 2006.

Arnold I. Havens,

General Counsel, Office of the Secretary.

[FR Doc. 06–1106 Filed 2–3–06; 11:01 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0014; FRL–8028–1]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent degreasers. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 10, 2006.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0014, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: SCAQMD 1122. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 20, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 06–1172 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2005–AZ–0006; FRL–8029–3]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Finding of Attainment for Ajo Particulate Matter of 10 Microns or Less (PM_{10}) Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Ajo moderate PM–10 nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2002–2004. EPA also finds that the Ajo area has continued to attain the PM_{10} NAAQS since 2004. Based on this determination, EPA is also proposing to determine that certain Clean Air Act requirements are not applicable for so long as the Ajo area continues to attain the PM_{10} NAAQS.

DATES: Any comments on this proposal must arrive by March 10, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2005–AZ–0006 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *tax.wienke@epa.gov.*
- Fax: (415) 947–3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.
- Hand Delivery: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2005–AZ–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at: *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. 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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622–1622, e-mail: *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the determination that the Ajo moderate PM_{10} nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2002–2004. This proposal also addresses the determination that, because the Ajo area continues to attain the PM_{10} NAAQS, certain attainment demonstration requirements, along with other related requirements of the CAA, are not applicable to the Ajo area. In the Rules and Regulations section of this **Federal Register**, we are taking direct final action to make these determinations because we believe this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive comments, no further activity is planned.

For all the reasons explained in the parallel direct final notice, we propose to determine that the Ajo moderate PM_{10} nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). A determination of attainment is not a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved a maintenance plan as required under section 175(A) of the CAA or determined that the area has met the other CAA requirements for redesignation.[1]

We further propose to determine that, because the Ajo area has continued to attain the PM_{10} NAAQS, certain attainment demonstration requirements, along with other related requirements of the CAA, are not applicable to the Ajo area. For further information on this proposal and the rationale underlying our proposed action, please see the direct final action.

Dated: January 24, 2006.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 06–1173 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket No. MARAD–2006–23804]

RIN 2133–AB68

Maintenance and Repair Reimbursement Pilot Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will amend the Maritime Administration's (MARAD's) regulations governing its pilot program for the reimbursement of costs of qualified maintenance and repair (M&R) of Maritime Security Program (MSP) vessels performed in United States shipyards. Under Public Law 109–163, the Secretary of Transportation, acting through the Maritime Administrator, is directed to implement regulations that, among other things, replace MARAD's voluntary M&R reimbursement program with a mandatory system.

DATES: Comments are due by April 10, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2006–23804] by any of the following methods:

• Web Site: *http://dms.dot.gov.* Follow the instructions for submitting

[1] On December 20, 2005, EPA proposed revisions to the NAAQS for particulate matter. See 71 FR 2620, January 17, 2006. The proposed revisions address two categories of particulate matter: Fine particles which are particles 2.5 micrometers in diameter and smaller; and ''inhalable coarse'' particles, which are particles between 2.5 and 10 micrometers ($PM_{10-2.5}$). Upon finalization of a primary 24-hour standard for $PM_{10-2.5}$, EPA proposes to revoke the current 24-hour PM_{10} standard in all areas of the country except in areas where there is at least one monitor located in an urbanized area (as defined by the U.S. Bureau of the Census) with a minimum population of 100,000 that violates the current 24-hour PM_{10} standard based on the most recent three years of data. In addition, EPA proposes to revoke the current annual PM_{10} standard upon finalization of a primary 24-hour standard for $PM_{10-2.5}$.

comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. (EST or EDT), Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Marine Asset Development, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–3511; or e-mail *Jean.McKeever@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Maritime Security Program (MSP) was established to maintain a modern U.S.-flag fleet of commercially viable, militarily useful, privately-owned vessels for national defense needs and to maintain a strong U.S. presence in international maritime trade. Under the MSP, the U.S. Government contracts with certain operators of U.S.-flag commercial vessels to be on call for service when needed in times of national emergency or war.

The original MSP was established by the Maritime Security Act of 1996 (Pub. L. 104–239, Oct. 8, 1996) for fiscal years 1996 through 2005. On November 24, 2003, President Bush signed the Maritime Security Act of 2003 (MSA 2003) (part of the National Defense Authorization Act for Fiscal Year 2004) which reauthorized the MSP for fiscal years 2006 through 2015.

In addition to reauthorizing the MSP, section 3517 of the MSA 2003 established a voluntary pilot program under which the Secretary of Transportation could enter into agreement(s) to reimburse MSP vessel operators for the costs of qualified maintenance and repairs performed in U.S. shipyards instead of foreign shipyards. Reimbursement levels under the voluntary program were established at 80% of the difference between the fair and reasonable cost of obtaining qualified M&R work in U.S. shipyards and the cost of qualified M&R work in foreign shipyards. MARAD promulgated implementing regulations for this program at 46 CFR section 296.60 (70 FR 55581, Sept. 22, 2005).

Under Public Law 109–163, enacted on January 6, 2006, the Secretary of Transportation is directed to implement regulations to replace the voluntary M&R reimbursement program with a mandatory program. Under the mandatory program, MARAD must enter into an agreement with one or more MSP Contractors, subject to appropriations, for the M&R of one or more vessels that are subject to a MSP operating agreement. Under Public Law 109–163, reimbursement levels are established at 100% of the difference between the fair and reasonable cost of obtaining qualified M&R work in U.S. shipyards and the cost of qualified M&R work in foreign shipyards.

Public Comment

MARAD welcomes public comments regarding the M&R pilot program and, in particular, suggestions regarding what documentation Contractors could provide to assist MARAD in determining the fair and reasonable cost of obtaining qualified M&R work in U.S. shipyards as well as in the foreign shipyards where Contractors would otherwise undertake such work.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104–121

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not likely to result in an annual effect on the economy of $100 million or more. This proposed rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations have no substantial effects on the States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

MARAD does not believe that this proposed rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulatory Flexibility

The Maritime Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. We anticipate that no small entities will participate in this program.

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves this objective of U.S. policy.

Environmental Assessment

We have analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is

required. This proposed rule does not change the environmental effects of the current M&R Pilot program and thus no further analysis under NEPA is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*), this rulemaking contains no new information collection and record keeping requirements that require OMB approval.

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 46 CFR Part 296

Assistance payments, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, 46 CFR Chapter II, Subchapter C, Part 296 is proposed to be amended as follows:

PART 296—MARITIME SECURITY PROGRAM (MSP)

1. The authority citation for part 296 is revised to read as follows:

Authority: Pub. L. 108–136, Pub. L. 109–163, 117 Stat. 1392; 46 App. U.S.C. 1114(b), 49 CFR 1.66.

2. Amend § 296.60 by revising paragraphs (b), (c), (d), (e), and (f) and adding new paragraph (g) to read as follows.

§ 296.60 Applications.

* * * * *

(b) Every Contractor shall agree as a condition of participation in MSP that it will accept when offered an agreement under 46 U.S.C. 3517, to perform qualified M&R of one or more MSP vessels that normally make port calls in the United States, in United States shipyards, subject to terms set forth below. In this section the term ''qualified M&R'' means:

(1) Except as provided in paragraph (b)(2) of this section:

(i) Any inspection of a vessel that is—

(A) Required under chapter 33 of title 46, United States Code; and

(B) Performed in the period in which the vessel is subject to an agreement under this section;

(ii) Any M&R of a vessel that is determined, in the course of an inspection referred to in paragraph (b)(1)(i) of this section, to be necessary; and

(iii) Any additional M&R the Contractor intends to undertake at the same time as the work described in paragraph (b)(1)(ii) of this section; and

(2) Does not include:

(i) M&R not agreed to by the Contractor to be undertaken at the same time as the work described in paragraph (b)(1) of this section; or

(ii) Routine M&R or any emergency work that is necessary to enable a vessel to return to a port in the United States.

(c) The Administrator will offer M&R agreements only to the extent that funding for the M&R program is provided for by appropriations legislation. Following the enactment of any such appropriations legislation, the Administrator will canvass the Contractors to determine which Contractors desire to volunteer for the M&R program. If no MSP Contractor volunteers for the M&R program, the Administrator will select the participants in the M&R program on the basis of available funds and a review of the Contractors' vessels and ocean freight service. The Administrator will establish with the Contractors specific M&R programs that provide the greatest assistance to United States shipyards within the available funding, while minimizing any disruption to the Contractors' ocean freight service.

(d) *Terms of Agreement.* An agreement under this section:

(1) Will require that except as provided in paragraph (e) of this section, all qualified M&R on the vessel will be performed in the United States;

(2) Will require that the Administrator will reimburse the Contractor in accordance with paragraph (f) of this section for the costs of qualified M&R performed in the United States; and

(3) Will apply to qualified M&R performed during the 5-year period beginning on the date the vessel begins operating under the operating agreement under chapter 531 of title 46, United States Code.

(e) *Exception to requirement to perform work in the United States.* A Contractor will not be required to have qualified M&R work performed in the United States under this section if:

(1) The Administrator determines that there is no facility capable of meeting all technical requirements of the qualified M&R in the United States located in the geographic area in which the vessel normally operates available to perform the work in the time required by the Contractor to maintain its regularly scheduled service;

(2) The Administrator determines that there are insufficient funds to pay reimbursement under paragraph (f) of this section with respect to the work; or

(3) The Administrator fails to make the certification described in paragraph (g)(2) of this section.

(f) *Reimbursement.* (1) *In general.* The Administrator will, subject to the availability of appropriations, reimburse a Contractor for costs incurred by the Contractor for qualified M&R performed in the United States under this section.

(2) *Amount.* The amount of reimbursement will be equal to the difference between—

(i) The fair and reasonable cost of obtaining the qualified M&R in the United States; and

(ii) The fair and reasonable cost of obtaining the qualified M&R outside the United States, in the country in which the Contractor would otherwise undertake the qualified M&R.

(3) *Determination of fair and reasonable costs.* The Administrator will determine fair and reasonable costs for purposes of paragraph (f)(2) of this section.

(i) In order to determine the fair and reasonable cost of obtaining qualified M&R work in the United States, the Maritime Administrator will require, and Contractors will provide, supporting documentation outlining such costs, including shipyard contracts, etc.

(ii) In order to determine the fair and reasonable cost of obtaining qualified M&R work in the foreign country where the Contractor would otherwise undertake the qualified M&R work, the Maritime Administrator will require, and Contractors will provide, supporting documentation outlining such costs.

(g) *Notification Requirements.* (1) *Notification by contractor.* The Administrator is not required to pay reimbursement to a Contractor under this section for qualified M&R, unless the Contractor—

(i) Notifies the Administrator of the intent of the Contractor to obtain the qualified M&R, by not later than 90 days before the date of the performance of the qualified M&R; and

(ii) Includes in such notification:

(A) A description of all qualified M&R that the Contractor should reasonably expect may be performed;

(B) A description of the vessel's normal route and port calls in the United States;

(C) An estimate of the cost, with supporting documentation, of obtaining the qualified M&R described under

paragraph (g)(1)(ii)(A) of this section in the United States; and

(D) An estimate of the cost, with supporting documentation, of obtaining the qualified M&R described under paragraph (g)(1)(ii)(A) of this section outside the United States, in the country in which the Contractor otherwise would undertake the qualified M&R.

(2) *Certification by Administrator.* (i) Not later than 30 days after the date of receipt of notification under paragraph (g)(1)(ii)(A) of this section, the Administrator will certify to the Contractor—

(A) Whether the cost estimates provided by the Contractor are fair and reasonable;

(B) If the Administrator determines that such cost estimates are not fair and reasonable, the Administrator's estimate of fair and reasonable costs for such work;

(C) Whether there are available to the Administrator sufficient funds to pay reimbursement under paragraph (d) of this section with respect to such work; and

(D) That the Administrator commits such funds to the Contractor for such reimbursement, if such funds are available for that purpose.

(ii) If the Contractor notification described in paragraph (g)(1) of this section does not include an estimate of the cost of obtaining qualified M&R in the United States, then not later than 30 days after the date of receipt of such notification, the Administrator will:

(A) Certify to the Contractor whether there is a facility capable of meeting all technical requirements of the qualified M&R in the United States located in the geographic area in which the vessel normally operates available to perform the qualified M&R described in the notification by the Contractor under paragraph (g)(1) of this section in the time period required by the Contractor to maintain its regularly scheduled service; and

(B) If there is such a facility, require the Contractor to resubmit such notification with the required cost estimate for such facility.

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: February 3, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–1691 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–109; MB Docket No. 06–11, RM–11304]

Radio Broadcasting Services; Crowell, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Jeraldine Anderson. Petitioner proposes the allotment of Channel 250A at Crowell, Texas, as a potential second local service. Channel 250A can be allotted at Crowell in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 km (2.9 miles) west of Crowell. The proposed coordinates for Channel 250A at Crowell are 34–00–00 North Latitude and 99–46–18 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before March 13, 2006, and reply comments on or before March 28, 2006.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061; Gene A. Bechtel, Esq., Law Office of Gene Bechtel, Suite 600, 1050 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 06–11, adopted January 18, 2006, and released January 20, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(C)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at Crowell.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–1064 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2006–23634]

RIN 2127–AJ75

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the docket number for a notice of proposed rulemaking (NPRM) published in the **Federal Register** (70 FR 77454) on December 30, 2005 to amend Federal motor vehicle safety standard (FMVSS) No. 108 on lamps, reflective devices, and associated equipment. That NPRM proposed to amend the standard by reorganizing the regulatory text so that it provides a more straight-forward and logical presentation of the applicable regulatory requirements.

FOR FURTHER INFORMATION CONTACT: David Hines, Office of Crash Avoidance Standards (NVS–121), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. (Telephone: (202) 493–0245) (Fax: (202) 366–7002).

Correction

In proposed rule FR Doc. 05–24421, beginning on page 77454 in the issue of December 30, 2005, on page 77454 in the first column, correct the ''Agency Docket Number'' to read: [Docket No. NHTSA–2006–23634].

Issued: February 3, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E6–1743 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060127018–6018–01; I.D. 012506E]

RIN 0648–AR96

Fisheries of the Exclusive Economic Zone Off Alaska; Control Date for the Charter Sport Fishery for Pacific Halibut

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

ACTION: Advance notice of proposed rulemaking; control date.

SUMMARY: This notice announces that anyone entering the charter sport fishery for Pacific halibut in and off Alaska after December 9, 2005 (control date) will not be assured of future access to that fishery if a management regime that limits the number of participants is developed and implemented under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). This notice is necessary to publish the intent of the North Pacific Fishery Management Council (Council) that participation credit may not be granted for operating in the charter halibut fishery if initial entry into the fishery occurs after the control date. This notice is intended to promote public awareness of a potential eligibility criterion for future access to the charter halibut resource, and to discourage new entrants into the charter halibut fishery while the Council discusses whether and how access to the halibut resource by the charter sport fishery should be controlled. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented.

FOR FURTHER INFORMATION CONTACT: Jay Ginter at (907)586–7228 or *Jay.Ginter@noaa.gov*.

SUPPLEMENTARY INFORMATION: Fishing for Pacific halibut (*Hippoglossus stenolepis*) is managed by the International Pacific Halibut Commission (IPHC) and NMFS under the authority of the Halibut Act (16 U.S.C. 773 - 773k). The IPHC is authorized by the Convention of the United States and Canada for the Preservation of the Halibut Fishery in the North Pacific Ocean and Bering Sea (Convention) to promulgate regulations for the conservation and management of the Pacific halibut fishery. Commission regulations are published as annual management measures pursuant to 50 CFR 300.62. Section 773c of the Halibut Act provides the U.S. Secretary of Commerce (Secretary) with general responsibility to carry out the Convention, and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA. Additional management regulations that are in addition to and not in conflict with regulations adopted by the IPHC may be recommended by the Council and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen (section 773c(c)).

In the early 1990s, the rapid growth of the guided recreational (or charter) halibut fishery fleet led to increased concerns that unrestrained catch by the charter fishery would result in smaller allocations of halibut resources to the commercial sector. Accordingly, in 1993, the Council created a Halibut Charter Working Group (Work Group) and directed it to examine potential management alternatives for the charter halibut fishery and to develop suitable elements and options for a regional or statewide moratorium on the entry of new charter vessels into the fishery.

Later that year, the Work Group presented various management options to the Council for consideration and the Council announced a control date of September 23, 1993, as the last day to qualify for a potential moratorium. The Council deferred further action on the issue until January 1995 because of staffing priorities. In January 1995, the Council reviewed the Work Group's findings, received public testimony, developed a problem statement, and discussed development of alternatives for managing harvests of halibut by the charter fishery. Again, staffing priorities and lack of funding for adequate research delayed formal analysis of the management alternatives until 1996.

In June 1996, the Council narrowed the scope of potential management alternatives by eliminating consideration of the unguided sport fishery and focusing alternatives exclusively on the guided segment of the halibut sport fishery, which includes lodges, outfitters, and charter vessel guides. The Council also reviewed the possibility of allowing charter vessel owners and operators to purchase or lease IFQ in the existing commercial halibut IFQ Program. The specific alternatives considered were: (1) status quo; (2) Federal reporting requirements; (3) annual allocation of the total allowable catch between guided sport and commercial fisheries and a moratorium on new entries into the charter sport fishery for Pacific halibut; and (4) purchase by the charter industry of halibut IFQ from the commercial fishery if the cap in (3) were exceeded by the charter halibut fishery.

In September 1997, the Council recommended that charter halibut harvests be managed under guideline harvest levels (GHLs) in IPHC statistical areas 2C (Southeast Alaska) and 3A (Southcentral Alaska). The Council envisioned GHLs as an initial step towards developing a management strategy that would limit charter halibut harvests while maintaining the historic length of the charter season and allowing growth in the charter halibut fishery. The GHL defines the level of harvests permissible in the charter halibut fishery without further reallocating halibut from the commercial sector; however, the GHL does not constrain harvests by itself. To limit harvests to the GHL, the Council recommended that NMFS implement one of several optional measures to constrain future halibut harvest if the end-of-season harvest data indicated

that the charter sector had reached or exceeded its area specific GHL.

In November 1997, NMFS informed the Council that regulations implementing the GHL could not be published unless they included a more specific, non-discretionary system for constraining harvests in the event the harvest limits were met or exceeded. In December 1997, the Council created a GHL Committee to identify and recommend such a system. The GHL Committee convened three times in 1998 and 1999 and produced a suite of management measure alternatives for the Council's consideration; including setting a new control date of June 24, 1998, for entry into the charter sport fishery for Pacific halibut (63 FR 34356, June 24, 1998). In February 2000, the Council recommended a redefined GHL and, for constraining harvests in a timely manner after the GHL is exceeded, a framework system of management measures to be implemented by notification in the **Federal Register** without NMFS discretion and without prior notice-and-comment rulemaking. NMFS proposed regulations that would implement the GHL framework system on January, 28, 2002 (67 FR 3867).

NMFS again notified the Council that its GHL framework could not be approved as recommended. Given the potential impacts of the management measures recommended by the Council, those measures could not be implemented by publishing a notification in the **Federal Register**, but would need to provide opportunity for public comment on specific regulatory measures as required by the Administrative Procedure Act (APA). NMFS suggested that the Council consider an alternative that would require a letter of notification from NMFS to the Council when a GHL is reached. The Council would then initiate an analysis to recommend harvest restrictions, which NMFS would publish as a proposed rule and invite public comment consistent with the APA. The Council accepted this suggested alternative and submitted it for Secretarial review. A final rule implementing this alternative GHL system was published August 8, 2003 (68 FR 47256). More information on the GHL may be found in the preamble to the proposed rule published on January 28, 2002 (67 FR 3867).

Concurrent with the adoption of the GHL Program in February 2000, the Council initiated an analysis for integrating the charter halibut fishery into the existing commercial halibut IFQ Program. To develop alternatives for analysis, the Council created a Halibut Charter IFQ Committee comprised of representative charter operators, sport anglers, and commercial fishermen. The Council determined that participation in the charter halibut fishery would be based on catches reported in 1998 and 1999 in logbooks required by the State of Alaska. In addition, the Council decided not to proceed with a moratorium on entry into the charter fishery, but rather determined that a charter IFQ Program should replace GHL management of the fishery. The Council also removed lodges and outfitters from its problem statement, thus limiting analysis to guided charter vessels.

In April 2000, the Council adopted a problem statement that noted that although the GHL is intended to stop the open-ended reallocation from the commercial to the charter sector, overcapitalization within the charter halibut fleet may continue to have a negative impact on charter vessel operators and anglers. The problem statement noted also that this concern could be addressed by a quota-based management such as an IFQ Program.

During its review in February 2001, the Council refined its alternatives for analysis to include: (1) status quo, (2) incorporate the charter halibut fishery into the existing IFQ Program, and (3) establish a moratorium in the charter halibut fishery in Areas 2C and 3A. Also in February 2001, the Council revised the problem statement that it had previously adopted in April 2000.

In April 2001, the Council adopted its preferred alternative that incorporated the charter sector into the existing commercial halibut IFQ Program. Under the preferred alternative, quota share would be issued only to a person who owned or leased a charter vessel that transported guided clients who caught halibut during 1998 or 1999 from IPHC regulatory areas 2C or 3A. In June 2001, the State of Alaska representative on the Council notified the Council of the State's plan to move to rescind the Council's April 2001 action recommending a charter halibut IFQ Program. At the next Council meeting in October 2001, a motion to rescind that program failed.

During the next several years, NMFS developed the proposed regulation and implementation plan for the recommended charter halibut IFQ Program. On August 3, 2005, the Assistant Administrator for Fisheries sent a letter to the Council in which NMFS requested that the Council confirm its support for the 2001 decision to incorporate the charter sector into the commercial halibut IFQ Program before NMFS published the proposed rule in the **Federal Register**. At its October 2005 meeting, after receiving public testimony about the proposed charter halibut IFQ Program, the Council indicated its concern for the lengthy process, but neither confirmed nor denied its continued support of the proposed charter halibut IFQ Program. Also at the October 2005 meeting, a Council member announced that he would move to rescind the charter halibut IFQ Program at the December 2005 meeting of the Council.

In December 2005, the Council adopted a motion to amend its April 2001 action recommending a charter halibut IFQ Program. The preamble to the motion cited the following concerns about the time delay in implementing the charter halibut IFQ: ''a lengthy delay in enacting this program has resulted in a large number of current participants that do not qualify for quota share. This has resulted in controversy and a lack of broad support for the program as well as potential legal vulnerabilities.'' In light of these concerns, the Council decided to form a stakeholder working group comprised of representatives of affected groups. The working group is responsible for developing alternatives that provide for the long-term management of the charter halibut fishery. Because these management alternatives may limit access to the charter halibut fishery, the Council set a control date of December 9, 2005, after which charter operators entering the charter halibut fishery will not necessarily be assured access to the halibut resource.

The Council and NMFS intend, in making this announcement, to discourage speculative entry into the charter sport fishery for Pacific halibut in convention waters off Alaska while potential entry or access control management measures are developed by the Council. The control date will help distinguish established participants from speculative entrants into the fishery. Although participants are notified that entering the charter sport fishery for Pacific halibut after the control date will not assure them of future access to the fishery based on participation, additional or other qualifying criteria may be applied. The Council may choose different and variably weighted methods to qualify participants based on the type and length of participation in the fishery or other methods of determining economic dependence on the fishery. For the purpose of this announcement, a person in the halibut charter fishery means the owner or operator of a vessel that carries passengers for hire to engage in

recreational fishing for Pacific halibut in convention waters off Alaska.

This announcement establishes December 9, 2005, as such a control date for determining historical or traditional participation in the charter sport fishery for halibut. This action does not commit the Council or Secretary to any particular management regime or criteria for entry to the charter halibut fishery. Charter vessel operators are not guaranteed future participation in the charter halibut fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. Finally, the Council may choose to take no further action to control entry or access to the charter halibut fishery.

Classification

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

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

Dated: February 2, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E6–1726 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 26
Wednesday, February 8, 2006

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, February 22, 2006 (9 a.m. to 4 p.m.).

Location: Hotel Washington, 515 15th Street, NW., Washington Ballroom, Washington, DC 20004.

Please note that this is the anticipated agenda and is subject to change.

Foreign Assistance Reforms: The Committee will receive an update on the Secretary of State's new direction for U.S. foreign assistance.

Africa: Lloyd Pierson, Assistant Administrator for USAID's Africa Bureau, has been invited to outline how USAID country plans are being aligned with the Fragile States strategy. Specific countries may include Liberia and the Democratic Republic of the Congo.

Military Affairs: Spencer King, ACVFA Member, will lead a discussion with Tom Baltazar, Director of USAID's Office of Military Affairs, concerning collaboration with NGOs on the ground in post-conflict situations. Jeb Nadaner, Deputy Assistant Secretary of Defense for Stability Operations has also been invited to join the discussion as well as a representative from the Office of the Coordinator for Reconstruction and Stabilization at the U.S. Department of State.

Pandemics—Surveillance and Monitoring with Local Partners: Dennis Carroll and Irene Koek from USAID's Global Health Bureau have been invited to join a discussion with Nancy Aossey and Mohammad Akhter, ACVFA members, on how the current international preparedness framework, particularly with local partners, may be optimized when responding to pandemics, such as avian influenza and polio.

The meeting is free and open to the public. Persons wishing to attend the meeting can register online at *http://www.usaid.gov/about_usaid/acvfa* or e-mail their name to Kristy Nuss at *kristy@websterconsulting.com* or Jocelyn Rowe at *jrowe@usaid.gov* or 202–712–4002.

Dated: February 1, 2006.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. E6–1639 Filed 2–7–06; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Conservation Reserve Program Hunting and Wildlife, Viewing Revenue Survey

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on a new information collection. A revenue survey will be used in this information collection and is designed to analyze the effect of Conservation Reserve Program (CRP) enrollment on opportunities for recreational activities, including hunting and fishing, as required by the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171.

DATES: Comments on this notice must be received on or before April 10, 2006 to be assured consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to Farm Service Agency, USDA, Attn: Skip Hyberg, Agricultural Economist, USDA/FSA/EPAS, STOP–0519, 1400 Independence Avenue, SW., Washington, DC 20250. Comments also may be submitted by e-mail to: *Skip.Hyberg@wdc.usda.gov* . The comments should be also sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments should include the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Skip Hyberg, Agricultural Economist, (202) 720–9222 and *Skip.Hyberg@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Conservation Reserve Program Reserve Program, Hunting and Wildlife, Viewing Revenue Survey.

OMB Number: 0560–NEW.

Type of Request: NEW.

Abstract: The survey is needed to find out how CRP participants are providing recreational activities on their lands, how such activities affects the CRP program and what revenues are generated by such activities. FSA, on behalf of the Commodity Credit Corporation, provides services to landowners under the CRP to help them conserve and improve soil, water and wildlife resources on their lands. Some landowners have used their lands, enrolled in the CRP, to provide recreational activities (hunting, fishing, hiking, viewing and other activities) to outdoor recreationists.

Respondents: Landowners with land enrolled in the CRP.

Estimated Annual Number of Respondents: 4000.

Estimated Annual Number of Forms per person: 1.

Estimated Average Time to Respond: 5 minutes.

Estimated Total Annual Burden Hours: 333.

Comments are invited regarding (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumption 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Signed in Washington, DC, on February 2, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–1646 Filed 2–7–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Gila National Forest, Forest Service, USDA.

ACTION: Notice of new fee site and solicitation of comments.

SUMMARY: The Gila National Forest proposes to begin charging a fee for the overnight rental of the Kingston Administrative Site and the Straight Gulch Cabin. Rentals of Forest Service cabins in Arizona have shown that the public appreciates and enjoys the availability of historic rental cabins. Funds from the rentals will be used for the continued operation and maintenance of the Kingston Administrative Site and the Straight Gulch Cabin. The Kingston Administrative Site is located in T16S, R8W, Section 17, NMPM, and the Straight Gulch Cabin is located in T10S, R9W, Section 6, NMPM, on the Black Range Ranger District.

DATES: The Kingston Administrative Site and Straight Gulch Cabin are expected to become available for rent October 2006. Comments, concerns or questions about this new fee must be submitted by September 1, 2006.

ADDRESSES: Submit written comments, concerns, or questions about the new fee associated with the Kingston Administrative Site and Straight Gulch Cabin rentals to Forest Supervisor, Gila National Forest, 3005 E. Camino Del Bosque, Silver City, NM 88061.

FOR FURTHER INFORMATION CONTACT: Carol Telles, Archaeologist, Gila National Forest, Black Range Ranger District, 505–894–6677.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (Title VIII, 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 the public an opportunity to comment if they have concerns or questions about new fees.

This will be the Gila National Forest's first cabin rental opportunity. Other cabin rentals exist in neighboring national forests in Arizona. The cabins in Arizona are often fully booked throughout their rental season. The Gila National Forest proposes to rent the cabins for $75 to $125 a night, but will conduct a market analysis to determine if those fees are both reasonable and acceptable for this sort of unique recreation experience. People wanting to rent the Kingston Administrative Site or the Straight Gulch 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: February 2, 2006.

Patrick L. McKee,

Acting Forest Supervisor.

[FR Doc. 06–1143 Filed 2–7–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Chemical Weapons Convention (CWC) Declaration and Report Forms

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before April 10, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, Department of Commerce, Room 6703, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) bans the development, production, acquisition, stockpiling, retention and direct or indirect transfer of chemical weapons. Under the CWC, companies that produce, process, consume, utilize, or transfer certain chemicals must file initial and annual declarations. This information will be submitted to the Organization for the Prohibition of Chemical Weapons (OPCW), the treaty's international body. The collection of this information is required to comply with the treaty.

II. Method of Collection

Submitted on BIS Declaration forms.

III. Data

OMB Number: 0694–0091.

Form Number: Certification Form, Form A, Form B, Form 1–1, 1–2, 1–3, 1–4, 2–1, 2–2, 2–3, 3–1, 3–2, 3–3, UDOC, et al.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions, federal government.

Estimated Number of Respondents: 929.

Estimated Time Per Response: 10 minutes—31 hours per response.

Estimated Total Annual Burden Hours: 20,608.

Estimated Total Annual Cost: $49,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 2, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1652 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–428–815]

Preliminary Results of Antidumping Duty Changed Circumstances Reviews And Notice of Intent to Revoke Orders in Part: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada and Germany

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

SUMMARY: On December 28, 2005, the U.S. Department of Commerce (the Department) published a notice of initiation of changed circumstances reviews with the intent to revoke, in part, the antidumping duty orders on certain corrosion–resistant carbon steel flat products (corrosion–resistant steel) from Canada and Germany, as described below. *See Initiation of Antidumping Duty Changed Circumstances Reviews: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada and Germany*, 70 FR 76763 (December 28, 2005) (*Initiation Notice*). In our *Initiation Notice*, the Department invited interested parties to comment on the request to exclude ''wear plate'' (described below) from the scope of these orders. The Department received no comments.

Absent any comments, the Department preliminarily concludes that producers accounting for substantially all of the production of the domestic like product to which these orders pertain, lack interest in the relief provided by these orders with respect to wear plate. Therefore, the Department preliminarily concludes that it is appropriate to revoke these orders, in part, with respect to unliquidated entries of wear plate, not subject to the final results of an administrative review, that have been entered for consumption on or after August 1, 2005, based on the fact that domestic parties have made an affirmative statement of no interest in the continuation of the orders with respect to that merchandise.

EFFECTIVE DATE: February 8, 2006.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Abdelali Elouaradia, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3019 and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty orders on corrosion–resistant steel from Canada and Germany on August 19, 1993. *See Notice of Antidumping Duty Order: Corrosion–Resistant Carbon Steel Flat Products from Canada*, 58 FR 44162. *See also Notice of Antidumping Duty Order: Corrosion–Resistant Carbon Steel Flat Products from Germany*, 58 FR 44170. On November 7, 2005, Eutectic, a U.S. importer, requested that the Department exclude a product commonly known as wear plate and marketed under the name of ''CastoDur Diamond Plate'' from the scope of these orders. *See* Eutectic's submissions to the Secretary, dated November 7, 2005 (Eutectic Requests). In those submissions, Eutectic included letters from petitioners and domestic interested parties in these cases stating that they had no interest in retaining this product in the scope of these orders.

On December 28, 2005, the Department published a notice of initiation of changed circumstances reviews of the antidumping duty orders on corrosion–resistant steel from Canada and Germany. *See Initiation Notice*. In the *Initiation Notice*, the Department indicated that interested parties could submit comments for consideration in the Department's preliminary results no later than 15 days after publication of the initiation of these reviews, and submit responses to those comments no later than 7 days following the submission of comments. The Department received no comments from interested parties.

Scope of the Orders

The products covered by each of these orders are corrosion–resistant carbon steel flat products (corrosion–resistant steel) from Canada and Germany, respectively. This scope includes flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in these orders are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from these orders are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these orders are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

On September 22, 1999, the Department issued the final results of a changed circumstances review partially revoking the order with respect to certain corrosion–resistant steel from Germany.[1] This partial revocation applies to certain corrosion–resistant deep–drawing carbon steel strip, roll–clad on both sides with aluminum (AlSi) foils in accordance with St3 LG

[1] *See Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation.

as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Changed Circumstances Reviews

The products subject to these changed circumstances reviews are certain corrosion–resistant carbon steel flat products from Canada and Germany meeting the following description: certain flat–rolled wear plate ranging from 30 inches to 50 inches in width, from 45 inches to 110 inches in length and from 0.187 inch to 0.875 inch in total thickness, having a layer on one side composed principally of a combination of boron carbides, chromium carbides, nickel carbides, silicon carbides, manganese carbides, niobium carbides, iron carbides, tungsten carbides, vanadium carbides, titanium carbides and/or molybdenum carbides fused to a non–alloy flat–rolled steel substrate. The carbides are in the form of M_xC_x where ''M'' stands for the metal and ''x'' for the atomic ratio. An example of a common carbide would be (Cr_7C_3). The carbide layer is a visually distinct layer ranging in thickness from 0.062 inch to 0.312 inch with hardness at the surface of the carbide layer in excess of 55 HRC. *See* Eutectic Requests at 1.

Preliminary Results of Reviews and Intent to Revoke in Part the Antidumping Duty Orders

Pursuant to sections 751(d)(1) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(1) of the Act gives the Department the authority to revoke if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of relief. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) other changed circumstances sufficient to warrant revocation exist.

As stated in the *Initiation Notice*, petitioners and domestic interested parties attested to their lack of interest in having the merchandise commonly referred to as CastoDur Diamond Plate or certain wear plate, and fully described above in the ''Scope of the Changed Circumstances Reviews'' section, continue to be subject to the AD orders on corrosion–resistant carbon steel flat products from Canada and Germany.[2] *See* Eutectic Requests at Attachments 1–4 and Memorandum to the File, from Angelica L. Mendoza, Senior Case Analyst, Office 7, ''Confirmation of Interested Parties' Lack of Interest for 'Wear Plate' (marketed as 'CastoDur Diamond Plate') to Be Subject to the Above–Captioned Antidumping Duty Orders,'' dated December 7, 2005. Since the Department received no comments during the comment period opposing the partial revocation of the orders as to certain wear plate products from these antidumping duty orders, the Department preliminarily concludes that producers accounting for substantially all of the production of the domestic like product to which these orders pertain, lack interest in the relief provided by these orders with respect to certain wear plate products. If these results become final, the Department will revoke the orders, in part, for all unliquidated entries, not subject to the final results of an administrative review, of products that meet the specifications set forth above, and that were entered for consumption on or after August 1, 2005, the beginning of the most recent review period. The Department will also instruct U.S. Customs and Border Protection to end the suspension of liquidation for certain wear plate products covered by these orders, and to release any cash deposits or bonds pursuant to 19 CFR 351.222(g)(4).

Interested parties wishing to comment on these preliminary results may submit briefs to the Department no later than 16 days after the publication of this notice in the **Federal Register**.[3] Parties will have five days subsequent to this due date to submit rebuttal comments, limited to the issues raised in those briefs. Parties who submit briefs or rebuttal comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**.

All written comments must be submitted in accordance with 19 CFR 351.303, with the exception that only three (3) copies for each case need be served on the Department. Any comments must also be served on all interested parties on the Department's service list, which is available on our website (http://ia.ita.doc.gov/apo/index.html). The Department will issue its final results in these changed circumstances reviews as soon as practicable following the above comment period, but not later than 270 days after the date on which the changed circumstances reviews were initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances reviews are underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of these changed circumstances reviews, will continue unless and until these orders are revoked, in part, pursuant to the final results of these changed circumstances reviews or an administrative review.

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: February 1, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–1725 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–DS–S

[2] Petitioners include: United States Steel Corporation (U.S. Steel) and Mittal Steel USA ISG Inc. (formerly Bethlehem Steel Corporation, Ispat Inland Steel, and LTV Steel Company, Inc.). Domestic interested parties include: Nucor Plate Group of Nucor Corporation and Ipsco Inc.

[3] All the interested parties presently known have stated that they no longer are seeking relief for this product and no longer are interested in its inclusion in scope of these orders, and therefore, we are using our discretion to alter the time period for comments.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

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

EFFECTIVE DATE: February 8, 2006.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Judy Lao, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution, NW, Washington DC 20230; telephone: (202) 482–0405 and (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping order on stainless steel butt–weld pipe fittings from Taiwan for the period of review (''POR'') of June 1, 2004, through May 31, 2005. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 31422 (June 1, 2005). On June 27, 2005, Flowline Division of Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively ''petitioners'') requested an antidumping duty administrative review for Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), Liang Feng Stainless Steel Fitting Co., Ltd., Tru–Flow Industrial Co., Ltd., Censor International Corporation, and PFP Taiwan Co., Ltd. On June 30, 2005 Ta Chen requested an administrative review of its sales to the United States during the POR. On July 21, 2005, the Department published the notice initiating this administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 70 FR 42028 (July 21, 2005). The preliminary results are currently due not later than March 2, 2006.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2), the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within 245 days after the last day of the anniversary month of the date of publication of the order for which the administrative review was requested. The Department has determined it is not practicable to complete this review within the originally anticipated time limit, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), because more time is needed to analyze Ta Chen's responses to supplemental questionnaires. Therefore, the Department is extending the time limit for the preliminary results by 120 days, to not later than June 30, 2006. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: February 2, 2006.

Stephen Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–1723 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 980901228–6023–06]

Solicitation of Applications for the Minority Business Opportunity Center (MBOC) Program (Baton Rouge/New Orleans, LA)

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Opportunity Center (MBOC) (formerly Minority Business Opportunity Committees) in Baton Rouge/New Orleans, Louisiana. The Minority Business Opportunity Centers through their staff will provide brokering services and assistance to minority business enterprises (MBEs) that (a) generate $500,000 or more in annual gross revenues or (b) are capable of creating significant employment and long-term economic impact (commonly referred to as ''rapid growth-potential'' MBEs). In addition, MBOCs provide access to buyers of goods and services and procurement and financing opportunities within the public and private sectors. MBOC operators and executive directors should have experience in and knowledge of the local minority business sector and established working relationships with buying organizations. MBOCs are supported by a volunteer advisory committee that assists the MBOC in implementing program requirements and providing contract and financing opportunities to MBEs. The program is primarily evaluated by MBDA based on the number and dollar value of contracts and financial transactions awarded to minority business enterprises.

DATES: The closing date for receipt of applications is March 10, 2006. Completed applications must be received by MBDA no later than 5 p.m. Eastern Standard Time at the address below for paper submission or at *http://www.Grants.gov* for electronic submission. The due date and time is the same for electronic submissions as it is for paper submissions. The date the applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is approximately sixty (60) days from the date of publication of this notice. MBDA anticipates that awards for the MBOC program will be made with a start date of April 1, 2006.

ADDRESSES: (1)(a) *Paper Submission—If Mailed:* If the application is mailed/shipped overnight by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Completed application packages must be mailed to: Office of Business Development—MBOC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce delivery policies for Federal Express, UPS, and DHL overnight services require the packages to be sent to the address above.

(1)(b) *Paper Submission—If Hand-Delivered:* If the application is hand-delivered by the applicant or his/her representative, one (1) signed original plus two (2) copies of the application must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBOC Program (extension 1940), HCHB, Room 1874,

Entrance #10, 15th Street, NW., Washington, DC (Between Pennsylvania and Constitution Avenues).

U.S. Department of Commerce ''hand-delivery'' policies state that Federal Express, UPS, and DHL overnight services submitted to the address listed above (Entrance #10) cannot be accepted. These policies should be taken into consideration when utilizing their services. MBDA will not accept applications that are submitted by the deadline but rejected due to Departmental hand-delivery policies. The applicant must adhere to these policies for its application to be considered for award.

(2) *Electronic Submission:* Applicants are encouraged to submit their proposal electronically at *http://www.Grants.gov.* Electronic submissions should be made in accordance with the instructions available at Grants.gov (*see http://www.grants.gov/ForApplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For further information, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov.* Paper applications and Standard Forms may be obtained by contacting the MBDA National Enterprise Center (NEC) for the area in which the Applicant is located (See Agency Contacts section) or visiting MBDA's Portal at *http://www.mbda.gov.* Standard Forms 424, 424A, 424B, and SF–LLL can also be obtained at *http://www.whitehouse.gov/omb/grants, or http://www.Grants.gov.* Forms CD–511, and CD–346 may be obtained at *http://www.doc.gov/forms.*

Responsibility for ensuring that applications are complete and received by MBDA on time is the sole responsibility of the Applicant.

Agency Contacts

1. Office of Business Development, 14th and Constitution Avenues, Room 5073, Washington, DC 20230.

Contact: Efrain Gonzalez, Program Manager at 202–482–1940.

2. Dallas National Enterprise Center (NEC) is located at 1100 Commerce Street, Suite 7B–23, Dallas, TX 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming.

Contact: John Iglehart, Regional Director, Dallas NEC at 214–767–8001.

SUPPLEMENTARY INFORMATION:

Electronic Access: A link to the full text of the Federal Funding Opportunity (FFO) Announcement for the MBOC Program can be found at *http://www.Grants.gov* or by contacting the appropriate MBDA representative identified above. The FFO is also available at *http://www.mbda.gov.* The FFO contains a full and complete description of the MBOC program requirements. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO. Applicants will be able to access, download and submit electronic grant applications for the MBOC Program in this announcement at Grants.gov. MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

Funding Availability: The total award period is one year, nine months. The Federal funding share in year 1 (April 1–December 31, 2006) is $195,000. MBDA anticipates the Federal funding share in year 2 (January 1–December 31, 2007) will be $260,000 (subject to the availability of FY 2007 appropriations). MBDA anticipates funding only one (1) MBOC from this competitive Announcement.

MBDA anticipates that 75 percent of the Federal funding share must be allocated to key staff, such as the Executive Director and Senior Business Development person(s). Applicants must submit project plans and budgets for each of the two funding periods. Projects will be funded for no more than one year at a time. Awardees will be eligible for one continuation period, for a total of one year, nine months. Project proposals accepted for funding will not compete for funding in the subsequent second budget period. Second year funding will depend upon satisfactory performance, availability of funds to support continuation of the project, Department of Commerce and MBDA priorities, and will be at the sole discretion of MBDA and the Department of Commerce. MBDA is soliciting competitive applications from organizations to operate one MBOC in the geographic area identified below. The maximum Federal Funding Amounts for each year are also shown.

Applicant location	Federal amount year 1 (April 1–Dec. 31, 2006)	Federal amount year 2 (Jan. 1–Dec. 31, 2007)
1. Baton Rouge/New Orleans, LA*	$195,000	$260,000

* Metropolitan Statistical Area (MSA). These areas are defined in OMB Bulletin 06–01 at *http://www.whitehouse.gov/omb/bulletins/index.html.*

MBOC Operators should have an established presence in either Baton Rouge or New Orleans or both. Established presence is defined to mean that the applicant has had an office in the location for approximately three (3) years preceding the date of this Announcement and has established working relationships with buying organizations. In light of Hurricanes Katrina and Rita, the definition for established presence is amended to include entities in operation since the beginning of 2003 (minimum) through August 2005. Applicants are encouraged to propose as large a service area as possible, which may extend beyond the defined areas noted above.

Applicants will be required to operate one MBOC office (at a minimum) in either Baton Rouge or New Orleans, but not necessarily both. The service area includes both Baton Rouge and New Orleans.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.803 Minority Business Opportunity Center Program.

Eligibility: For-profit entities (including sole-proprietorships, partnership, and corporations), and non-profit organizations, State and local government entities, American Indian Tribes, and educational institutions are eligible to operate MBOCs.

Program Description: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Minority Business Opportunity Centers (MBOC) (formerly Minority Business Opportunity Committees). The Minority Business Opportunity Centers through their staff will provide brokering services and assistance to MBEs that (a) generate $500,000 or more in annual gross revenues or (b) are capable of creating significant employment and long-term economic impact (commonly referred to as ''rapid growth-potential'' MBEs). In addition, MBOCs provide

access to buyers of goods and services and procurement and financing opportunities within the public and private sectors. The MBOC program's primary objective is to match pre-qualified MBEs with private and public sector contracting and financing entities. MBOC operators and executive directors should have experience in and knowledge of the local minority business sector and demonstrated ability to gain access to key decision-makers. MBOCs are supported by a volunteer advisory committee that assists the MBOC in implementing program requirements and providing contract and financing opportunities to MBEs. The program is primarily evaluated by MBDA based on the number and dollar value of contracts and financial transactions awarded to MBEs.

Match Requirements: Cost sharing of at least 30% is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement in (1) Cash contributions; (2) non-cash applicant contributions; and/or (3) third party in-kind contributions. Bonus points will be awarded for cost sharing exceeding 30 percent that is applied to MBOC staff. Applicants must provide a detailed explanation of how the cost-sharing requirement will be met.

While not a program requirement, the MBOC may charge client fees for brokering services rendered. Client fees may be used towards meeting cost share requirements. Client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives.

Selection Procedures: Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent reviewers (Federal employees) who will review all applications based on the below evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. The National Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

1. The evaluations and rankings of the independent review panel;

2. Size of proposed service area. Applicants are encouraged to propose as large a service area as possible, which may extend beyond the defined service area of Baton Rouge/New Orleans, Louisiana.

3. The following funding priorities:

a. Having an existing or recent client base that can be utilized for brokering contract and financial transactions;

b. Ability to establish an MBOC that has an Industry specific(s) focus and that demonstrates the utility of economic clusters including, but not limited to, aerospace, manufacturing, construction, financial services, IT and/or automotive industries;

c. The ability to assist in economic recovery following natural disasters through available economic opportunities; and,

4. The availability of funding.

Evaluation Criteria: Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for *each* evaluation criterion, in order for the application to be considered for funding.

The Maximum total points that can be earned is 105 including the bonus points for staff related non federal cost sharing as described below.

1. Applicant Capability (30 Points)

The applicant's proposal will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- MBE Community—Experience and knowledge of the local minority business sector and established working relationships with buying organizations. This factor will be evaluated on whether or not the applicant has an established presence in the proposed geographic service area. Established presence is defined to mean that the applicant has had an office in the geographic service area for a minimum of three (3) years preceding this announcement and has established relationships with buying organizations. (10 points);
- Business Acumen—experience in and knowledge of coaching and mentoring techniques related to serving rapid growth-potential minority firms (3 points);
- Financing—experience in and knowledge of brokering techniques and facilitating large financial transactions (5 points);
- Procurements and Contracting—experience in and knowledge of the public and private sector contracting opportunities and gaining access to the buyers to facilitate and broker large deals (5 points);
- Financing Networks—Knowledge of the resources and professional relationships within the corporate, banking and investment community that can be beneficial to minority-owned firms (2 points);
- Experience and knowledge of particular industries and ability to gain access to industry leaders within the geographic service area (5 points).

2. Resources (25 Points)

The applicant's proposal will be evaluated according to the following criteria:

- *Key Staff*—Discuss the experience of the staff that will operate the MBOC. In particular, an assessment will be made to determine whether key staff has the experience in working with high level key decisionmakers as relates to brokering and facilitating large dollar contracts and financial transactions, and coaching and mentoring. Proposed staff will be assessed to determine if they possess the expertise in utilizing information systems (10 points);
- Resources—discuss what resources will be utilized to accomplish the work requirements (not included as part of the cost-sharing arrangement). An assessment will be made to evaluate how well the plan establishes and maintains a network of resources. Discuss how the Advisory Committee and subcommittees will be recruited and what their role will be. Discuss how the committees will contribute to the performance measures as outlined in the FFO (10 points);
- *Equipment*—An assessment will be conducted to evaluate how well the plan fulfills the computer hardware and software requirements stated in the FFO (5 points).

3. Techniques and Methodologies (25 Points)

The applicant's proposal will be evaluated as follows:

- *Performance Measures*—relate each performance measure to the financial, information and market resources available in the applicant's defined service area and how the goals will be met. Specific attention should be placed on the Dollar Value of Contract Awards and Financial Transactions (as described under Definitions in the FFO). Minimum goals should be based on the availability of Federal procurement dollars in the service area. The applicant should also consider existing market conditions and its strategy to achieve the goal (10 points);
- *Plan of Action*—provide specific detail on how the applicant will start operations, including how the Advisory Committees and Subcommittees will be

formed. The plan should include a detailed discussion of the nature of the advisory role and how the committee will work with Center staff to accomplish program objectives. Program Operators have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff is hired, all signs are up, all items of furniture and equipment are in place and operational, all stationery forms are developed and the Center is ready to open its doors to the public. Failure to have all staff on board within 30 days after award will result in a deduction of 10 points on the first semi-annual performance assessment report and may jeopardize continuation of the award (5 points);

• *Work Requirements Execution Plan*—The applicant will be evaluated on how it plans to execute the Work Requirements (including implementation timelines) and how effectively and efficiently all staff will be used. Applicants should include a description for using an intra and interstate approach, depending on the geographic service area, for accomplishing the work requirements contained in the FFO (5 points).

• *Appropriateness of Applicant Defined Service Area*—The applicant will be evaluated based on the following: the size of the minority population and density of MBEs with revenues of $500,000 or rapid-growth potential in the applicant's defined service area. The presence of significant Federal and commercial contracting and financing opportunities, the size of the market, and the need for MBDA resources in the applicant's defined service area should also be discussed (5 points).

4. Proposed Budget and Supporting Budget Narrative (20 Points)

The applicant's proposal will be evaluated on the following sub-criteria:

• Reasonableness, allowability and allocability of costs (5 points). MBDA anticipates that 75% of the funding level will be allocated to key staff, such as the Executive Director and senior business development persons.

• Proposed cost sharing of 30 percent is required and must be documented, including whether client fees for brokering will be charged and applied to the cost share. Applicants choosing to charge fees should set forth a fee schedule in their proposals (5 points).

• Performance-based Budget. Discuss how the budget is related to the accomplishment of the work requirements and the Performance measures. Provide a budget narrative that clearly shows the connections (10 points).

• Non Federal cost sharing exceeding 30 percent that is related to additional staff (5) bonus points).

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

Applicants are hereby given notice that funds have been appropriated for this program for Fiscal Year 2006; however, funds have not yet been appropriated for FY 2007. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on Grants.gov Web site at *http://www.Grants.gov*.

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

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of standard forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB control Number.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice for an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grant, benefits and contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq*.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: February 3, 2006.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. E6–1675 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before April 10, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument and instructions should be directed to David Kaiser, 603–862–2719 or at *david.kaiser@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with the CZMA requirements. The requirements are detailed in 15 CFR part 930. The information will be used by coastal states with federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the states' programs.

II. Method of Collection

Paper submissions are made following regulatory guidance.

III. Data

OMB Number: 0648–0411.

Form Number: None. Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; individuals or households; business or other for-profit organizations; and Federal government.

Estimated Number of Respondents: 4,111.

Estimated Time Per Response: 8 hours for a State objection or concurrence letter for a consistency certification or determination; 4 hours for a State request for review of unlisted activities; 1 hour for public notice requirements for a project; 4 hours for a request for remedial action of a supplemental review; 1 hour for coordination of a listing notice; 2 hours for a request for Secretarial mediation; and 200 hours for an appeal. These are average estimates and burden can significantly vary based on the individual situation.

Estimated Total Annual Burden Hours: 20,535.

Estimated Total Annual Cost to Public: $47,013.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1648 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northwest Region Federal Fisheries Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before April 10, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kevin A. Ford, (206) 526–6115 or e-mail at *kevin.ford@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA Fisheries seeks comment on the renewal of permit information collections required to: (1) Renew and transfer of Pacific Coast Groundfish limited entry permits; (2) implement certain provisions of the sablefish permit stacking program as provided for by Amendment 14 of the Pacific Coast Groundfish Fishery Management Plan; and (3) issue and fulfill the terms and conditions of exempted fishing permits (EFPs).

NOAA Fisheries, Northwest Region manages the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone (EEZ) off Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan. The regulations implementing the Pacific Groundfish Fishery require that those individuals participating in the limited entry fishery have a valid limited entry permit. The participation in the fishery and access to a limited entry permit has been restricted to control the overall harvest capacity.

Each year, permit owners are required to renew their permit by reviewing their current permit information, providing any updated information and certifying that the permit information is correct. Similarly, a permit owner is required to request a permit transfer in writing. Additional information may be requested from the permit owner to determine compliance with groundfish regulations. The regulations implementing the limited entry program are found at 50 CFR part 660, Subpart G.

Also, NOAA Fisheries will require information collections to implement sablefish permit stacking program which will allow NOAA Fisheries to prevent excessive fleet consolidation, ensure processor access to sablefish, and maintain the character of the fleet through an owner on board provision. These information collections will include both one time collections and annual information collections. Specifically, the annual information collections will require a corporation or partnership that owns a sablefish endorsed permit to list all individuals with ownership interests in the entity; and as part of a permit transfer, a certification by the permit owner to report the remaining pounds (not yet harvested) on a sablefish permit at the time of transfer.

Applicants for exempted fishing permit must submit written information that allows NOAA Fisheries to evaluate the exempted fishing activity and weigh the benefits and costs of the proposed activities. The information included in an application is specified at 50 CFR 600.745(b)(2). Permit holders are required to file reports on the results of the experiments and in some cases individual vessels are required to provide minimal data reports. There is also a requirement of a call-in notification prior to the fishing trip. This information allows NOAA fisheries

to evaluate the techniques used and decide if management regulations should be approved as is, modified, or disapproved.

II. Method of Collection

The information collections for permit renewals and transfers and to implement sablefish permit stacking program are made on NOAA Fisheries forms. Also, the renewal of limited entry permits may be completed and submitted using online renewal form on the NOAA Fisheries, Northwest Region web site. Transfer forms and forms for the permit stacking program are available from the region's web site but must be submitted by mail or in person. Applications for an exempted fishing permit must be submitted in a written format. The exempted fishing permit data reports from individual vessels may be submitted in person, faxed, or submitted by telephone by the vessel owner or operator to NOAA Fisheries or the states of Washington, Oregon, or California.

III. Data

OMB Number: 0648–0203.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, states, individuals or households, and business or other for-profits organizations.
Estimated Number of Respondents: 755.
Estimated Time Per Response: 10 hours for an exempted fishing permit (EFP) application; 1 hour for an EFP summary report; 10 minutes for an EFP data report; 2 minutes for EFP trip notification; 20 minutes for a limited entry permit transfer form; 20 minutes for a renewal form; 30 minutes for mid-season transfer of sablefish permit; 30 minutes for at sea processing vessel exemption application; 20 minutes for addition of spouse as co-owner of a sablefish permit application; and 30 minutes for an sablefish permit ownership interest form.
Estimated Total Annual Burden Hours: 723.
Estimated Total Annual Cost to Public: $51,904.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1649 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Groundfish Tagging Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before April 10, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Gallagher or John Herring at 206–526–4009 or *Michael.S.Gallagher@noaa.gov* or *John.Herring@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The groundfish tagging program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Northwest Pacific. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, and the Alexander Archipelago of Southeast Alaska), California, Oregon, and Washington. Fish movement information from recovered tags is used in population dynamics models for stock assessment.

II. Method of Collection

This is a volunteer program requiring the actual tag from the fish to be returned, along with recovery information. Reporting forms with pre-addressed and postage-free envelopes are distributed to processors and catcher vessels.

III. Data

OMB Number: 0648–0276.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 420.
Estimated Time Per Response: 5 minutes for returning a regular tag; and 20 minutes for returning an internal archival tag.
Estimated Total Annual Burden Hours: 98.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1654 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Villa Marina Yacht Harbour, Inc. From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Villa Marina Yacht Harbour, Inc. (Villa Marina).

DATES: The decision record for the Villa Marina administrative appeal closed on January 30, 2006.

ADDRESSES: Materials from the appeal record are available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Odin Smith, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–7391.

SUPPLEMENTARY INFORMATION: Villa Marina has filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), and implementing regulations found at 15 CFR part 930, subpart H. Villa Marina appeals an objection raised by the Puerto Rico Planning Board to a consistency certification contained within its permit application to the Army Corps of Engineers to expand an existing marina.

Applicable provision of the CZMA require that a notice be published in the **Federal Register** indicating the date on which the decision record closed. Accordingly, notice is hereby provided that the decision record for this appeal closed on January 30, 2006.

For additional information about this appeal contact Odin Smith, 301–713–7392.

Dated: January 31, 2006.

James R. Walpole,

General Counsel.

[FR Doc. 06–1110 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020206B]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (Council) Scallop Plan Team will meet at the Anchorage Hilton Hotel in Anchorage, AK.

DATES: The meetings will be held on February 23–24, 2006. The meeting will be held from 10:30 a.m. to 5 p.m. on February 23rd and from 9 a.m. to 3 p.m. on February 24th.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, 15th Floor – Chart Room, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda includes: (1) Election of Chair; (2) Review Status of Statewide Stocks; (3) Compile Stock Assessment Fishery Evaluation Report (SAFE); (4) Review Economic Discussion paper; and (5) Discuss new business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 3, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–1710 Filed 2–7–06; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0043, Rules Relating To Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules relating to review of National Futures Association decisions in disciplinary, membership denial, registration, and member responsibility actions.

DATES: Comments must be submitted on or before April 10, 2006.

ADDRESSES: Comments may be mailed to Gail B. Scott, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gail Scott, (202) 418–5139; FAX: (202) 418–5524; e-mail: *gscott@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of 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.

Rules Relating To Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB Control Number 3038–0043—Extension

These rules establish procedures and standards for Commission review of registered futures association procedures for membership and disciplinary actions.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR Part 171	25	On occasion	51.3	.5	25.6

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: February 3, 2006.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 06–1154 Filed 2–7–06; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) in Support of New Facilities for the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), Fort Detrick, MD

AGENCY: U.S. Army Medical Research and Materiel Command, Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the construction and operation of new USAMRIID facilities and the decommissioning and demolition or reuse of existing USAMRIID facilities at Fort Detrick. This EIS is being prepared and considered in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969, regulations of the President's Council on Environmental Quality (40 CFR parts 1500–1508), and the Army's implementation of NEPA (32 CFR part 651), 29 March 2002.

The proposed new USAMRIID facilities will provide biocontainment laboratory space, animal facilities, and administrative offices, as well as operational and administrative support facilities. These new facilities will be located adjacent to the existing USAMRIID facilities within the National Interagency Biodefense Campus on Area A of Fort Detrick and near the biomedical research facilities of mission partners, including the Agricultural Research Service Foreign Disease—Weed Research Unit of the U.S. Department of Agriculture, the planned National Institute of Allergy and Infectious Diseases' Integrated Research Facility, and the Department of Homeland Security's National Biodefense Analysis and Countermeasures Center. The existing USAMRIID facilities on Area A will be decommissioned and either demolished or reused following occupancy of the new USAMRIID facilities.

The construction will occur in two stages. Stage 1 will provide approximately 700,000 gross square feet (gsf) of new building space for the replacement of outdated and compressed existing USAMRIID facilities in order to sustain the current mission and to expand medical testing and evaluation (T&E) capacity in support of immediate Department of Defense (DoD) and national demand. Stage 2 will encompass approximately 400,000 gsf of new building space for the balance of USAMRIID's expanded mission and for additional capacity to meet intensified national requirements for medical test and evaluation in support of biodefense research as well as to accommodate increased collaborative efforts among USAMRIID's mission partners. In addition, approximately 200,000 gsf of the existing USAMRIID facilities may be renovated and reused for laboratory or non-laboratory use, to be determined by evolving biodefense requirements.

DATES: A public scoping meeting to describe the EIS to the public will be held on Wednesday, February 22, 2006, 7 p.m. at Governor Thomas Johnson High School, 1501 N. Market St., Frederick, MD 21701. Comments on the scope of the EIS for the proposed project should be received no later than March 10, 2006. Additional information on submitting comments is included in the public participation section.

FOR FURTHER INFORMATION CONTACT: Caree Vander Linden, USAMRIID Public Affairs, 1425 Porter Street, Fort Detrick, MD 21702–5011; telephone: (301) 619–2285, fax: (301) 619–4625.

SUPPLEMENTARY INFORMATION: USAMRIID, an organization of the U.S. Army Medical Research and Materiel Command, was established in 1969 to conduct basic research, applied research, and advanced technology development against biological threats, resulting in medical solutions to protect military personnel. USAMRIID's medical countermeasures against diseases such as anthrax, smallpox, botulinum intoxication, and Ebola have included development of vaccines and drugs, diagnostic capabilities, and medical management procedures.

USAMRIID has established itself as the lead biodefense laboratory of the DoD, with unique high-level

biocontainment facilities (as regulated by the Centers for Disease Control and prevention (CDC)) and expertise to safely conduct critical biomedical research. In addition to its original mission to protect military personnel, USAMRIID has been assigned a second mission to leverage these capabilities to support government-wide biological defense efforts by acting as the DoD's lead laboratory for T&E of medical biological defense products.

USAMRIID must expand its facilities to meet both the requirements for increased understanding of current biological threats and the threat of emerging diseases to U.S. military service members and citizens. Replacing the existing USAMRIID facilities on Area A of Fort Detrick is essential to accelerate the research, development, testing, and evaluation of vaccines, drugs and diagnostics for military and civilian applications. This laboratory complex, built primarily in the 1950s and 1960s for 325 personnel, now houses approximately 750 staff personnel in approximately 500,000 gsf of floor space. Major utilities and other support systems within the laboratory complex have exceeded their life expectancies and cannot readily accept new technologies. Despite high levels of maintenance that consume up to 25% of the USAMRIID operating budget, the existing facilities no longer provide an adequate platform for USAMRIID to execute its critical missions. It is estimated that approximately 900 people will staff the Stage 1 facility and a total of approximately 1,300 people will be employed upon completion of Stage 2.

The proposed new USAMRIID facilities will include biocontainment laboratories designed, constructed, and operated to Biosafety Levels (BSLs) –2, –3, and –4 and enhanced BSL–3 standards. The animal facilities will be designed, constructed and operated to Animal Biosafety Level (ABSL) –2 and enhanced ABSL–3 standards. (Note: BSLs and ABSLs are designations within a well-defined system established by the CDC and the National Institutes of Health consisting of facilities, equipment, and procedural guidelines designed to minimize risk of exposure to potentially hazardous biological pathogens for laboratory workers and the outside environment.) These BSL and ABSL facilities will enable USAMRIID researchers to safely conduct the research and development and medical T&E work required to support USAMRIID's evolving missions. The research conducted at USAMRIID has been and will continue to be solely defensive in nature. The army does not conduct offensive chemical or biological weapon research in any way, and is firmly committed to compliance with both international and domestic law including, but not limited to, the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction* and the *Biological Weapons Anti-terrorism Act.*

Environmental analyses of the Proposed Action and alternatives will evaluate land use, climate, geology, soils, water resources, wetlands, plant and animal ecology, air quality, historical and cultural resources, socioeconomic environment, noise, odors, transportation, energy resources, hazardous material management, human health and safety, environmental justice, and cumulative effects with respect to unknown or potentially significant impacts. The issues to be addressed will include safety of laboratory operations and demolition of the existing biocontainment laboratories; public health and safety; handling, collection, treatment, and disposal of research wastes; analysis of other risks; and pollution prevention.

The EIS will address several alternatives, including demolition of the existing USAMRIID facilities; partial renovation of existing USAMRIID facilities for laboratory or non-laboratory use; and a No-Action alternative, under which the proposed new USAMRIID facilities would not be built and operated and the existing USAMRIID facilities would not be decommissioned and demolished or reused. Additional alternatives may be identified in the public scoping process.

Public participation: The Army invites full public participation to promote open communication and informed decision-making. All interested persons and organizations, including minority, low-income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone with special needs to facilitate their participation in the NEPA process.

To ensure that the full range of issues related to this Proposed Action and the scope of this EIS are addressed, oral and written comments are invited from all interested parties, including appropriate Federal, state, and local agencies, and private organizations and citizens. The scoping process supporting this effort will include: establishment of the public USAMRIID EIS Web site at *http://www.usamriid.army.mil/eis*; dissemination of public information packages; publication in local newspapers; and coordination with public interest groups. These efforts will allow the public to provide input regarding the scope of the study and reasonable alternatives.

Public comments are welcome throughout the NEPA process and should be directed to Caree Vander Linden at the address above. Additional formal opportunities for public participation after the public scoping phase are tentatively scheduled as follows: review and comment on the Draft EIS, August–September 2006; public information meeting on the Draft EIS, August 2006. Notices of Availability for the Draft EIS, Final EIS, and Record of Decision will be provided through direct mail, the **Federal Register**, and other media. Notifications also will be sent to Federal, state, and local agencies and persons and organizations that submit comments or questions throughout the NEPA process. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for public distribution of meeting announcements and associated documents.

Dated: February 3, 2006.

Addison D. Davis,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 06–1165 Filed 2–7–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

[Docket No. EA–307]

Application To Export Electric Energy; Silverhill Ltd.

AGENCY: Office Electricity Delivery & Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Silverhill Ltd. (Silverhill) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 10, 2006.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office Electricity Delivery & Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office), 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. 824a(e)).

On January 6, 2006, the Department of Energy (DOE) received an application from Silverhill to transmit electric energy from the United States to Canada. Silverhill is a corporation formed under Ontario law with its principal place of business in Toronto, Ontario, Canada. Silverhill does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which Silverhill proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

Silverhill proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Silverhill as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Silverhill application to export electric energy to Canada should be clearly marked with Docket EA–307. Additional copies are to be filed directly with George Radan, President, Silverhill Ltd., 17 Golf Crest Road, Toronto, Ontario, M9A 1L2.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the Home page, scroll down and select ''Pending Proceedings.''

Issued in Washington, DC, on February 1, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–1697 Filed 2–7–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Wednesday, February 22, 2006, 9 am to 5 pm and Thursday, February 23, 2006, 9 am to 12:15 pm.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Highway, Crystal City, Virginia 22202, (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Roth, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–20, 19901 Germantown Road, Germantown, MD 20874, Telephone Number 301.903.5501, E-mail: *mark.roth@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Wednesday February 22, 2006

Welcome Remarks
Organizational Issues
Status of Office of Nuclear Energy, Science and Technology Programs and Budget
- FY 2007 Budget
- New Initiatives

Subcommittee Reports
- Generation IV Subcommittee Report
- Advanced Nuclear Transformation Technologies Subcommittee

Thursday, February 23, 2006

Continuation of Discussions from Wednesday
Public comment period
Setting of Dates for Next Meeting
Adjournment

Public Participation: The day and a half meeting is open to the public on a first-come, first-served basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Mark Roth at the addresses or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 2, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–1698 Filed 2–7–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–50–000]

American Electric Power Service Corporation; Notice of Filings

February 1, 2006.

Take notice that on January 31, 2006, as supplemented on February 1, 2006,

American Electric Power Service Corporation (AEP) submitted a petition requesting that the Commission issue a declaratory order approving proposed incentive rates for a new 765 kV transmission project that newly-formed AEP Transmission Company LLC proposes to construct from west to east across PJM. AEP states that the proposed line is expected to run from West Virginia to New Jersey.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 March 1, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1673 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS05–18–000]

Attala Transmission LLC; Notice of Filing

February 1, 2006.

Take notice that on June 29, 2005, Attala Transmission LLC (Attala), submitted for filing a request for waiver of the Standards of Conduct provisions in Part 358 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1666 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–012]

Colorado Interstate Gas Company; Notice of Amending Stipulation and Agreement

January 31, 2006.

Take notice that on January 6, 2006, Colorado Interstate Gas Company (CIG) tendered for filing a petition to the Commission to amend the ''Stipulation and Agreement'' approved in Docket No. RP01–350–000, et al., on August 5, 2002.[1]

CIG requests that the Commission approve the petition to amend the Stipulation and Agreement on or before February 17, 2006, in order to allow the parties to attempt to settle its next rate case before it is filed.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

[1] *Colorado Interstate Gas Company,* 100 FERC ¶ 61,154(2002).

Comment Date: 5 p.m. Eastern Time on February 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1658 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–194–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2006.

Take notice that on January 30, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of February 1, 2006:

Third Revised Sheet No. 167.
Third Revised Sheet No. 168.

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. E6–1705 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–074]

Dominion Transmission, Inc.; Notice of Negotiated Rate

February 2, 2006.

Take notice that on January 31, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 1405, to become effective February 1, 2006.

DTI states that the purpose of this filing is to amend the Appalachian Pool Operators negotiated rate customer and contract list.

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 § 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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1707 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–53–000]

Eastern Shore Natural Gas Company; Notice of Application

January 31, 2006.

Take notice that on January 20, 2006, Eastern Shore Natural Gas Company (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No. CP06–53–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to construct and operate certain pipeline and measuring station facilities, with appurtenances, located in Pennsylvania and Delaware in order to expand the capacity of Eastern Shore's system, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Eastern Shore proposes to construct and operate, in three phases, 55-miles of mainline extension and looping and construct and operate two new delivery points. The additional capacity created by the proposed facilities will be utilized to serve high-priority residential and commercial customer market growth in Eastern Shore's market area. The construction and operation of the proposed facilities will provide additional peak day capacity on Eastern Shore's system of 47,350 dekatherms per day at an estimated cost of $33,606,460.

Any questions regarding this application should be directed to Elaine B. Bittner, Vice President, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904, or call at (302) 734–6710 ext. 6016.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1664 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–413–002]

Entrega Gas Pipeline LLC; Notice of Compliance Filing

February 2, 2006.

Take notice that on January 19, 2006, Entrega Gas Pipeline LLC (Entrega) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of December 17, 2005:

Original Volume No. 1.
First Revised Sheet No. 254.
Original Sheet No. 254.01.

Entrega states that a copy of this filing has been served upon all parties on the official service list for this proceeding.

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 online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1708 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–022]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

February 2, 2006.

Take notice that on January 27, 2006, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and WPS Energy Services Inc. (WPS) (FT Service Agreement).

Great Lakes states that the FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and WPS commencing February 1, 2006.

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 online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1699 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–22–000]

International Transmission Company; Notice of Filing

February 2, 2006.

Take notice that on January 1, 2006, International Transmission Company (International Transmission) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term securities in an amount not to exceed $100 million.

International Transmission also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1702 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–90–001]

KeySpan LNG, LP; Notice of Compliance Filing

February 2, 2006.

Take notice that on January 24, 2006, KeySpan LNG, LP (KLNG) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume 1, the following revised tariff sheets to be effective September 1, 2005:

Substitute Original Sheet No. 74A, Superseding Original Sheet No. 74A.
Original Sheet No. 74B.
Substitute Second Revised Sheet No. 93, Superseding Second Revised Sheet No. 93.
Substitute First Revised Sheet No. 93A, Superseding First Revised Sheet No. 93A.

KLNG states that copies of the filing are being mailed to all parties designated on the official service list, KLNG's jurisdictional customers and affected state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1706 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–187–000]

Louis Dreyfus Energy Services L.P.; Notice of Request for Waiver

January 31, 2006.

Take notice that on January 26, 2006, Louis Dreyfus Energy Services L.P., (LDES) filed a petition requesting certain waivers of the Commission's regulations and policies relating to capacity release transactions to allow LDES to consummate an arrangement involving the long-term release of firm transportation capacity and a related long-term natural gas sale.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing

an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1663 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–182–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2006.

Take notice that on January 24, 2006, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective March 1, 2006:

Fourth Revised Sheet No. 1
Seventh Revised Sheet No. 202
Original Sheet No. 5B
Ninth Revised Sheet No. 204
Original Sheet No. 112
Third Revised Sheet No. 113
Original Sheet No. 207
Original Sheet No. 448
Original Sheet No. 114
Original Sheet No. 449
Original Sheet No. 115
Original Sheet No. 450
Sheet Nos. 116–199
Sheet Nos. 451–477

Midwestern is filing revised tariff sheets for the purpose of establishing a new Rate Schedule, referred to as Rate Schedule TPB. Midwest states that this rate schedule is designed to provide a Third Party Balancing Service to assist customers in accessing balancing services to meet variable load requirements.

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 § 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. E6–1659 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–185–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2006.

Take notice that on January 25, 2006, Northern Natural Gas Company (Northern), tendered for filing as part its FERC Gas Tariffs, Fifth Revised Volume No. 1, the tariff sheets listed on the filing, proposed to be effective on the dates shown on the tariff sheets.

Northern further states that copies of the filing have been provided to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 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. E6–1661 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP06–184–000]

Petal Gas Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2006.

Take notice that on January 24, 2006, Petal Gas Storage, LLC (Petal) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, to be made effective February 24, 2006:

Third Revised Sheet No. 2
Fourth Revised Sheet No. 105
First Revised Sheet No. 108A
Fifth Revised Sheet No. 109
Fourth Revised Sheet No. 110
Sixth Revised Sheet No. 126
Sixth Revised Sheet No. 127
Third Revised Sheet No. 210
Third Revised Sheet No. 222

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 § 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. E6–1660 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–189–000]

Southern LNG Inc; Notice of Proposed Changes to FERC Gas Tariff

February 1, 2006.

Take notice that on January 27, 2006, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, with an effective date of March 1, 2006:

Fourteenth Revised Sheet No 5
Fourteenth Revised Sheet No. 6

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 online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1671 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–192–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2006.

Take notice that on January 31, 2006, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets to become effective March 1, 2006:

Sixth Revised Sheet No. 26
Fifth Revised Sheet No. 27
Fifth Revised Sheet No. 28
Forty-Fifth Revised Sheet No. 29
Twenty-Seventh Sheet No. 30

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. E6–1703 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–188–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2006.

Take notice that on January 27, 2006, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective March 1, 2006.

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 § 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. E6–1655 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–284–000]

SR Energy, LLC; Notice of Issuance of Order

February 1, 2006.

SR Energy, LLC (SR Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for sales of energy, capacity and ancillary services at market-based rates. SR Energy also requested waivers of various Commission regulations. In particular, SR Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by SR Energy.

On January 31, 2006, the Commission granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SR Energy 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 March 2, 2006.

Absent a request to be heard in opposition by the deadline above, SR Energy 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 SR Energy, 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 SR Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Commission'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. E6–1667 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–190–000]

Transcontinental Gas Pipe Line Corporation; Notice of Cancellation of Rate Schedule

February 1, 2006.

Take notice that on January 27, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a notice to inform the Commission that Rate Schedules FS, OFS, and IS in

FERC Gas Tariff, are to be cancelled on March 1, 2006.

Transco also tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing, to become effective March 1, 2006. Transco states that the revised tariff sheets reflect the cancellation of Rate Schedules FS, OFS, and IS and make additional conforming changes.

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 online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1672 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–186–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2006.

Take notice that on January 25, 2006, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to become effective February 25, 2006.

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 § 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. E6–1662 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–193–000]

Vector Pipeline L.P.; Notice of Tariff Filing

February 2, 2006.

Take notice that on January 30, 2006, Vector Pipeline L.P. (Vector), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of March 1, 2006.

Vector states that the filing is being made for the purpose of making minor changes to various tariff sheets and revising the terms of its Web Site Access Agreement.

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 § 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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1704 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–49–000]

Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., WPS Power Development, LLC, Complainant v. Midwest Independent Transmission, System Operator, Inc. and PJM Interconnection, LLC, Respondent; Notice of Complaint

January 31, 2006.

Take notice that on January 30, 2006, Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc. and WPS Power Development, L.L.C. (WPS Companies) filed a formal complaint against the Midwest Independent Transmission System Operator, Inc and PJM Interconnection, L.L.C. (RTOs) pursuant to section 206 of the Federal Power Act and 18 CFR 385.206, alleging that the RTOs' December 30, 2005 compliance filing in Docket Nos. ER04–375–017 and ER04–375–018 fails to comply with the Commission's orders requiring the filing of status reports on and the actual implementation by the RTOs of a comprehensive Joint and Common Market.

The WPS Companies certify that copies of the complaint were served on the contacts for the Midwest Independent Transmission System Operators, Inc. and PJM Interconnection, LLC.

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 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1656 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 31, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER06–540–000.

Applicants: Entergy Services, Inc.

Description: Entergy Arkansas, Inc. submits an executed Service Agreement which provides cost-based short-term power sales to North Arkansas Electric, Inc.

Filed Date: January 25, 2006.

Accession Number: 20060127–0129.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–541–000.

Applicants: Old Lane Commodities, LP.

Description: Old Lane Commodities, LP submits an application for market-based rate authority.

Filed Date: January 25, 2006.

Accession Number: 20060127–0130.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–542–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits proposed revisions to FERC Electric Tariff, Original Volume No. 8 market-based power sales and resale transmission tariff.

Filed Date: January 25, 2006.

Accession Number: 20060127–0121.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–543–000.

Applicants: Florida Power Corporation.

Description: Progress Energy Service Co. on behalf of Florida Power Corp., *et al.* submits a new rate schedule for service to Reedy Creek Improvement District.

Filed Date: January 25, 2006.

Accession Number: 20060127–0120.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–544–000.

Applicants: American Electric Power Services Corp.

Description: American Electric Power Service Corp. on behalf of its affiliate, AEP Texas North Co. submits a fully executed Second Interconnection Agreement with Buffalo Gap Wind Farm 2, LLC.

Filed Date: January 25, 2006.

Accession Number: 20060127–0137.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–545–000.

Applicants: American Electric Power Service Corp.

Description: Ohio Power Co.'s Notice of Cancellation of Second Revised Service Agreement No. 463 under Companies of the American Electric Power System Open Access Transmission Tariff, FERC Electric Tariff, 3rd Revised Volume No. 6.

Filed Date: January 25, 2006.

Accession Number: 20060127–0136.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–546–000.

Applicants: Cinergy Services, Inc.

Description: Cinergy Services, Inc. on behalf of the Union Light, Heat & Power Co. and the Cincinnati Gas & Electric Co. notifies FERC of its withdrawal of the Purchase, Sale and Operation Agreement.

Filed Date: January 25, 2006.

Accession Number: 20060127–0123.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–547–000.

Applicants: Cinergy Services, Inc.

Description: Cinergy Services, Inc. on behalf of the Cincinnati Gas & Electric Co. *et al.* submit a notice of termination to the Joint Generation Dispatch Agreement.

Filed Date: January 25, 2006.

Accession Number: 20060127–0122.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–548–000.

Applicants: Cincinnati Gas & Electric Company.

Description: The Cincinnati Gas & Electric Co submits an amended Facilities Operation Agreement with the Union Light, Heat and Power Co.

Filed Date: January 25, 2006.

Accession Number: 20060127–0135.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 15, 2006.

Docket Numbers: ER06–558–000.

Applicants: New York Independent System Operator, Inc.

Description: The New York Independent System Operator, Inc. requests a one-time waiver of two provisions of Attachment S to the Open Access Transmission Tariff.

Filed Date: January 23, 2006.

Accession Number: 20060131–0031.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 7, 2006.

Docket Numbers: ER98–570–004.

Applicants: Maine Yankee Atomic Power Company.

Description: Maine Yankee Atomic Power Co. submits filing in compliance with 1999 settlement agreement.

Filed Date: January 20, 2006.

Accession Number: 20060130–0320.

Comment Date: 5 p.m. Eastern Time on Friday, February 10, 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 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. E6–1665 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 1, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER03–956–000.

Applicants: Duke Energy Marketing America, LLC.

Description: Duke Energy Marketing America LLC submits that it reassigned transmission capacity in October 2005 to the Bayside Power LP.

Filed Date: January 26, 2006.

Accession Number: 20060130–0288.

Comment Date: 5 p.m. Eastern Time on Thursday, February 16, 2006.

Docket Numbers: ER05–1371–001.

Applicants: Caledonia Power I, L.L.C.

Description: Cinergy Entities submits revised tariff sheets for Caledonia Power I, L.L.C., in compliance with FERC's November 22, 2005 Order.

Filed Date: January 26, 2006.

Accession Number: 20060130–0293.

Comment Date: 5 p.m. Eastern Time on Thursday, February 16, 2006.

Docket Numbers: ER06–517–000.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp submits its long-term Standard Large Generator Interconnection Procedures and January 19, 2006 filing submitting revised tariff sheets in Attachment B.

Filed Date: January 18, 2006.

Accession Number: 20060124–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–550–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co. submits revisions to their Transmission Owner Tariff, Grid Management Charge Pass-Through Tariff and Scheduling Coordinator Services Tariff for Western Area Power Administration.

Filed Date: January 26, 2006.

Accession Number: 20060130–0169.

Comment Date: 5 p.m. Eastern Time on Thursday, February 16, 2006.

Docket Numbers: ER06–551–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. and Midwest ISO Transmission Owners submits revisions to Schedule 23.

Filed Date: January 26, 2006.

Accession Number: 20060130–0321.

Comment Date: 5 p.m. Eastern Time on Thursday, February 16, 2006.

Docket Numbers: ER06–552–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corp. submits an executed amendment to the Generator Interconnection Agreement with United Materials of Great Falls, Inc.

Filed Date: January 26, 2006.

Accession Number: 20060130–0235.

Comment Date: 5 p.m. Eastern Time on Thursday, February 16, 2006.

Docket Numbers: ER06–554–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric & Power Co. submits its Rate Schedule No. 134, updated revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service.

Filed Date: January 27, 2006.

Accession Number: 20060131–0026.

Comment Date: 5 p.m. Eastern Time on Friday, February 17, 2006.

Docket Numbers: ER06–557–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Co. submits a Power Purchase and Sale Agreement with Phelps Dodge Energy Services, LLC and on January 31, 2006 an executed Certificate of Concurrence.

Filed Date: January 27, 2006.

Accession Number: 20060131–0030.

Comment Date: 5 p.m. Eastern Time on Friday, February 17, 2006.

Docket Numbers: ER06–560–000.

Applicants: Credit Suisse Energy LLC.

Description: Credit Suisse Energy, LLC submits a Notice of Succession as a result of a corporate name change.

Filed Date: January 27, 2006.

Accession Number: 20060131–0033.

Comment Date: 5 p.m. Eastern Time on Friday, February 17, 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 than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1674 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–167]

Snohomish County Public Utility District No. 1 and City of Everett; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

January 30, 2006.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Pre-Application Document; Commencing Licensing Proceeding.

b. *Project No.:* 2157–167.

c. *Dated Filed:* December 1, 2005.

d. *Submitted By:* Snohomish County Public Utility District (PUD) No. 1 and City of Everett (co-licensees).

e. *Name of Project:* Henry M. Jackson Hydroelectric Project.

f. *Location:* The Henry M. Jackson Hydroelectric Project is located on the Sultan River in Snohomish County, Washington. The project occupies lands of the Mt. Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Glen Mixdorf, Relicensing Team Lead, Snohomish County PUD No. 1, 2320 California St, Everett, WA, 98201, (425) 783–8607 or via e-mail at *grmixdorf@snopud.com.*

i. *FERC Contact:* Linda Lehman Stewart (202) 502–6680 or via e-mail at *linda.stewart@ferc.gov.*

j. The Snohomish County PUD No. 1 and City of Everett filed a Pre-Application Document (PAD), including a proposed process plan and schedule, with the Commission pursuant to 18 CFR 5.6 of the Commission's regulations.

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Snohomish County PUD No. 1 and City of Everett as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Henry M. Jackson Hydroelectric Project) and number (P–2157–167), and bear the appropriate descriptive heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any

individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 31, 2006.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

o. At this time, Commission staff intends to prepare an Environmental Assessment (EA) for the project, in accordance with the National Environmental Policy Act (NEPA).

Scoping Meetings

We will hold two scoping meetings at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date and Time: Monday, February 27, 2006, 7 p.m. (p.s.t.).

Location: PUD Electric Building Headquarters, 2320 California Street, Everett, Washington.

Directions: Arriving from Interstate 5, southbound: Take Exit 194, follow City Center signs onto Everett Avenue, westbound (right). Turn left at Virginia Avenue. Turn right at California Street.

Arriving from Interstate 5, northbound: Take Exit 193, turn left onto Pacific Avenue. Turn right at Cedar, and then left onto Hewitt Avenue. Turn right at Virginia Avenue.

For additional information: Please contact Ms. Dawn Presler, Relicensing Information Coordinator, Snohomish County PUD No. 1, (425) 783–1709 or *DJPresler@SNOPUD.com.*

Daytime Scoping Meeting

Date and Time: Tuesday, February 28, 2006, 10 a.m. (p.s.t.).

Location: Washington State Department of Ecology, Headquarters/Southwest Regional Office, 300 Desmond Drive, Lacey, Washington.

Directions: Arriving from Interstate 5, southbound: Take Martin Way Exit 109, turn left onto Martin Way. At the third traffic light turn right onto Desmond Drive. Head uphill and at the intersection turn left and proceed along the front of the Headquarters building. Proceed past a stop sign at the main entrance and find the visitors parking lot on the left.

Arriving from Interstate 5, northbound: Take Martin Way Exit 109, turn right onto Martin Way. At the second traffic light turn right onto Desmond Drive. Head uphill and at the intersection turn left and proceed along the front of the Headquarters building. Proceed past a stop sign at the main entrance and find the visitors parking lot on the left.

Please note that parking is limited and carpools are encouraged. If the visitors parking lots are full, retrace your route to Desmond Drive and take a left at the stop sign onto Desmond Drive. Continue around and park at the U.S. Fish and Wildlife Service building (510 Desmond Drive) and walk across the field to the Washington State Department of Ecology building.

Please check in at the front desk upon arriving at the Washington State Department of Ecology office building.

SD1, which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph m. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

A site visit is typically held in conjunction with the scoping meeting. However, anticipating that access to some project facilities would be limited by winter weather, the co-licensees hosted a project site visit on October 17, 2005. The site visit was noticed by the Commission on September 20, 2005 and attended by Commission staff on October 17, 2005. For these reasons, the Commission will not host its own site visit in conjunction with its NEPA scoping meeting.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any Federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraph m of this document.

Scoping Meeting Procedures

The scoping meetings will be recorded by a stenographer and will become part of the formal Commission record on the project.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1657 Filed 2–7–06; 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, Protests, and Comments

February 1, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12630–000.

c. *Date filed:* December 8, 2005.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Ford Canyon Pumped Storage Project.

f. *Location:* The project would be located in White Tank Mountain Regional Park, in Maricopa County, Arizona. The project will utilize water from the Colorado River System.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank L. Mazzone, Arizona Independent Power, Inc., 957 Fairway Drive, Sonoma, CA 95476, Phone (707) 996–2573.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 1,970-foot-long, 250-foot-high earth and rock filled with impervious core upper reservoir dam, (2) a proposed upper reservoir with surface area of 150 acres, with a storage capacity of 12,500 acre-feet and a normal water surface elevation of 3,040 feet mean sea level, (3) a proposed 2,160-foot-long, 210-foot-high earth and rock filled with impervious core lower reservoir dam, (4) a proposed lower reservoir having a surface area of 140 acres, with a storage capacity of 12,500 acre-feet and a normal water surface elevation of 1,840 feet mean sea level, (5) two proposed 14,070-foot-long, 25-foot-diameter penstocks, (6) a proposed powerhouse containing five generating units having a total installed capacity of 1,250, (7) two proposed 28-foot-diameter tailraces, (8) a proposed 40-mile-long, 500 kilovolt transmission line; and (9) appurtenant facilities. The project would have an annual generation of 1,682 gigawatt hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1668 Filed 2–7–06; 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, Protests, and Comments

February 1, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12631–000.

c. *Date filed:* December 20, 2005.

d. *Applicant:* David R. Croft and Ellen D. McCarthy.

e. *Name of Project:* The Willow Creek and Yuba Fish Flows Project.

f. *Location:* The project would be located on the Yuba River and Willow Creek, in Yuba County, California. The Yuba Fish Flows Development would be additional capacity to the already licensed Bullard Bar Project FERC Project No. 2246 by the Yuba County Water Agency.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kelly Sackheim, Sackheim Consulting, 5096 Cocoa Palm Way, Fair Oaks, CA 95628, Phone (530) 288–1711.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed three developments of the Willow Creek Project would consist of:

The Upper Willow Creek Development:

(1) An existing 150-foot-long, 50-foot-high concrete Debris Dam, (2) an impoundment having a surface area of less than 10 acres with negligible storage and a normal water surface elevation of 2,720 feet mean sea level, (3) a proposed 200-foot-long, 24-inch diameter PVC (schedule 80 green sewer pipe) penstock, (4) a proposed powerhouse containing two generating units having a total combined installed capacity of 540 kilowatts, and a third unit with 50 kilowatt installed capacity, (5) a proposed 0.5-mile-long, 12 kilovolt transmission line; and (6) appurtenant facilities.

The Lower Willow Creek Development:

(1) A proposed 20-foot-long, 4-foot-high concrete and steel diversion weir, (2) a proposed impoundment having a surface area of 0.5 acres with negligible storage and a normal water surface elevation of 2,320 feet mean sea level, (3) a proposed ½-mile-long, 36-inch diameter PVC (schedule 80 green sewer pipe) penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 3,660 kilowatts, and a third unit with 250 kilowatt installed capacity, (5) a proposed 1-mile-long, 12 kilovolt transmission line; and (6) appurtenant facilities.

The Yuba Fish Flows Development:

(1) A proposed diversion-intake established at the project boundary below the Yuba River outlet of the existing Bullards Bar Dam, (2) a proposed 10-foot-long, 10-inch diameter PVC (schedule 80 green sewer pipe) penstock, (3) a proposed powerhouse containing a single generating unit having a total installed capacity of 150 kilowatts, (4) a proposed ¼-mile-long, 12 kilovolt transmission line; and (5) appurtenant facilities.

The average annual generation of the proposed project would be 8 gigawatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as

applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1669 Filed 2–7–06; 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, Protests, and Comments

February 1, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12632–000.

c. *Date filed:* December 20, 2005.

d. *Applicant:* East Texas Electric Cooperative, Inc.

e. *Name of Project:* Lake Livingston Hydroelectric Project.

f. *Location:* On Lake Livingston and the Trinity River, in Polk, San Jacinto, Walker and Trinity, Counties, Texas. Dam is owned by the Trinity River Authority of Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John H. Butts, Manager, East Texas Electric Cooperative, Inc., 2905 Westward Drive, P.O. Box 631623, Nacogdoches, TX 75963, (936) 560–9532, Fax (936) 560–9215.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing Lake Livingston 14,400-foot-long, 45 to 90-foot-high dam owned by the Trinity River Authority of Texas, (2) an existing impoundment with a surface area of approximately 83,000 acres having a storage capacity of 1,750,000 acre-feet and a normal water surface elevation of 131.0 feet mean sea level, (3) a proposed powerhouse containing three turbine/generating units having a total installed capacity of 24-megawatts, (4) a proposed 2-mile-long, 138-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would have an average annual generation of 118 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1670 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–000; CP05–132–000; CP05–395–000; CP06–26–000; CP05–131–000 (Not consolidated)]

Dominion Cove Point LNG, L.P., Dominion Cove Point LNG, L.P., Dominion Cove Point LNG, L.P., Dominion Transmission, Inc.; Notice of Procedural Conference and Order on Late Interventions

February 2, 2006.

The Commission has received a number of pleadings in this proceeding regarding the quality of the natural gas delivered, and proposed to be delivered, to Washington Gas Light Company (WGL), from the liquefied natural gas (LNG) import terminal owned and operated by Dominion Cove Point LNG, LP (Cove Point), and the potential effects of the proposed expansion and modification of Cove Point's LNG import terminal on certain facilities owned by WGL.[1] The Commission staff has determined that discussing with the parties the issues raised in these various pleadings would assist staff in evaluating these matters.

Accordingly, a Procedural Conference will be held at the Commission's offices in Washington, DC, on February 22, 2006, commencing at 10 a.m., in order that the parties and the Commission Staff can discuss the pleadings filed and the procedural options for continued timely processing of Cove Point's requests for expansion and modification of its LNG import terminal.

Participants at the conference should come prepared to discuss the relationship, if any, between Cove Point's proposal to expand and modify its LNG import terminal in the captioned proceedings and the problems on WGL's system which WGL alleges are associated with the quality of natural gas delivered from the Cove Point import terminal. As part of this discussion, participants should be prepared to provide information which shows that the alleged impacts on WGL's ability to provide safe and reliable services to its customers are either substantially related to the introduction of natural gas from Cove Point's LNG import terminal into Cove Point's pipeline and interconnecting pipelines and delivered to WGL, or are substantially related to other factors and that such problems have occurred prior to the introduction of LNG into Cove Point's pipeline and interconnecting pipelines.

The Commission, pursuant to Rule 214(d)(3)(i) of the Commission's Rules of Practice and Procedure, hereby grants the motions to intervene out of time listed in the Appendix to this Notice for the limited purpose of participating in the Procedural Conference. The Commission reserves the right to grant or deny further party status of any late intervenor, as appropriate.

FERC 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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1700 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

[1] A list of pleadings that relate to these gas quality issues is in the Appendix to this Notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1410–000, EL05–148–000, ER06–456–000, EL05–145–000, ER06–309–000, ER06–406–000, EL06–50–000 (not consolidated)]

PJM Interconnection, LLC; PJM Interconnection, LLC; District of Columbia Public Service Commission; PJM Interconnection, LLC; PJM Interconnection, LLC; American Electric Power Service Corporation; Supplemental Notice Regarding RPM Technical Conference

February 2, 2006.

The Commission will hold a technical conference on February 3, 2006, on the matters raised by the Reliability Pricing Model (RPM) filed by PJM Interconnection, LLC (PJM) in Docket Nos. ER05–1410–000 and EL05–148–000 (February 3 RPM conference).[1] The additional docket numbers are added because filings in those proceedings contain issues that may arise in the course of discussions regarding RPM.

These proceedings are not consolidated. Once the February 3, 2006 RPM conference is completed and all documents related to that conference are filed, parties should not combine issues relating to these separate proceedings in a single filing. Parties should file future pleadings relating to PJM's filing in Docket Nos. ER05–1410–000 and EL05–148–000 in those dockets only, and similarly, should file future pleadings related to the proceedings in Docket Nos. ER06–456–000, EL05–145–000, ER06–309–000, ER06–406–000, and EL06–50–000 in those dockets respectively.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1701 Filed 2–7–06; 8:45 am]

BILLING CODE 6717–01–P

[1] See Notice of Commission Technical Conference (December 28, 2005) and Supplemental Notice of Commission Technical Conference (January 19, 2006) in Docket Nos. ER05–1410–000 and EL05–148–000.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0082, FRL–8029–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Valuing Reduced Asthma Episodes for Adults and Children—Research Survey; EPA ICR Number 2216.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 10, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OA–2006–0082, by one of the following methods:

- *http://www.regulations.gov;* Follow the on-line instructions for submitting comments.
- E-mail: *dockins.chris@epa.gov*
- Fax: 202–566–2338
- Mail : Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460
- Hand Deliver: Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2006–0082. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Dr. Chris Dockins, Office of Policy, Economics and Innovation, U.S. EPA, Mail Code 1809T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number 202–566–2286; fax number 202–566–2338; e-mail address: *dockins.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0082, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information (OEI) Docket is 202–566-1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected Entities: Entities potentially affected by this action are individuals

volunteering to participate in focus group discussions.

Title: Valuing Reduced Asthma Episodes for Adults and Children—Focus Groups.

ICR Numbers: EPA ICR No. 2216.01.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Asthma is one of the most common chronic illnesses in the United States, particularly among children. The disease is characterized by recurring episodes of symptoms like cough, shortness of breath, and wheezing. Epidemiological studies suggest that ambient air pollution may contribute to exacerbation of these episodes. Acute asthma episodes are a leading cause of work and school absence and contribute to the economic burden of the disease. The policies and programs of many public and private entities including EPA may affect the frequency and severity of asthma episodes, but economic analysis of these programs is hindered by inadequate information about the economic benefits of reduced asthma episodes. The proposed surveys would gather information to support estimation of willingness to pay (WTP) to avoid acute episodes of asthma exacerbation for adults and children.

The survey research has three main objectives. The first is to estimate WTP to reduce frequency of asthma episodes. The second is to examine how the ''attributes'' of asthma episodes, such as their frequency, severity and symptoms, affect WTP. The third is to provide some evidence on the WTP to reduce the severity of asthma episodes, while holding frequency constant. WTP would be estimated in the context of the severity of the individual's asthma and the activities taken to manage the disease. The resulting estimates will advance research needed to provide researchers and policy analysts with a systematic and credible basis for valuing policies that influence acute asthma episodes.

Through a cooperative agreement from EPA (R–83062801–0), researchers at the University of Central Florida (UCF) have designed and are proposing to conduct a nationwide survey of adult individuals in two parts. One survey would be administered to a sample of adults with physician-diagnosed asthma who have experienced asthma symptoms during the 12 months preceding the survey. This survey focuses on eliciting adults' WTP to reduce the asthma episodes that they experience. The other survey would be administered to a national sample of parents of children with physician-diagnosed asthma who have experienced asthma symptoms during the 12 months preceding the survey. In this case, the focus is on eliciting parents' WTP to reduce the asthma episodes that their children experience.

The purpose of the proposed ICR is to gain approval for these research surveys. A separate is ICR is being proposed for the focus groups needed for survey testing and development. Survey respondents will be selected from a representative national panel of respondents maintained by Knowledge Networks, an online survey company. Subjects will be asked to complete a web-based questionnaire. Participation in the survey is voluntary. The survey is anticipated to be given to a total of 1250 persons, including any pilot versions. A web-based format was chosen because it is the most cost-effective method available to conduct large statistically-based surveys.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA would like to solicit comments in order to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The only burden imposed by the survey on respondents will be the time required to respond to the invitation to take the survey, to read the survey instructions, and respond to the survey questions. The survey developers estimate that this will require an average of 25 minutes per respondent. With a total of 1250 respondents, including pretests, this requires a total of approximately 521 hours. Based on an average hourly rate of $26.05 [1] (including employer costs of all employee benefits), the survey developers expect that the average per-respondent cost for the pilot survey will be $10.86 and the corresponding one-time total cost to all respondents will be approximately $13,568.00. Since this information collection is voluntary and does not involve any special equipment, respondents will not incur any capital or operation and maintenance (O&M) costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the

[1] Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, total compensation, December 2005. (*http://stats.bls.gov/news.release/ecec.t02.htm*)

technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 31, 2006.

Al McGartland,

Director, National Center for Environmental Economics, Office of Policy Economics and Innovation.

[FR Doc. E6–1716 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6672–1]

Notice of Intent To Prepare an Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site (ODMDS) Off Gulfport, MS

AGENCY: U.S. Environmental Protection Agency (EPA), Region 4.

Purpose: The U.S. EPA, Region 4, in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA) and EPA's October 29, 1998 Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy (NEPA) Documents (63 FR 58045), and in cooperation with the U.S. Army Corps of Engineers (Corps), Mobile District, will prepare a Draft EIS on the designation of a new ODMDS off Gulfport, Mississippi. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION CONTACT: Mr. Douglas K. Johnson, U.S. Environmental Protection Agency, Region 4, Coastal Programs section, 61 Forsyth Street, Atlanta, Georgia 30303, phone (404) 562–9386 or Dr. Susan Ivester Rees, U.S. Army Corps of Engineers, Mobile District, Planning & Environmental Division, Coastal Environment, P.O. Box 2288, Mobile, Alabama 36628, phone (251) 694–4141.

SUMMARY: Ongoing needs for ocean disposal of dredged material and the proposed improvements to the Federal Gulfport Harbor navigation channel have resulted in the need for the designation of a new ODMDS off Gulfport, Mississippi. Gulfport Harbor is located in Harrison County, Mississippi, on Mississippi Sound about equidistant (80 miles) from New Orleans, Louisiana, and Mobile, Alabama. There are currently two existing U.S. EPA-designated ODMDSs located east and west of the Federal channel; however, these sites will not provide sufficient capacity to accommodate the anticipated disposal needs of the upcoming improvements at Gulfport Harbor.

Need for Action: The Corps, Mobile District has requested that U.S. EPA designate a new ODMDS off Gulfport, Mississippi for the disposal of dredged material from the Gulfport Harbor area, when ocean disposal of dredged material is the preferred disposal alternative. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives: ''No action'' alternative. The no action alternative is defined as not designating an ocean disposal site. Additional alternatives under consideration include: Nearshore Area Disposal Site; Mid-shelf Area Disposal Site; and a Deepwater Area Disposal Site.

Scoping: Scoping will be accomplished by correspondence with affected Federal, State, and local agencies, and with anticipated interested parties. Appropriate Federal, State, and local entities will be invited to participate as a cooperating agency.

Estimated Date of Release: It is anticipated that the Draft EIS will be made available for public review in spring 2006.

Responsible Official: J.I. Palmer, Jr., Regional Administrator, Region 4.

Dated: February 2, 2006.

Anne Norton Miller,

Director, Office of Federal Activities.

[FR Doc. E6–1727 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0561; FRL–7760–2]

Pesticide Program Dialogue Committee, Workgroup on Pesticide Worker Safety Regulations; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC), Workgroup on Pesticide Worker Safety Regulations will hold a public meeting on February 27, 2006. An agenda for this meeting is being developed and will be posted on EPA's website at *http://www.epa.gov/oppfead1/cb/ppdc/*. The workgroup will provide input and advice on regulatory changes being considered to the Worker Protection Standard (40 CFR part 170) and the Certification of Pesticide Applicators (40 CFR part 171).

DATES: The meeting will be held on Monday, February 27, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at EPA's offices at 1801 S. Bell St. (formerly 1921 Jefferson Davis Hwy.), Crystal Mall #2, Rm. 1110 (the Fishbowl), Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Kathy Davis, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7002; fax number: (703) 308–2962; e-mail address: *davis.kathy@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 persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Worker Protection Standard (WPS) and amendments; and regulation for the Certification of Pesticide Applicators. Other potentially affected entities may include, but are not limited to, agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local, and Tribal governments; academia; public health organizations; food processors; and the public. 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 questions about the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0561. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that

is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., 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/*. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced, Federal-wide electronic docket management and comment system located at*http://www.regulations.gov*. Follow the online instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

The PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995 for a 2–year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 31, 2006

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–1711 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8029–8]

Science Advisory Board (SAB) Staff Office; Notification of Public Teleconferences of the Arsenic Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Arsenic Review Panel to continue discussions of its draft report, *Advisory on EPA's Assessments of Carcinogenic Effects of Organic and Inorganic Arsenic.*

DATES: The dates for the teleconference meetings are February 23, 2006 and February 28, 2006, from 1:30 p.m. to 4 p.m., eastern time on each day.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the teleconference call-in number and access code to participate in the teleconferences may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), by telephone at (202) 343–9982 or e-mail at *miller.tom@epa.gov*. General information about the SAB, as well as any updates concerning the teleconference announced in this notice, may be found on the SAB Web Site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

Human exposure to arsenic compounds may occur through various environmental media by their use as pesticides (*e.g.*, dessicants/defoliants, wood preservatives) or from industrial wastes. EPA regulates environmental exposure to arsenic compounds pursuant to requirements of several laws (*e.g.*, the Safe Drinking Water Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and the Food Quality Protection Act). EPA requested its Science Advisory Board (SAB) to provide advice on scientific issues underlying the Agency's assessments of the carcinogenic potential of arsenic compounds.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Arsenic Review Panel will hold public teleconferences on the dates and times provided above. The purpose of these teleconference meetings is to allow the SAB Panel to continue the discussion of the Panel's draft report, *Advisory on EPA's Assessments of Carcinogenic Effects of Organic and Inorganic Arsenic.* This draft report was previously discussed at the telephone conference meeting held on January 24, 2006 (see 70 FR 76451–76452). Background on this advisory activity has been provided in **Federal Register** notices published on February 23, 2005 (70 FR 8803–8804) and July 26, 2005 (70 FR 43144–43145).

Availability of Meeting Materials

A roster of the Panel members, the teleconference agenda, the charge to the Panel may be found on the SAB Web Site at: *http://www.epa.gov/sab/panels/arsenic_review_panel.htm.* The draft SAB report which is the subject of discussion may be found at: *http://www.epa.gov/sab/pdf/arsenic_12-27-2005_dft_for_jan-24-2006.pdf.*

EPA's *Toxicological Review of Inorganic Arsenic* and related background information on inorganic arsenic may be found at: *http://www.epa.gov/waterscience/sab.* The technical contact for the above information on inorganic arsenic is Dr. Elizabeth Doyle, (202) 566–0056, of the Office of Water. EPA's assessment for organic arsenic, *Science Issue Paper: Cancer Mode of Action of Cacodylic Acid (Dimethylarsinic Acid, DMAV and Recommendations for Dose Response Extrapolation* and other related background information on organic arsenic may be found at: *http://www.epa.gov/oppsrrd1/reregistration/cacodylic_acid.* The technical contact for the above information on organic arsenic is Dr. Anna Lowit, (703) 308–4135, of the Office of Pesticide Programs.

Procedures for Providing Public Input

Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process. Written and oral statements should not repeat information previously submitted to the Panel at its previous meetings.

Written Statements: Written statements should be submitted at least five days prior to the scheduled

conference calls so that the information may be made available to the Panel for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Oral Statements: The SAB Panel had previously received oral statements from interested members of the public on the SAB draft advisory report during the January 24, 2006 telephone conference meeting. Because of time limitations, oral statements will be scheduled only for the February 28, 2006 meeting. In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested individuals or groups should contact the DFO, in writing via e-mail by February 26, 2006, to be placed on the public speaker list for the teleconference.

Meeting Accommodations

For information on access or services for individuals with disabilities, please contact the DFO, contact information provided above. To request accommodation of a disability, please contact the DFO, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process the request.

Dated: February 2, 2006.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E6–1721 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0034; FRL–7759–6]

Lindane and Other Hexachlorocyclohexane (HCH) Isomers Risk Assessment; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment for the organochlorine pesticide lindane, gamma hexachlorocyclohexane (HCH) and the other HCH isomers, and opens a public comment period on these documents. In addition, this notice solicits public comment on risk reduction options for lindane and the other HCH isomers. This action follows up on issues discussed in the July 2002 Lindane RED, in public comments EPA received on that decision document and in the draft North American Regional Action Plan (NARAP) on Lindane and other HCH Isomers.

DATES: Comments must be received on or before April 10, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0034, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *E-mail*: *opp-docket@epa.gov*.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0034. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0034. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8059; fax number: (703) 308–8005; e-mail: *nesci.kimberly@epa.gov*or Mark Howard, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; fax number: (703) 308–8005; e-mail address: *howard.markt@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is making available the risk assessment for lindane and the other HCH isomers. Lindane is an organochlorine pesticide currently used as a seed treatment on six agricultural crops, barley, corn, oats, rye, sorghum, and wheat. The other HCH isomers are byproducts of the manufacture of lindane. These isomers are mobile in the environment, condense in the Arctic, and have the potential to bioaccumulate, biomagnify, and bioconcentrate. HCH isomers have been detected in air, surface water, groundwater, sediment, soil, ice, snowpack, fish, wildlife, and humans.

On July 31, 2002, EPA completed its Reregistration Eligibility Decision (RED) for lindane on the six remaining agricultural uses of lindane, seed treatment on barley, corn, oats, rye, sorghum, and wheat. The RED document states that the six remaining lindane seed treatment uses are eligible for reregistration provided that certain conditions are met, one of which is that the Agency is able to establish all required tolerances for lindane residues on food. In response to the RED, the Agency received comments stating that the other isomers should be considered. In addition, these isomers are considered in the draft North American Regional Action Plan (NARAP) on Lindane and other HCH Isomers. Consistent with the RED comments and the NARAP, the Agency prepared a risk assessment that considers risks resulting from human and environmental exposures to other HCH isomers of environmental significance produced as by-products during the manufacture of lindane.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment on lindane and the other HCH isomers. Such comments and input could address, for example, the assumptions used, availability of additional data to further inform the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. In addition, EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for lindane and the other HCH isomers.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to lindane and the other HCH isomers, compared to the general population.

Comments should be limited to issues raised within the risk assessment and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for lindane. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 31, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–1103 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2006–0061; FRL–8028–6]

Public Water Supply Supervision Program Rules for the State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative approval.

SUMMARY: EPA is proposing to approve the State of Florida's drinking water regulations for the Interim Enhanced Surface Water Treatment, Long Term 1 Enhanced Surface Water Treatment, Radionuclides, Arsenic, and Filter Backwash Recycling Rules, and Administrative Penalty Authority. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

DATES: All interested parties may request a public hearing and/or submit comments on or before March 10, 2006.

ADDRESSES: Submit your requests and/or comments, identified by Docket ID No. EPA–R04–OW–2006–0061, in one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. E-mail: *meyer.larry@epa.gov.*

3. Fax: (404) 562–9439.

4. Mail: EPA–R04–OW–2006–0061, U.S. Environmental Protection Agency, Region 4, Water Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. Hand Delivery or Courier: Larry Meyer, U.S. Environmental Protection Agency, Region 4, Water Management Division, Drinking Water Section, 15th Floor, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OW–2006–0061. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Florida Department of Environmental Protection, Drinking Water Program, 2600 Blair Stone Road, MS 3520, Tallahassee, Florida 32399–2400 or Mr. Larry Meyer, U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Please contact Mr. Meyer at (404) 562–9449 and/or electronic mail address at *meyer.larry@epa.gov* for questions and/or comments regarding this tentative approval.

Authority: Section 1442 of the Safe Drinking Water Act as amended in 1996 and 40 CFR part 142.

Dated: January 26, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–1717 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2006–0057; FRL–8028–7]

Public Water Supply Supervision Program Rules for the State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative approval.

SUMMARY: EPA is proposing to approve the State of Mississippi's drinking water regulations for the Radionuclides, Arsenic, and Filter Backwash Recycling Rules. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends on approving the program revisions.

DATES: All interested parties may request a public hearing and/or submit comments on or before March 10, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OW–2006–0057, in one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. E-mail: *mcmullen.shaun@epa.gov.*

3. Fax: (404) 562–9439.

4. Mail: EPA–R04–OW–2006–0057, U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

5. Hand Delivery or Courier: Shaun McMullen, U.S. Environmental Protection Agency, Region 4, Water Management Division, 15th Floor, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office is open Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OW–2006–0057. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://*

www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 4, Water Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mississippi State Department of Health, Bureau of Water Supply, 2423 North State Street, Jackson, Mississippi 39215 or Mr. McMullen, U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please contact Mr. McMullen at (404) 562–9294 and/or electronic mail address at *mcmullen.shaun@epa.gov* for questions and/or comments regarding this tentative approval for the State of Mississippi's Public Water Supply Supervision Program.

Authority: Section 1442 of the Safe Drinking Water Act as amended in 1996 and 40 CFR part 142.

Dated: January 30, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–1718 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, February 15, 2006, 9 a.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 L Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.

2. Financial Management System Support Services.

3. FY 2006 Proposed Budget Allocations for the State and Local Program, and

4. Spring 2006 Regulatory Agenda.

Closed Session

Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future (Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

This Notice Issued February 6, 2006.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 06–1213 Filed 2–6–06; 1:37 pm]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

January 25, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 10, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.*: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,750.

Estimated Time Per Response: .50–40 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 165,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as an extension (no change in information collection requirements) in order to obtain the full three-year clearance from them. This collection contains 17 different information collection requirements. The Commission sought to further Congress's goal of promoting innovation and investment by all participating in the telecommunications marketplace, in order to stimulate competition for all services, including advanced telecommunications services. In furtherance of this goal, the Commission imposes certain information collection requirements on incumbent local exchange carriers (LECs) in order to ensure compliance with the incumbent LEC's collocation obligations and to assist incumbent LECs in protecting network integrity. All of the information collections will be used by the Commission and by competitive carriers to facilitate the deployment of advanced services and to implement section 251 of the Communications Act of 1934, as amended.

OMB Control No.: 3060–0076.

Title: Common Carrier Annual Employment Report.

Form No.: FCC Form 395.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,100.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement, recordkeeping requirement.

Total Annual Burden: 1,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them. The Commission has revised the FCC Form 395 to conform to OMB's revised standards in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. Additionally, the total annual burden for this information collection has been adjusted to reflect a decrease in the number of respondents since the last OMB renewal period which was three years ago. The current number of respondents is 4,000. With this submission, we are reporting 1,100 respondents; and 1,100 total annual burden hours.

OMB Control No.: 3060–0835.

Title: Ship Inspections.

Form Nos.: FCC Forms 806, 824, 827, and 829.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and State, local or tribal government.

Number of Respondents: 1,210.

Estimated Time Per Response: .084 hours to complete inspection certificate; 4 hours for the ship inspection; and .25 hours to provide a summary in the ship's log.

Frequency of Response: Annual and every five year reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 5,245 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking an extension (no change in reporting requirements) for this information collection in order to obtain the full three-year clearance from OMB.

The FCC seeks to promote efficiency in the Commission's service to the public and to encourage the use of private sector organizations to take over government operations whenever possible. The Communications Act requires the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years. The Safety Convention (which the United States is a signatory) also requires an annual inspection. However, the Safety Convention permits an Administrator to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other parties conduct the radio inspection of vessels for compliance with the Safety Convention. The Commission allows FCC-licensed technicians to conduct these inspections. FCC-licensed technicians certify that the ship passed an inspection and issue a safety certificate. These safety certificates (FCC Forms 806, 824, 827 and 829) indicate that the vessel complies with the Communications Act and the Safety Convention. These technicians are required to provide a summary of the results of the inspection in the ship's log. In addition, the vessel's owner, operator, or ship's master must certify in the ship's log that the inspection was satisfactory. Inspection certificates issued in accordance with the Safety Convention must be posted in a prominent place on the ship.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–970 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

December 27, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be

submitted on or before March 10, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0645.

Title: Section 17.4, Antenna Registration.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 25,600.

Estimated Time per Response: .2–1.2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 40,965 hours.

Total Annual Cost: $3,200,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The requirements contained in Part 17 are necessary to implement a uniform registration process for owners of antenna structures. The following are the information collection requirements subject to OMB review and approval: (1) Antenna structure owners will be required to provide tenant licensees with a copy of the antenna registration; (2) display the registration number on or around the antenna structure; (3) notify of improperly function of antenna structure lights; and (4) recording of improperly function of antenna structure lights. The information will be used by the Commission during investigations related to air safety or radio frequency interference. A registration number will be issued to identify antenna structure owners in order to enforce congressionally mandated provisions related to the owners. The Commission is submitting this information collection to OMB as an extension (no change in requirements) in order to obtain the full three year clearance.

OMB Control No.: 3060–0901.

Title: Reports of Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 20 respondents; 1,200 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion and one-time reporting requirements, and third party disclosure requirement.

Total Annual Burden: 6,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as an extension (no change in requirements) in order to obtain the full three year clearance. The rules applicable to this information collection are contained in Section 43.51(a). This rule requires, in part, that common carriers file copies of all contracts entered into with a communications entity in a foreign point for the provision of a common carriers service between the United States and that foreign point. In a Report and Order and Order on Reconsideration adopted in May 1999, the Commission amended Section 43.51 to exempt from this requirement U.S. carriers that enter into such a contract with a foreign carrier that lacks market power. The Commission also amended Section 43.51 with respect to carriers filing agreements with foreign carriers that have market power on routes for which the Commission eliminated the International Settlements Policy. It amended the rules specifically to permit these carriers to request confidential treatment of and to redact from the public view, the rates, terms and conditions that govern the settlement of international traffic.

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations.

Form No.: FCC 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,432.

Estimated Time per Response: 1–40 hours.

Frequency of Response: On occasion and annual reporting requirements, and third party disclosure requirement.

Total Annual Burden: 42,108 hours.

Total Annual Cost: $608,401,936.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission has revised this information collection in a Third Notice of Proposed Rulemaking, FCC 05–62. In this proceeding, the Commission proposed to combine power level requirements and antenna diameter requirements into one off-axis equivalent isotropically radiated power (EIRP) requirement. (EIRP is the product of the gain of the antenna in a given direction relative to an isotropic antenna and the power supplied to that antenna.) If this proposal is adopted, it would give earth station operators more flexibility in their operations and help expedite its review of some non-routine earth station applications. The Commission invited comments on what revisions would be necessary to its rules to provide protection from interference for earth stations in the event that it adopts an off-axis EIRP requirement for fixed satellite service (FSS) earth stations. Additionally, the Commission invited comment on what specific information should be required from earth station applicants in order to comply with the proposed off-axis EIRP requirement. The following new information collection requirements are proposed in the rulemaking: (1) Earth station applicants will provide a table showing the EIRP of the antenna at various specific off-axis angles; (2) Very Small Aperture Terminal (VSAT) licensees will certify that they will meet any applicable requirements for contention protocols adopted in this proceeding; (3) any party questioning a license applicant's contention protocol certification will provide a technical analysis showing that the applicant's planned contention protocol usage is likely to cause harmful interference to adjacent satellites or terrestrial wireless operations; and (4) a certificate of coordination signed by an authorized representative of the National Radio Astronomy Observatory (NRAO) will be made to the Commission upon request.

If the proposals are adopted by the Commission, it is anticipated that the FCC Form 312 will be revised and/or new applications will be developed to accommodate the off-axis EIRP requirement for earth stations. Furthermore, the modification of the FCC Form 312 and/or creation of new applications would necessitate revisions to the International Bureau Filing System (IBFS) so that applicants can file the new or revised applications electronically with the Commission.

(**Note:** No changes to the Schedule S will be required to accommodate the off-axis EIRP requirement for earth stations.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–1058 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Number 96–45; DA 06–55]

Federal-State Joint Board on Universal Service, National Exchange Carrier Association, Inc. 2006 Modification of Average Schedule Universal Service Formulas

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, each year, the Commission must review and approve or modify any proposed modifications to the formulas used to calculate Part 36 high-cost loop support and local switching support for average schedule companies.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Senior Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on January 12, 2006. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In the Order, each year, the Commission must review and approve or modify any proposed modifications to the formulas used to calculate Part 36 high-cost loop support and local switching support for average schedule companies. Historically, the National Exchange Carrier Association, Inc. (NECA) has filed the annual average schedule company formula modifications for both Part 36 high-cost loop support and local switching support. Pursuant to § 54.301(f) of the Commission's rules, however, the Universal Service Administrative Company (USAC) now submits the proposed formula for local switching support. The Commission's rules require that these formulas simulate the disbursements that would be received by a company that is representative of average schedule companies.

2. On August 30, 2005, NECA filed proposed modifications to the current high-cost loop universal service formula for average schedule companies, requesting that they take effect on January 1, 2006, and remain in effect through December 31, 2006. On September 30, 2005, USAC filed proposed modifications to the current local switching support formula for average schedule companies. On October 20, 2005, the Wireline Competition Bureau (Bureau) issued a public notice soliciting comments on NECA's high-cost support filing. For the reasons discussed below, we approve USAC's modified local switching support formula and, with respect to Part 36 high-cost support, we adopt NECA's cost per loop (CPL) formula. As we have done previously, we direct USAC to provide support to average schedule carriers consistent with this Order retroactive to January 1, 2006.

II. Local Switching Support Formula

3. The local switching support formula is used to determine the amount of support for switching costs that will be provided to average schedule companies from the Commission's universal service high-cost support mechanism. The current interstate local switching support formula was approved on December 30, 2004. In its September 30, 2005, filing, USAC proposes a formula for 2006 that, if approved, would increase annual payments for local switching support from approximately $83.7 million in 2005 to approximately $85.8 million in 2006, an increase of approximately 2.5 percent. We have reviewed USAC's filing and the supporting information in *NECA's 2005 Modification of Average Schedules* and find that the method used to develop this year's proposed formula is the same method that NECA has used to develop the formula we approved during the last payment period. Consistent with the Bureau's prior orders, we approve USAC's proposed 2006 average schedule local switching support formula.

4. USAC's average schedule local switching support filing provided only its proposed 2006 formulas. Supporting documentation for the 2006 local switching support formulas was filed eight months earlier in *NECA's 2005 Modification of Average Schedules.* In average schedule local switching support filings prior to 2005, NECA provided detailed explanations, supporting documentation, and data. Such a consolidated single filing of the formulas, necessary information, and data enables us to conduct a more efficient review of local switching support filings. Thus, beginning with the local switching support filing due in 2006, and for all subsequent filings, we require USAC to provide at least the same level of explanative detail and data that NECA had included previously with its average schedule local switching support formula filings.

III. Discussion

5. Consistent with our reasoning in our *2003 Order, Federal-State Joint Board on Universal Service* in CC Docket No. 96–45, DA 02–3587, released on December 27, 2002; *2004 Order, Federal-State Joint Board on Universal Service* in CC Docket No. 96–45, DA 03–4063, released on December 24, 2003; and *2005 Order, Federal-State Joint Board on Universal Service* in CC Docket No. 96–45, DA 04–4070, released on December 30, 2004, we adopt the CPL formula for purposes of calculating average schedule company expense adjustments for 2006. In previous average schedule formula filings, NECA conceded that the CPL formula better estimates cost per loop, but argued that the Bureau should instead approve NECA's EAPL formula because NECA believes it better estimates the expense adjustments that an average schedule carrier should receive. We again find, however, that we are not required to adopt a formula based on its ability to predict expense adjustments per loop, *i.e.*, ''disbursements,'' compared to a formula's ability to predict costs per loop. The Bureau has consistently held, and the Commission has upheld, that the appropriate high-cost loop support formula should reasonably approximate the cost per loop of the sample average schedule companies and allocate funds accurately to average schedule companies. Because the CPL formula provided by NECA in its filing better estimates the cost per loop of sample average schedule companies than the proposed EAPL formula, based on the current record, the Bureau concludes, as it did in its *2003 Order,* that the CPL formula is a more appropriate means of calculating universal service high-cost loop support for average schedule companies. Because NECA's submission of the results derived from the CPL formula appear to be accurate and complete, we therefore approve the CPL formula results provided in NECA's August 30, 2005 submission.

6. Although today, based on the current record, we approve NECA's CPL formula for 2006, which is essentially the same CPL formula filed since 2002 adjusted for changes in the sample cost data, we are concerned about yearly

increases in high-cost loop support. For the three years beginning with 2004, and ending with the estimate of high-cost loop support for 2006, high-cost loop support provided to average schedule companies has increased by 16.4 percent, 38.7 percent, and 41.6 percent, respectively. NECA states that increases in support are primarily driven by the increases in costs reported by sample average schedule companies. Although support for 2006 is estimated to be going up by over 41%, NECA's filing also shows that the support will be provided to more carriers. We also note that the increase in NECA's high-cost loop support estimate is due, in part, to NECA's implementation of loop count reporting modifications pursuant to a 2004 Commission order. NECA makes marginal reference to this order without specific details of the effect on universal service fund payments resulting from its implementation of the loop count adjustment. For future filings, we find that NECA should clearly disclose and quantify any significant modifications to the development of average schedule universal service formulas in its annual average schedule universal service filings. We require NECA to disclose when a Commission order or rule change causes a change in aggregate universal service support to average schedule companies by more than five percent of the previous year's universal service support. Similarly, we require USAC to disclose when a Commission order or rule change causes a change in aggregate local switching universal service support to average schedule companies by more than five percent of the previous year's support.

IV. Ordering Clauses

7. Pursuant to §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that the average schedule formula proposed by the Universal Service Administrative Company on September 30, 2005, for local switching support IS adopted, effective retroactively as of January 1, 2006.

8. Pursuant to §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that the average schedule cost per loop formula described by the National Exchange Carrier Association on August 30, 2005, for high-cost loop support is adopted, effective retroactively as of January 1, 2006.

9. Pursuant to section 4(i) of the Communications Act of 1934, as Amended, 47 U.S.C. 154(i), §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that this order is effective upon its release.

Federal Communications Commission.

Cathy Carpino,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 06–1062 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 06–30; Report No. AUC–06–66–A (Auction No. 66); DA 06–238]

Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006 Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of Advance Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz (AWS–1) bands. The auction is scheduled to commence on June 29, 2006. This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 66.

DATES: Comments are due on or before February 14, 2006 and reply comments are due on or before February 28, 2006.

ADDRESSES: Comments and reply comments may be submitted using the Commission's electronic comment filing system (ECFS) at *http://www.fcc.gov/cgb/ecfs/*. The Wireless Telecommunications Bureau (Bureau) also requested that a copy of all comments and reply comments be submitted by electronic mail to the following address: *auctions66@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Scott Mackoul at (202) 418–0660. *For general auction questions:* Lisa Stover at (717) 338–2888.

For service rules questions: Peter Corea at (202) 418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 66 Comment Public Notice* released on January 31, 2006. The complete text of the *Auction No. 66 Comment Public Notice*, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 66 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number for example, DA 06–238. The *Auction No. 66 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/66/*.

I. Licenses To Be Offered at Auction

1. The 90 megahertz of spectrum in the AWS–1 bands consists of 1,122 licenses: 36 Regional Economic Area Grouping (REAG) licenses, 352 Economic Area (EA) licenses, and 734 Cellular Market Area (CMA) licenses.

2. License Descriptions. The following table describes the AWS–1 licenses:

Block	Frequency bands (MHz)	Total bandwidth (MHz)	Geographic area type	Number of licenses
A	1710–1720/2110–2120	20	CMA	734
B	1720–1730/2120–2130	20	EA	176
C	1730–1735/2130–2135	10	EA	176
D	1735–1740/2135–2140	10	REAG	12
E	1740–1745/2140–2145	10	REAG	12
F	1745–1755/2145–2155	20	REAG	12

The AWS–1 licenses available at auction are also listed in Attachment A of the *Auction No. 66 Comment Public Notice*.

3. Incumbency Issues/Spectrum Relocation Fund. The lower half of paired frequencies for AWS–1 licenses, *i.e.*, 1710–1755 MHz, is spectrum covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent federal entities. Specifically, the Commercial Spectrum Enhancement Act (CSEA) established a Spectrum Relocation Fund (SRF), to which the cash proceeds attributable to eligible frequencies in an auction of licenses involving such frequencies would be deposited.

4. In addition to requiring that specified auction proceeds be deposited in the SRF, CSEA prohibits the Commission from concluding any auction of eligible frequencies if the total cash proceeds attributable to such spectrum are less than 110 percent of the estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration (NTIA). NTIA has collected estimates of the relocation costs for the eligible frequencies in the AWS–1 bands.

5. In 2005, the Commission opened a proceeding to address CSEA implementation. In the *CSEA/Part 1 Declaratory Ruling*, 70 FR 43372 (July 27, 2005), the Commission determined, among other things, that total cash proceeds for purposes of meeting CSEA's revenue requirement means winning bids net of any applicable bidding credit discounts at the end of bidding. Thus, to determine whether CSEA's revenue requirements regarding eligible frequencies have been met at the end of a CSEA auction, the Commission will have to determine whether winning bids net of any applicable bidding credit discounts at the end of bidding that are attributable to such spectrum equal at least 110 percent of estimated relocation costs. On January 24, 2006, the Commission released the *CSEA/Part 1 Report and Order*, FCC 06–4 (rel. January 24, 2006), addressing CSEA implementation. Among other provisions, the CSEA/Part 1 Report and Order modified the Commission's reserve price rules pursuant to CSEA to ensure that CSEA's revenue requirement will be met.

II. Seeking Comment on Auction Procedures

6. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to the auction of AWS–1 licenses.

A. Proposals for Auction Design

i. Simultaneous Multiple Round Auction(s)—With or Without Package Bidding

7. The Bureau proposes to auction all of the AWS–1 licenses in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license, unless a modified stopping rule is invoked.

8. Although the Bureau proposes to offer all of the AWS–1 licenses in a single auction using its standard SMR format, in the alternative, the Bureau seeks comment on the feasibility and desirability of allocating the AWS–1 licenses among two auctions, run concurrently, with one of the auctions using the standard SMR format and the other using the FCC's package bidding format (SMR–PB). The Bureau recommends that the two auctions be run concurrently, rather than sequentially, in order to permit bidders interested in winning licenses in both auctions to coordinate their bidding across auctions, and in order to facilitate the application of the aggregate reserve price.

9. Under the SMR–PB format, bidders can place bids on groups of licenses they wish to win in combination, with the result that they win either all of the licenses in a group or none of them, in contrast to the license-by-license bidding in the FCC's SMR format. In the SMR–PB auction format, each bidder can have at most a single winning bid, so that in order to win any particular license combination, the bidder must have placed a package bid on that license or specific group of licenses.

10. This option could allow bidders to better express the value of any synergies (*i.e.*, benefits from combining complementary items) that may exist among licenses, and to avoid the risk of winning only part of a desired aggregation.

11. At the same time the Bureau notes that package bidding under the SMR–PB format may be more complex for bidders if they wish to aggregate any or all of a number of licenses because they cannot win a group of licenses unless they have explicitly placed a bid on that exact combination. In an SMR–PB auction, bidders may need to place a large number of bids in order to completely express their interests. If they do not place the bids, the system may not be able to find a consistent set of smaller bids that collectively exceeds the amount of a large package bid, thereby potentially making it more difficult for bidders interested in small groups or single licenses to compete against bidders interested in large aggregations.

12. The Bureau believes that offering all licenses in a single standard SMR auction will provide bidders with the simplest and most flexible means of obtaining single AWS–1 licenses or aggregations of AWS–1 licenses. A single auction will apply a single set of familiar rules to all bidders, bids and licenses. Bidders interested in licenses in several blocks will not have to try to manage their bidding activity and eligibility across two auctions, as they might if the different blocks were offered in two different auctions.

13. Furthermore, the Bureau believes that an SMR auction format, together with a bandplan which offers bidders the option to bid on several blocks of large regional licenses, will provide bidders with the opportunity to create efficient aggregations of licenses without creating the difficulties that a package bidding format may introduce for bidders trying to win single licenses or smaller groups of licenses. The Bureau, therefore, proposes to offer the 1,122 AWS–1 licenses in one SMR auction without package bidding.

14. If commenters feel that it would be feasible and desirable to offer some of the licenses in the AWS–1 inventory in a concurrent but separate auction using the SMR–PB format, the Bureau seeks comment on which blocks of licenses should be included in the package bidding auction.

ii. Information Available to Bidders Before and During an Auction

15. Economic theory and recent analysis suggest that the competitiveness and economic efficiency of an SMR auction may in some circumstances be enhanced if certain information about bids and bidder identities is not revealed publicly prior to and during the auction. Recognizing that there are benefits as well as potential harms from publicly revealing all information during the auction process, the Commission, in the past, reserved the option to limit the availability of information on an auction-by-auction basis, and retained discretion in the Bureau, under its existing delegated authority, to limit the information disclosed to bidders. With certain exceptions, the Bureau has generally opted to make bidders' license selections public at the conclusion of the application process, as well as to release the identities of all bidders and their bid amounts at the conclusion of each round during the auction.

16. The particular circumstances of the AWS–1 auction, however, suggest that the Commission's statutory mandates under section 309(j)(3) of the Communications Act would better be served by withholding, until after the auction closes, the public release of (1) information on bidder interests, normally made available prior to the start of the auction, and (2) the identities of bidders placing bids and the amounts of non-winning bids, normally released after each bidding round. In the years since the Commission's SMR auction design was first developed, economists have observed, as a potential drawback to disclosing information, that bidders could use the information revealed over the multiple rounds to signal each other and implement a division of the licenses at lower than market prices, and in some cases, to retaliate against competing bidders. In particular, the potential for such anti-competitive bidding behavior is greater when an auction offers multiple, substitutable blocks of licenses for sale and when the number of bidders is expected to be relatively low compared to the number of licenses offered. Given that the AWS–1 auction is likely to meet these criteria—i.e., there are multiple spectrum blocks offered with over 1100 licenses and perceived license values may limit the number of potential bidders—the Bureau believes that the potential harm from coordinated behavior that is facilitated by full information on bidders' interests and bidding behavior is likely to outweigh the benefits.

17. Moreover, the Bureau also believes that the potential benefits from fully revealing bid and bidder information are less likely to be important in the AWS–1 auction than they have been in other FCC auctions, particularly in early auctions. The Commission previously identified certain benefits to disclosing bidder identities and other information during an auction, including: Bidders may bid more confidently if they know the bids of their potential competitors; information on the identities of likely other licensees may provide useful technical information, such as the degree of possible signal interference or the potential for negotiating roaming agreements; and full transparency during an auction promotes confidence in the Commission's auction process.

18. The Bureau believes these benefits may be less significant in an auction of AWS–1 licenses. With respect to the argument that bidders will have more confidence in their bids if they know against whom they are bidding, the Bureau notes that the evolving market for wireless services and a record of spectrum license sales gives bidders far more information about how they should value spectrum licenses than bidders in early spectrum auctions had. Furthermore, the Bureau notes that even under the proposal to limit bid information, the number of bids placed on a license in a round will continue to be publicly available as well as the amount of the provisionally winning bid. With respect to the benefit of knowing bidders' identities to account for technical information, the Bureau expects that the flexible and sophisticated technologies employed by successful bidders for the AWS–1 spectrum licenses will make any technical information conveyed through bidder identities of limited value relative to its value in certain other services or at an earlier stage in the development of the wireless industry. Finally, confidence in the Commission's auctions has been established over the course of many auctions, and is likely to be enhanced further by a procedure that reduces the potential for anti-competitive bidding behavior.

19. Based on the increased likelihood that fully revealing bid and bidder information may lead to anti-competitive bidding behavior under the particular circumstances of the AWS–1 auction and the belief that any potential benefits to the auction process from fully revealing such information are unlikely to be significant, the Bureau believes that the competitive bidding for AWS–1 licenses would be enhanced by not releasing certain information about bids and bidders until after bidding in the auction closes. In particular, in contrast to its general practice, the Bureau proposed not to reveal until the close of the auction: (1) Bidders' license selections on their short form applications and the amount of their upfront payments; (2) the amounts of non-provisionally winning bids and the identities of bidders placing those bids; and (3) the identities of bidders making provisionally winning bids. Thus, during the auction, the only information about bids that the Bureau proposes to reveal to the public is the gross, not the net, amount of any provisionally winning bids. However, as in past auctions, after each round each bidder individually may access reports regarding whether their own bids are provisionally winning bids. This proposed approach will strike a balance between withholding information that is likely to foster anticompetitive behavior, and making essential information available to bidders so that the multiple round structure of the auction enables efficient outcomes to emerge.

20. In the event that the Bureau decides to allocate the AWS–1 licenses between two auctions, one with package bidding, the Bureau proposes to limit information only in the SMR auction without package bidding. The Bureau proposes to disclose full information about bids and bidders in an SMR–PB auction because, among other things, the Bureau have not yet analyzed the role of revealing information in an SMR–PB auction and both the Commission and bidders have only limited experience with this type of auction. The Bureau seeks comment on this approach.

B. Auction Structure

i. Round Structure

21. The Commission will conduct the AWS–1 auction(s) over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

22. The auction(s) will consist of sequential bidding rounds. The initial bidding schedule(s) will be announced in a public notice to be released at least one week before the start of the auction.

23. The Bureau retains the discretion to change the bidding schedule(s) in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the

amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors.

24. In the event that two auctions are run concurrently, the Bureau will make an effort to structure the timing of the rounds so as to facilitate the participation of bidders potentially interested in winning licenses in both auctions. The Bureau seeks comment on this approach.

ii. Stopping Rule

25. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. The Bureau proposes two different stopping rules for the auction of AWS–1 licenses, the first in the event there is a single auction of AWS–1 licenses, and the second in the event there are two concurrent auctions of AWS–1 licenses.

26. *Single Auction*—For a single auction of AWS–1 licenses, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or submits a withdrawal. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

27. Further, the Bureau proposes to retain the discretion to exercise any of the following options during a single AWS–1 auction: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) keep the auction open even if no bidder submits any new bids, applies a waiver, or submits a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver; (c) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

28. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

29. *Two Auctions*—In the event that the Commission holds two concurrent auctions of AWS–1 licenses, the Bureau proposes that all licenses in both auctions will remain available for bidding until bidding closes simultaneously on all licenses in both auctions. Accordingly, even though there may be a round in one auction in which no bidder submits any new bids, applies a proactive waiver or submits a withdrawal, that auction will remain open so long as there are new bids, proactive waivers applied, or withdrawals submitted in the other concurrent AWS–1 auction.

30. This proposal reflects two connections between two concurrent AWS–1 auctions. First, concurrent auctions offering AWS–1 licenses will be offering licenses that may be used together. Individual applicants may seek combinations of licenses offered in separate concurrent auctions. If one auction of AWS–1 licenses stops while another continues, bids in the first will become final before bids in the second. In contrast, if the bidding remains open in both auctions, bidders may better be able to achieve their desired aggregations, which may facilitate the assignment of licenses to the parties that value them most highly.

31. Second, two auctions offering AWS–1 licenses will be subject to an aggregate reserve price, as fully described below. Congress provided in CSEA that an auction for licenses authorizing use of eligible frequencies, which includes frequencies from 1710–1755 MHz, may conclude only if the total cash proceeds attributable to such spectrum are at least 110 percent of the total estimated relocation costs of federal entities previously assigned to the spectrum. The Commission has determined that total cash proceeds in an auction for purposes of the CSEA shall be measured by the winning bids net of applicable discounts at the end of bidding. If an aggregate reserve price applies to both auctions and one auction stops first, applicants in the first auction would be unable to raise their bids to meet the reserve price in the event that bidding in the second auction did not satisfy the reserve price. Of course, if the reserve price is satisfied by the first auction in which bidding stops, it will not be necessary to hold that auction open to assure that the reserve price is met.

32. The Bureau seeks comment on its proposal. Comments regarding the appropriate stopping rule for two concurrent auctions should specify whether the comments apply regardless of how AWS–1 licenses are divided between the auctions.

33. The Bureau also seeks comment on an alternative stopping rule for two concurrent auctions. In this alternative, if the first auction to have a round with no new bids, proactive waivers or withdrawals satisfies the reserve price by itself, bidding will close simultaneously on all licenses in that auction, even though bidding will continue in the second auction.

34. Finally, the Bureau proposes to retain the discretion to exercise any of the following options during two concurrent AWS–1 auctions: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auctions for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license or package of licenses for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auctions open under this modified stopping rule; (b) keep the auctions open even if no bidder submits any new bids, applies a waiver, or makes a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver; (c) declare that the auctions will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auctions will close.

35. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auctions are proceeding very slowly, there is minimal overall bidding

activity, or it appears likely that the auctions will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

iii. Information Relating to Auction Delay, Suspension, or Cancellation

36. For the AWS–1 auction(s), the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction(s) in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction(s) starting from the beginning of the current round(s), resume the auction(s) starting from some previous round(s), or cancel the auction(s) in their entirety. Network interruption may cause the Bureau to delay or suspend the auction(s). The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

C. Bidding Procedure Considerations

37. In the sections that follow, there are considerations that apply regardless of auction format and others that are specific to either the SMR or the SMR–PB format. Similarly, there are considerations that differ based on whether a single auction of all the AWS–1 licenses is held, or whether the Bureau conduct two concurrent auctions. In each section, the Bureau first discusses the procedures that apply generally and then the Bureau discusses format-specific (SMR or SMR–PB), or auction number-specific, procedures separately. The Bureau seeks comment on the options set forth below.

i. Upfront Payments and Bidding Eligibility

38. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area and the value of similar spectrum. A bidder's upfront payment is a refundable deposit to establish eligibility to bid on licenses. Upfront payments related to licenses for the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for AWS–1 auction(s), the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula: $0.05 * MHz * License Area Population.

39. Consistent with the Bureau's usual practice, the Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 66 Comment Public Notice,* on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder's upfront payment is not attributed to specific licenses. If there are two concurrent auctions and bidders wish to participate in both, they must submit separate upfront payments.

40. The proposed upfront payment and number of bidding units for each AWS–1 license are set forth in Attachment A of the Auction No. 66 Comment Public Notice.

41. SMR—A bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

42. SMR–PB—With package bidding, bidders can submit bids on groups of one or more licenses, but each bidder can have at most one provisionally winning bid. The number of bidding units associated with each bid in an SMR–PB auction is the sum of the bidding units assigned to the individual licenses comprising the package. As in an SMR auction, a bidder's eligibility limits the total number of bidding units that a bidder can win. However, because any licenses that a bidder wins in a package bidding auction must be packaged together in a single bid, the bidder's eligibility limits the total number of bidding units that can be included in the bidder's largest (in terms of bidding units) single bid. Therefore, to calculate its upfront payment amount and initial bidding eligibility, an applicant must determine the largest number of bidding units associated with licenses it may wish to include in a single package bid, and submit an upfront payment amount covering that total number of bidding units. Bidders should note that the eligibility rules will permit them to place multiple package bids, as long as the number of bidding units associated with any one bid does not exceed their current eligibility.

ii. Activity Rule

43. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating.

44. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the required activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

45. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage of increase in revenue.

46. In the event there are two concurrent auctions for the AWS–1 licenses, bidders will be required to manage their eligibility and activity separately for each auction.

47. Commenters that believe these activity rules should be modified should

explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

48. SMR—A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids.

49. For an SMR auction for AWS–1 licenses, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

50. SMR–PB—A bidder's activity in a round will be the number of bidding units associated with the bidder's largest (in terms of bidding units) active bid. Active bids include current provisionally winning bids, new bids and any bids from previous rounds which are at or above the current minimum acceptable bid.

51. For an SMR–PB auction, the Bureau proposes the following activity requirements, while noting again that it retains the discretion to change stages unilaterally by announcement during the auction:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 60 percent (three-fifths) of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-thirds (5/3).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by ten-ninths (10/9). The Bureau maintains the discretion not to transition to Stage Two if the Bureau believes the auction is progressing satisfactorily under the Stage One activity requirement, and in the alternative, to transition to Stage Two with an activity requirement that is lower than the 90 percent proposed herein, by announcement during the auction.

iii. Activity Rule Waivers

53. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

54. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

55. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

56. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

57. The Bureau proposes that each bidder in the AWS–1 auction(s) be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. Waivers apply to a specific auction.

iv. Reserve Price or Minimum Opening Bid

58. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

a. Reserve Price

59. In CSEA, Congress requires the Commission to prescribe methods by which the total cash proceeds from any auction of licenses authorizing use of eligible frequencies, such as 1710–1755 MHz, shall equal at least 110 percent of the total estimated relocation costs provided to the Commission pursuant to

CSEA. For purposes of determining whether a CSEA revenue requirement has been met, the Commission has determined that total cash proceeds means winning bids net of any applicable bidding credit discounts at the end of bidding.

60. CSEA also requires that the total cash proceeds attributable to eligible spectrum must be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction. If this condition is not met, CSEA requires that the Commission shall cancel the auction. One-half of the frequencies covered by the AWS–1 licenses authorize use of CSEA eligible spectrum. Accordingly, the Bureau proposes that one-half of each winning bid net of any applicable bidding credit discounts at the end of bidding will be counted toward meeting the reserve price. In light of the proposed procedures on information available to bidders, the Bureau also seeks comment on whether the Commission should announce before the close of bidding whether the reserve price has been met.

61. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission of the estimated relocation costs and timelines for relocation of eligible Federal entities assigned to frequencies from 1710 to 1755 MHz. NTIA reported that the total estimated relocation costs equal $935,940,312. This information can be found at *http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm.*

62. Single Auction—The Bureau proposes to establish an aggregate reserve price of $1,029,534,343.20 for all AWS–1 licenses. This aggregate reserve price, $1,029,534,343.20, is 110 percent of total estimated relocation costs of $935,940,312 and therefore the minimum reserve price required by CSEA. This reserve price will be met if half of the total winning bids for AWS–1 licenses net of any applicable bidding credit discounts at the end of bidding equals $1,029,534,343.20.

63. Two Auctions—In the event that the Commission conducts two auctions of AWS–1 licenses, the aggregate reserve price will apply jointly to both auctions. In other words, half of the total winning bids for all AWS–1 licenses net of any applicable bidding credit discounts at the end of bidding must equal at least $1,029,534,343.20 to meet the reserve price. If the reserve price is not met, the Commission will cancel both auctions pursuant to CSEA.

b. Minimum Opening Bid

64. In contrast to a reserve price, a minimum opening bid amount is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. The auctioneer, however, often has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

65. In light of section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for the AWS–1 auction(s). The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

66. Specifically, for the AWS–1 auction(s), the Commission proposes the following license-by-license formula for calculating minimum opening bids: $0.05 * MHz * License Area Population.

67. The specific proposed minimum opening bid for each AWS–1 license available at auction is set forth in Attachment A of the *Auction No. 66 Comment Public Notice.*

68. If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the AWS–1 licenses. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amounts.

v. Bid Amounts

69. The Bureau proposes that, in each round, eligible bidders be able to place bids in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license (or package). The first of the nine acceptable bid amounts, called the minimum acceptable bid amount, is calculated using a formula that takes into account the amount of bidding activity on the license (or package). The eight additional bid amounts are determined by adding successively higher multiples of a fixed bid increment amount to the minimum acceptable bid.

70. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, and the bid increment percentage if it determines that circumstances so dictate. If it does make any of these changes, the Bureau will do so by announcement in the FCC Auction System during the auction.

71. SMR—The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus an additional amount calculated using the formula described below. The Bureau will round the result using its standard rounding procedures.

72. The Bureau proposes to calculate minimum acceptable bid amounts by using an activity-based formula, as it has done in several other auctions. The formula calculates minimum acceptable bid amounts by first calculating a percentage increment. The percentage increment for each license is a function of bidding activity on that license in prior rounds; therefore, a license that has received many bids will have a higher percentage increment than a license that has received few bids.

73. The calculation of the percentage increment used to determine the minimum acceptable bid amounts for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of bidders that submit bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license. Equations and examples are

shown in Attachment C of the *Auction No. 66 Comment Public Notice.*

74. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

75. The acceptable bid amounts in addition to the minimum acceptable bid amount for each license are calculated using a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—e.g., if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc.

76. SMR–PB—Because bids are submitted on groups of licenses in SMR–PB, there generally are not provisionally winning bid amounts associated with individual licenses, as there are in an SMR auction where bids are submitted on a license-by-license basis. Consequently, in order to determine license-specific acceptable bid amounts for the next round, after each round the auction system will assign a price to each license using an algorithm that takes into account the bids placed so far in the auction that include that license. These prices, or current price estimates (CPEs), form the basis for calculating minimum acceptable bids and the additional increment bid amounts, much as the per-license provisionally winning bids do in the SMR format. The algorithm for computing CPEs is described in detail in Attachment B of the *Auction No. 66 Comment Public Notice.*

77. Once CPEs are determined following a round, the minimum acceptable bids for each license will be calculated as the CPE plus a percentage of the CPE. This percentage (known as the percentage increment) is determined according to a formula based on the number of bids placed that included a given license. The percentage increment will be higher for licenses that have been included in many bids than for licenses receiving little bidding activity.

78. As in an SMR auction, the computation of the percentage increment for each license is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of bidders that submit bids on packages that include the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license. Equations and examples are shown in Attachment C of the *Auction No. 66 Comment Public Notice.*

79. The percentage increment is added to the CPE in order to determine minimum acceptable bids for each license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the license(s) comprising the package. Once the minimum acceptable bids have been calculated for a package, the additional eight bid amounts will be calculated by adding successively higher multiples of a fixed bid increment amount to the minimum acceptable bid.

vi. Provisionally Winning Bids

80. SMR—At the end of a bidding round, a provisionally winning bid amount for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

81. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

82. SMR–PB—At the end of each bidding round in an SMR–PB auction, the FCC Auction System will determine the set of provisionally winning bids by considering all of the bids that have been placed in the auction and determining which combination of non-overlapping bids yields the highest aggregate gross bid amount while not allowing a bidder to have more than one provisionally winning bid.

83. If more than one set of bids generates the same highest aggregate gross bid amount (i.e., the sets of bids are tied), the Bureau will randomly select a provisionally winning set of bids from among the tied sets. Specifically, each license in each bid will be assigned a random number. The sum of random numbers for the licenses comprising the bid will determine a selection number for each bid. The provisionally winning set of bids will be that set of bids that generates the highest aggregate gross bid amount and that maximizes the sum of selection numbers for the bids in the set. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end, the winning bidders would be those that placed the provisionally winning bids.

84. In the SMR–PB format, all bids placed in the auction will be considered when determining the provisionally winning set of bids. This contrasts with the SMR format in which only provisionally winning bids from the previous round and bids placed during the current round are considered when determining new provisionally winning bids. As a consequence, in SMR–PB a bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. This may occur even if the bidder no longer has the bidding eligibility to cover the newly-provisionally winning bid. Bids cannot be withdrawn in an SMR–PB auction.

85. The rule that a bidder can hold only one of the bids in the provisionally winning set of bids may increase the likelihood that bids placed in previous rounds may appear in the provisionally

winning set for the first time many rounds later. Bids at very competitive prices may have been excluded from the provisionally winning set because the bidder placed another bid which, in combination with the bids of others, yielded a higher aggregate gross bid amount. However, if a bid placed by another bidder displaces the bidder's provisionally winning bid from the set of provisionally winning bids, an old bid by that bidder may fit better into the new set of winning bids.

86. The set of provisionally winning bids is determined after every round in which new bids are submitted.

vii. Bid Removal and Bid Withdrawal

87. SMR—Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

88. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

89. In the *Part 1 Third Report and Order*, 65 FR 13540 (May 21, 1997), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

90. Applying this reasoning, the Bureau proposes to limit each bidder in an auction using the SMR format to withdrawing provisionally winning bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

91. SMR–PB—As in the SMR format, before the close of a round a bidder has the option of removing any bid placed in that round, effectively unsubmitting any bid placed in the round. Once a round closes, a bidder may no longer remove a bid. However, in contrast to SMR, bidders will not be permitted to withdraw any bids after a round has closed.

92. As discussed above, the *Part 1 Third Report and Order* permits withdrawals in the SMR format in part to allow bidders to avoid being the winning bidder on some, but not all, of a desired set of licenses. In contrast to the license-by-license bidding of SMR, the SMR–PB format does not expose bidders to the risk of winning incomplete aggregations. In SMR–PB, bidders can only win licenses that were submitted as part of a single package bid and therefore, withdrawals are not needed to avoid winning an incomplete set of licenses.

93. Bids in an SMR–PB auction are much more interdependent than in an SMR auction. In an SMR auction, whether a bid on a license becomes provisionally winning depends only upon whether it is the highest bid submitted for the license and, in the case of ties, on its random number assignment. In contrast, in the SMR–PB format, whether a bid becomes part of the provisionally winning set depends in part upon the particular configuration of package bids submitted by other bidders and upon the identities of the bidders submitting them, because a given bidder can only have one bid in the provisionally winning set. Consequently, a withdrawn bid in an SMR–PB auction may significantly change the current set of provisionally winning bids and seriously disrupt the bidding strategies of other bidders.

94. Hence, because the potential benefits to bidders from being able to withdraw bids are much lower in an SMR–PB auction than in an SMR auction and because the potential harms to other bidders from withdrawn bids are potentially much greater, no withdrawals will be permitted in an auction using the SMR–PB format.

D. Considerations Relating to Certain Post-Auction Payment Rules

i. Apportioning Package Bids

95. In the event that it offers AWS–1 licenses in an auction using SMR–PB, the Bureau seeks comment on the appropriate mechanism for apportioning package bids among the individual licenses comprising the package. In package bidding, when bidders place winning all-or-nothing bids on groups of licenses, there will be no identifiable bid amounts on the individual licenses that comprise packages of more than one license. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known.

96. In the event that it offers AWS–1 licenses in an auction using SMR–PB, the Bureau proposes to use final current price estimates as a mechanism for apportioning package bids among the individual licenses comprising the package when regulatory calculations require a bid amount on an individual license. As summarized below and described in detail in Attachment B of the *Auction No. 66 Comment Public Notice*, current price estimates (CPEs) for each license in an SMR–PB auction reflect the demand expressed by bids in the auction that include the license. CPEs are calculated in each round of the auction using an algorithm that takes into account all the bids placed in the auction that include that license, whether the bids are for the individual license or include the license in a package with other licenses. The algorithm assures that the sum of CPEs for individual licenses in a package that is part of the provisionally winning set equals the provisionally winning bid amount for the package. Thus, CPEs in effect apportion the provisionally winning bid amount for a package in the provisionally winning set among the individual licenses in the package based on the relative demand for each license as expressed by bids in the auction. Final CPEs, or final price estimates (FPEs), are the CPEs from the final round of the auction. Accordingly, FPEs reflect all bids made in the auction and can be used to apportion a winning bid on a package. The Bureau seeks comment on this proposal.

ii. Establishing the Interim Withdrawal Payment Percentage

97. The Bureau seeks comment on the appropriate percentage of a withdrawn

bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). However, if a license for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent (3%) and twenty percent (20%).

98. When it adopted the new rule, the Commission indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate licenses offered, such as when few licenses are offered that are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining licenses.

99. With respect to an auction of AWS–1 licenses, the service rules permit a wide range of advanced services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. In addition, an auction of AWS–1 licenses will make available multiple licenses on adjacent frequencies in geographic areas of varying sizes. Given the availability of so many different licenses and the Bureau's interest in deterring strategic withdrawals, the Bureau proposes a percentage above the 3 percent (3%) previously provided by the Commission's rules. Specifically, taking into account the factors discussed above, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at ten percent (10%) for the AWS–1 auction. The Bureau seeks comment on this proposal.

iii. Establishing the Additional Default Payment Percentage

100. The Bureau seeks comment on the appropriate percentage of an applicable bid that should be assessed as an additional default payment in an auction under the SMR format. If, after the close of an auction, a winning bidder defaults on a down payment or final payment obligation or is disqualified, the bidder is liable for a default payment. This payment consists of a deficiency portion, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Under both prior and recently adopted Commission rules, in an auction under the SMR–PB format, the additional default payment will be twenty-five percent (25%) of the defaulted bid. However, the Commission's recently adopted new rule provides that in auctions under the SMR format, the Commission shall establish in the advance of the auction the percentage of the applicable bid to be assessed as an additional payment between three percent (3%) and twenty percent (20%).

101. When it adopted the new rule, the Commission indicated that the level of the additional default payment in a particular SMR auction will be based on the nature of the service and the inventory of the licenses being offered. In this regard, the Bureau believes that it is significant that the auction of AWS–1 licenses will be the first opportunity for bidders to obtain licenses to provide advanced wireless services. This context heightens the public interest in avoiding any delay in providing access to the spectrum that might result from defaults on winning bids. Furthermore, the public interest in rapid deployment of new advanced wireless services might be adversely affected by defaults.

102. Given its interest in deterring defaults, the Bureau proposes a percentage above the 3 percent (3%) minimum previously provided by the Commission's rules. The Bureau proposes to set the additional default payment for the auction of AWS–1 licenses at ten percent (10%) of the applicable bid. The Bureau seeks comment on this proposal.

III. Conclusion

103. Comments are due on or before February 14, 2006, and reply comments are due on or before February 28, 2006. All filings related to the auction(s) of AWS–1 licenses should refer to AU Docket No. 06–30. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau encourages interested parties to file electronically.

104. Electronic Filers: Parties who choose to file electronically through ECFS need submit only one copy. Comments may be filed electronically using the Internet by accessing the ECFS at *http://www.fcc.gov/cgb/ecfs/*. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

105. Paper Filers: 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. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

106. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions Spectrum and Access Division.

[FR Doc. 06–1196 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Friday, February 10, 2006

February 3, 2006.

The Federal Communications Commission will hold an Open Meeting on Friday, February 10, 2006, which is scheduled to commence at 11 a.m. CST. For the convenience of those appearing before the Commission, the Commission will hold its meeting in Keller, Texas at: The Keller Pointe Community Center, 405 Rufe Snowe Drive, Keller, TX 76248.

At this meeting, the Commission will consider one item. The Commission also will hear presentations on video competition from a panel of industry, governmental and public parties.

Item No.	Bureau	Subject
1	Media Bureau	Title: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming Summary: The Commission will consider a Twelfth Annual Report to Congress on the status of competition in the market for the delivery of video programming.

Open captioning will be provided for this event. 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 coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio*.

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.

William F. Caton,

Deputy Secretary.

[FR Doc. 06–1208 Filed 2–6–06; 12:29 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2754]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 24, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by February 23, 2006. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cambridge, Newark, St. Michaels, and Stockton, Maryland and Chincoteague, Virginia) (MM Docket No. 04–20).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–971 Filed 2–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011453–006.

Title: Southern Africa/Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; Mediterranean Shipping Co., S.A.; and Safmarine Container Lines N.V.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment revises the number of ships to be deployed under the agreement, adds language regarding the responsibility for the running costs of certain ships, and updates Maersk's trade name.

Agreement No.: 011733–016.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; Hamburg-Süd; Mediterranean Shipping Company S.A.; CMA CGM S.A.; Hapag Lloyd Container Linie GmbH; and United Arab Shipping Company (SAG) as shareholder parties; and Alianca Navegacao e Logistica Ltda.; Safmarine Container Lines N.V.; Nippon Yusen Kaisha; CP Ships (UK) Limited; Tasman Orient Line C.V.; Mitsui O.S.K. lines Ltd.; CP Ships (USA) LLC; Kawasaki Kisen Kaisha Ltd.; FESCO Ocean Management Ltd.; and Senator Lines GmbH as non-shareholder parties.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment adds Compania Süd Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Norasia Container Lines Limited as non-shareholder parties to the agreement.

Agreement No.: 011936.

Title: CMA–CGM/CSCL Cross Space Charter, Sailing and Cooperative Working Agreement—North Europe/USEC Loop.

Parties: CMA–CGM, S.A., and China Shipping Container Lines Co., Ltd./China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Brett M. Esber, Esq.; Blank Rome LLP; Watergate; 600 New Hampshire Ave., NW., Washington, DC 20037.

Synopsis: The agreement authorizes CMA–CGM and CSCL to share vessel space in a weekly liner service between ports on the U.S. East Coast and ports in Northern Europe and to engage in related cooperative activities.

Agreement No.: 011937.

Title: MSC/CKY Space Charter Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Co. S.A.; and YangMing (UK) Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The agreement authorizes MSC to charter space to COSCO, K-Line, and YangMing on its service between the U.S. South Atlantic and Gulf Coasts and North Europe.

Agreement No.: 011938.

Title: HSDG/Alianca/CSAV/Libra/Montemar Cooperative Working Agreement.

Parties: Hamburg-Süd.; Alianca Navegacao e Logistica Ltda. e CIA (''Alianza''); Compania Süd Americana de Vapores, S.A. (''CSAV''); Companhia Libra de Navegacao (''Libra''); and Montemar Maritima S.A. (''Montemar'')

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The agreement authorizes HSDG and Alianca to take space on CSAV's service and CSAV, Libra, and Montemar to take space on HSDG's service in the trade between the U.S. East Coast and the East Coast of South America. It also authorizes them to engage in a limited range of cooperative activities in connection with the exchange of space.

Agreement No.: 011939.

Title: COSCON/Agreement 011745 Transpacific All Water Vessel Sharing Agreement (Cue Service).

Parties: COSCO Container Lines Company Ltd.; Evergreen Marine Corporation Ltd.; Lloyd Triestino di Navigazione S.p.A.; and Hatsu Marine Limited.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP: 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. East Coast ports and ports in China and Taiwan.

Agreement No.: 201143–006.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; Husky Terminals and Stevedoring, Inc.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service LLC; Trans Bay Container Terminal, Inc.; Trans Pacific Container Service Corporation; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; and SSA Terminal (Long Beach), LLC.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment adds SSA Terminals, LLC as a party + to the agreement.

Agreement No.: 201168.

Title: Surface Lease.

Parties: Lake Charles Harbor & Terminal District and Cameron LNG, LLC.

Filing Party: Michael K. Dees, Esq.; Lake Charles Harbor & Terminal District; P.O. Box 3753, Lake Charles, LA 70602.

Synopsis: The agreement provides for the lease of a certain tract of land for the purpose of loading, unloading, metering, storing, and processing petroleum liquids, natural gas liquids, and other petroleum products.

By Order of the Federal Maritime Commission.

Dated: February 3, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–1715 Filed 2–7–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
008790N	A.S.A.P. Transport Ltd., 2414 Morris Avenue, Union, NJ 07083	January 5, 2006.
018793F	Berr International, Inc., 8344 NW 30th Terrace, Miami, FL 33122	December 17, 2005.
003722N	Falcon Transportation & Forwarding Corp., 500 Bi-County Boulevard, Suite 203N, Farmingdale, NY 11735.	November 20, 2005.
018249N	JJB Trucking Services Corp. & Shipping, 333 N. Broad Street, Elizabeth, NJ 07200	December 2, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–1714 Filed 2–7–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

NATCO USA, Inc., 19227 72nd Avenue S., Kent, VA 98032, Officers: Donald W. Jay, President (Qualifying Individual), Mary M. Jay, Secretary.

Tran Smart Logistics, Inc., 161–15 Rockaway Blvd., #307, Jamaica, NY 11434, Officer: Tom S. Lee, President (Qualifying Individual).

Legacy Worldwide Logistics, Inc., 115 S. Corona Avenue, Suite 2C, Valley Atream, NY 11580, Officers: Thomas Leibman, President (Qualifying Individual), Stacy Vance, Secretary.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Prime Van Lines, Inc., 4100 West Side Avenue, North Bergen, NJ 07047, Officers: Sonia Fernandez, Treasurer (Qualifying Individual), Betty Bendavid, President.

The Valdan Group, LLC, 1629 World Trade Center Loop, Laredo, TX 78045, Officers: Daniel J. Petrie, Owner (Qualifying Individual), Valerie Petrie, Owner.

Dated: February 3, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–1712 Filed 2–7–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 014399N.

Name: Philcon, Inc.

Address: 1025 Industrial Drive, Bensenville, IL 60106.

Date Revoked: December 20, 2005.

Reason: Surrendered license voluntarily.

License Number : 016430N.

Name: R.E. Rogers, Inc.

Address: 23824 Hawthorne Blvd., Suite 201, Torrance, CA 90505.

Date Revoked: January 6, 2006.

Reason: Surrendered license voluntarily.

License Number: 014410N.

Name: Tropical Shipping International Ltd.

Address: 821 Avenue E, Riviera Beach, FL 33404.

Date Revoked: December 7, 2005.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–1713 Filed 2–7–06; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06–05AL]

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

Evaluation and Assessment of the Effectiveness of Activities Supporting Fire Prevention and Safety—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project will evaluate the effectiveness of fire safety and prevention education for second grade children and identify program components that contribute to successful outcomes. The fire safety prevention education programs are delivered by fire department personnel and funded by the United States Fire Administration's (USFA) Assistance to Firefighters Grant Program (AFGP). Deaths from fires and burns are the sixth most common cause of unintentional injury-related deaths in the United States with over three fourths of fire-related deaths and three fourths of fire-related injuries the result of house fires. Children are particularly at high risk for injury with residential fire deaths rates approximately two times that of adult age groups. The prevention programs that are funded by AFGP provide local fire departments with resources to conduct fire safety education for elementary school children. None of these programs has been systematically evaluated to determine impact on fire safety knowledge, skills, and behaviors. The proposed project does not assume a direct link from knowledge, skills, and behaviors to reductions in fire death rates; however, these intermediate outcomes may predispose and enable children to protect themselves from fire-related injury.

Children's knowledge, skills, and behaviors will be studied as a function of time (pre-, immediate post-, and 6 month post-intervention), geographic setting (urban, rural, and suburban) and instructional format (classroom, safety trailer, and classroom + safety trailer). The design used in this study is a 3 × 4 factorial design with repeated measures. A survey will be used to assess children's fire safety knowledge, skills, and behaviors. Information will be also collected from the children's parents on fire safety activities within the home.

Teachers, school administrators, and the fire fighters delivering the program will complete surveys to gather information on messages delivered, props used, and possible additional exposures to fire safety education. Information will also be collected regarding the school and fire department personnel's perceptions about program sustainability and the relationship between the fire department and school. The only cost to the respondents is the time involved to complete the survey. The estimated total burden hours are 3276.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Fire Fighters	24	2	15/60
2nd Grade Children	2400	3	20/60
Parents of 2nd Grade Children	2400	2	10/60
Teachers of 2nd Grade Children	96	2	15/60
School Administrators	48	1	20/60

Dated: February 1, 2006.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–1692 Filed 2–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0576]

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

Possession, Use, and Transfer of Select Agents and Toxins (OMB Control No. 0920–0576)—Revision—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) specifies that the Secretary of Health and Human Services (HHS) shall provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of select agents and toxins that have the potential to pose a severe threat to public health and safety. The Act specifies that entities that possess, use, and transfer these select agents register with the HHS Secretary. The HHS Secretary has designated CDC as the agency responsible for collecting this information.

CDC is requesting continued OMB approval to collect this information through the use of five separate forms. These forms are: (1) Application for Registration, (2) Request to Transfer Select Agent or Toxin, (3) Report of Theft, Loss, or Release of Select Agent and Toxin, (4) Report of Identification of Select Agent or Toxin, and (5) Request for Exemption.

The Application for Registration (42 CFR 73.7(d)) is used by entities to register with CDC. The Application for Registration requests facility information; a list of select agents or toxins in use, possession, or for transfer by the entity; characterization of the select agent or toxin; and laboratory information. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent or toxin. CDC estimates that entities will need an additional 45 minutes for each additional investigator or agent. In our regulatory analysis, we have estimated that 70% of the 350 entities have 1–3 principal investigators, 15% have 5 principal investigators, and 15% have 10 principal investigators. We have used these figures to calculate the burden for this section. Estimated burden for the Application for Registration is 2,191 hours.

Entities may amend their registration (42 CFR 73.7(h)(1)) if any changes occur in the information submitted to CDC. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 1 hour.

The Request to Transfer Select Agent or Toxin form (42 CFR 73.16) is used by entities requesting transfer of a select agent or toxin to their facility and by the entity transferring the agent. CDC revised the Request to Transfer Select Agent or Toxin form by removing the requirement that entities provide written notice within five business days when select agents or toxins are consumed or destroyed after a transfer. Estimated average time to complete this form is 1 hour, 30 minutes.

The Report of Theft, Loss, or Release of Select Agent and Toxin form (42 CFR 73.19(a)(b)) must be completed by entities whenever there is theft, loss, or release of a select agent or toxin. Estimated average time to complete this form is 1 hour.

The Report of Identification of Select Agent or Toxin form 42 CFR 73.5(a)(b) and 73.6(a)(b)) is used by clinical and diagnostic laboratories to notify CDC that select agents or toxins identified as the result of diagnostic or proficiency testing have been disposed of in a proper manner. In addition, the form is used by Federal law enforcement agencies to report the seizure and final disposition of select agents and toxins. Estimated average time to complete this form is 1 hour.

The Request for Exemption form (42 CFR 73.5(d)(e) and 73.6(d)(e)) is used by entities that are using an investigational product that are, bear, or contain select agents or toxins, or in cases of public health emergency. Estimated average time to complete this form is 1 hour.

In addition to the standardized forms, this regulation also outlines situations in which an entity must notify or may make a request of the HHS Secretary in writing. An entity may apply to the HHS Secretary for an expedited review of an individual by the Attorney General (42 CFR 73.10(e)). To apply for this expedited review, an entity must submit a request in writing to the HHS Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. CDC has not developed standardized forms to use in the above situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

An entity may also apply to the HHS Secretary for an exclusion of an attenuated strain of a select agent or toxin that does not pose a severe threat to public health and safety (42 CFR 73.3(e)(1) and 73.4(e)(1)). The estimated time to gather the information and submit this request is 1 hour.

As part of the requirements of the Responsible Official, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents or toxins are stored. Results of these self-inspections must be documented (42 CFR 73.9(a)(5)). CDC estimates, that, on average, such documentation will take 1 hour.

As part of the training requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training (42 CFR 73.15(c)). Estimated time for this documentation is 2 hours per principal investigator.

An individual or entity may request administrative review of a decision denying or revoking certification of registration or an individual may appeal a denial of access approval (42 CFR 73.20). This request must be made in writing and within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is 4 hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified (42 CFR 73.17(b)). The time to

implement such a system is estimated to average 4 hours.

The cost to respondents is their time to complete the forms and comply with the reporting and recordkeeping components of the Act plus a one-time purchase of a file cabinet (estimated cost $400) to maintain records. The total estimated annualized burden hours are 7,785.

ESTIMATED ANNUALIZED BURDEN HOURS

CFR reference	Data collection instrument	Number of respondents	Responses per respondent	Average burden per response
73.7(d)	Registration Application Form	350	1	3.75
73.7(d)	Additional Investigators	245	2	45/60
73.7(d)	Additional Investigators	53	4	45/60
73.7(d)	Additional Investigators	52	9	45/60
73.7(h)(1)	Amendment to Registration Application	350	2	1
73.19(a)(b)	Report of Theft, Loss, or Release	12	1	1
73.5 & 73.6(d–e)/73.3 & 73.4(e)(1)	Request for Exemption Form/Exclusion	17	1	1
73.16	Request to Transfer	350	2	1.5
73.5 & 73.6(a)(b)	Report of Identification	325	4	1
73.10(e)	Request expedited review	10	1	30/60
73.9(a)(5)	Documentation of self-inspection	350	1	1
73.15(c)	Documentation of training	350	1	2
73.20	Administrative Review	5	1	4
73.17	Ensure secure recordkeeping system	350	1	4

Dated: February 1, 2006.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–1694 Filed 2–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AG]

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

Process Evaluation of the Protocol for Assessing Community Excellence in Environmental Health—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC, through a cooperative agreement with the National Association of City and County Health Organizations (NACCHO), developed and disseminated the Protocol for Assessing Community Excellence in Environmental Health (PACE EH). This document consists of 13 tasks to engage the community in environmental health planning and assessment activities. PACE EH seeks to strengthen public health leadership, promote community collaboration, and encourage environmental justice. In the long run, PACE EH seeks to establish a new leadership role for local public health agencies and build sustainable community processes for decision-making. More than 1,700 copies of a guidebook have been disseminated to the public and approximately 900 organizations requested one or more copies for review. Little is known about how each of the hundreds of potentially interested communities nationwide evaluates the suitability of the PACE EH methodology to its own situation. Nor do we know the relative advantages and disadvantages each community perceives in this methodology compared to other tools and methods available for conducting environmental health assessments, nor the range of challenges encountered in implementing the method.

The purpose of the proposed study is to obtain information from current and potential PACE EH users that will be used to guide resource decisions related to its continued support and development. Two data collection activities are proposed. The first is a Web survey of all state and local health agencies that requested a copy of the PACE EH Guidebook. The survey will ask questions about their decision whether or not to adopt the method. If they did choose to adopt it, the survey will ask questions about their progress, challenges faced, and impacts of the method on their agency, the community, and the environment. The second data collection activity is a one-day site visit to 24 of the communities that are actively engaged in implementation to conduct interviews with key staff and community members. These site visits will provide additional detail about implementation issues and challenges that are not readily obtained through survey methodology. There is no cost to respondents other than their time. The total estimated annualized burden hours are 846.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
PACE EH Requestor Survey	872	1	45/60
PACE EH Participant Interviews	192	1	1

Dated: February 1, 2006.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–1695 Filed 2–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

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 Advisory Committee meeting.

Name: Advisory Committee to the Director (ACD), CDC.

Time and Date: 8:30 a.m.–4:30 p.m., February 23, 2006.

Place: CDC, Global Communications Center (Building 19), 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters To Be Discussed: Agenda items will include updates on CDC priorities with discussions of program activities including updates on CDC scientific and programmatic activities, strategic imperatives, goals, research agenda, and health equity.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Lynn Austin, PhD., Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. Telephone 404/639–7000.

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: February 2, 2006.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–1689 Filed 2–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Portfolio Review of Hereditary Blood Disorders

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Portfolio Review of Hereditary Blood Disorders.

Times and Dates: 9:30 a.m.–5 p.m., March 2, 2006 (Closed). 9 a.m.–4 p.m., March 3, 2006 (Closed).

Place: National Center on Birth Defects and Developmental Disabilities, CDC, 12 Executive Park Drive, Atlanta, GA 30329, Telephone Number 404.498.3800.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review and discussion of the Hereditary Blood Disorders Division's strategies and activities.

For Further Information Contact: Esther Sumartojo, Acting Associate Director for Science and Public Health, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., Mailstop E–87, Atlanta, GA 30333, Telephone Number 404.498.3800.

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: February 2, 2006.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–1677 Filed 2–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Community and Tribal Subcommittee (CTS) of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSDR announces the following subcommittee meeting:

Name: Community and Tribal Subcommittee (CTS).

Time and Date: 1 p.m.–2:30 p.m., February 27, 2006.

Place: The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. Please see *Supplementary Information* for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the BSC, NCEH/ATSDR the CTS will provide the board with a forum for community and tribal first-hand perspectives on the interactions and impacts of the NCEH/

ATSDR's national and regional policies, practices, and programs.

Matters To Be Discussed: The agenda will include a review of the draft coordinating center Environmental Justice Policy; a report on coordination efforts with the Program Peer Review Subcommittee; and a review and comment period on recently completed agency-funded programs related to health disparities and environmental justice communities. The public comment period will be from 2–2:15 p.m.

Items are subject to change as priorities dictate.

Supplementary Information:

To participate in the teleconference, please dial 877/315–6535 and enter conference code 383520.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

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 ATSDR.

Dated: February 2, 2006.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–1676 Filed 2–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Building Strong Families (BSF) Demonstration and Evaluation—Implementation and Impact Study.

OMB No.: New Collection.

Description: This proposed information collection activity is for two types of data collections: (1) Interview and focus group protocols for use with program staff and couples enrolled in BSF programs and (2) a telephone survey to be administered to both partners in couples enrolled in the BSF research sample about 15 mounts after enrollment.

These data collections are a part of the BSF evaluation, which is an important opportunity to learn if well-designed interventions can help low-income couples develop the knowledge and relationship skills that research has shown are associated with healthy marriages. BSF programs will provide instruction and support to improve marriage and relationship skills and enhance couples' understanding of marriage. In addition, BSF programs will provide links to a variety of other services that could help couples sustain a health relationship (e.g., employment assistance). The BSF evaluation uses an experimental design that randomly assigns couples who volunteer to participate in BSF programs to a program or to a control group.

The BSF evaluation has two parts, an implementation study and an impact study. For the implementation study, the BSF evaluation will use the interview and focus-group protocols to document how the programs worked and the experiences of staff and couples enrolled. For the impact study, the BSF evaluation will use telephone surveys to determine whether the BSF programs helped couples form healthier marriages.

Respondents: For the implementation study, respondents will be BSF program managers and staff, couples who participated in the BSF group sessions, and couples who dropped out of the program or never participated in the BSF groups. Information from staff will be obtained in face-to-face interviews. Information from participating couples will be collected in focus groups. Non-participating couples and couples who dropped out of the program will be interviewed by phone. For the impact study, the respondents for the 15-month survey will be all couples in the BSF evaluation. They will be interviewed by telephone. Both types of information collection will take place over about a 24-month period.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per responses	Total burden hours
Implementation Study				
Staff interview protocol	126	1	1.5	189
Focus group protocol	70	1	1.5	105
Telephone interview protocol (non-participants/drop-outs)	84	1	.17	14
Impact Study				
15-month Survey (females)	1,434	1	.91	1,305
15-month Survey (males)	1,434	1	.83	1,190
Estimated Total Annual Burden Hours				2,803

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the informtion shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 2, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1159 Filed 2–7–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Implementation of Head Start National Reporting System on Child Outcomes.

OMB No.: 0970–0249.

Description: The Administration on Children, Youth and Families (ACYF), within the Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS), is requesting comments on plans to implement the Head Start National Reporting System (HSNRS) on Child Outcomes. Child-outcomes information collected by this implementation is expected to enhance Head Start programs' accountability and quality.

HSNRS addresses Presidentially mandated reforms and Congressionally mandated requirements for information on specific child outcomes and provides Head Start program managers and teachers with useful information to support program-improvement strategies.

HSNRS has three major goals. First, HSNRS will provide local Head Start programs with information about the progress of groups of children on a limited number of performance measures. This information is captured by measuring how children are doing at the beginning and at the end of each program year. Second, HSNRS will capture the same set of information across the nation in a consistent manner, allowing for creation of normative comparison groups. Individual programs can use this information to target needs for training and technical assistance. Third, the child-outcomes information captured in HSNRS should serve as one component of the current national progress monitoring effort, which involves on-site, systematic review of programs. The Head Start Bureau can use compiled HSNRS data as part of the process for ensuring the effectiveness of services. These results can highlight the needs of specific groups of children, identify local programs' technical assistance and training needs, and contribute to the accountability of Head Start.

The first three rounds of the HSNRS national implementation (2003–04, 2004–05, and 2005–06 program years) were successful. In each round of the data collection, over 400,000 assessments were completed, making this the largest assessment of preschool children ever conducted. Over 99 percent of Head Start programs and Head Start parents and children cooperated fully with the HSNRS procedures. The HSNRS data show good internal reliability, both in terms of Item Response Theory (IRT) reliability and Cronbach's Coefficient Alpha at the individual child-level, for both English-language and Spanish-language assessments. IRT estimates of the internal reliability of the program-level English-language assessment scores were excellent, with most IRT-reliability coefficients greater than .90.

For each program year, participating local Head Start programs received HSNRS Program Reports at the aggregated program-level for the fall assessment (baseline) and the spring assessment (fall-spring growth). These reports provided local Head Start programs with information about the progress of their children in all assessed domains and demonstrated how these scores compared to all other Head Start children (national-level reference tables) as well as children in similar programs (sub-group reference tables).

HSNRS will continue to collect child-outcomes information from children who are four years old or older and who will enter Kindergarten next year. As in the previous three years, all eligible Head Start children will be assessed twice a year using a standardized direct child-assessment battery. The assessment battery will address a limited set of early literacy, language, and numerary skills.

Twice a year, HSNRS will also collect teachers' reports of social-emotional development of Head Start children using standardized rating scales. These social-emotional rating scales will be field-tested in spring 2006 prior to national implementation in fall 2006. Head Start teachers will rate children in their classrooms on the aspects of cooperative classroom behaviors, preschool learning behaviors, and problem behaviors.

HSNRS will also collect health and safety information on children and programs, including children's height and weight, immunization status, receipt of dental care, and occurrences of injuries requiring medical attention.

Respondents: Head Start children and Head Start staff.

ANNUAL BURDEN ESTIMATES

Respondents and activities	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Fall Implementation				
Head Start Children: Participate in Child Assessments	425,000	1	1/4	106,250
Head Start Staff (Assessors): Participate in Training on Child Assessments	25,000	1	4	100,000
Head Start Staff (Local HSNRS Trainers): Participate in Training on Child Assessments	1,800	1	4	7,200
Head Start Staff (Assessors): Administer Child Assessments	25,000	17	1/4	106,250
Head Start Teachers: Participate in Training on Social-Emotional Development Ratings	38,500	1	1	38,500
Head Start Teachers: Complete Social-Emotional Development Ratings	38,500	11	1/6	70,583
Head Start Teachers: Complete Child Health Questions	38,500	11	1/12	35,292
Head Start Staff: Complete Health and Safety of Program Questions	1,800	1	1/12	150

ANNUAL BURDEN ESTIMATES—Continued

Respondents and activities	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Staff: Enter Information on Computer-Based Reporting System (CBRS)	1,800	1	3	5,400
Spring Implementation				
Head Start Children: Participate in Child Assessments	425,000	1	1/4	106,250
Head Start Staff (Assessors): Participate in Refresher Training on Child Assessments	25,000	1	4	100,000
Head Start Staff (Local HSNRS Trainers): Participate in Training on Child Assessments	1,800	1	4	7,200
Head Start Staff (Assessors): Administer Child Assessments	25,000	17	1/4	106,250
Head Start Teachers: Participate in Refresher Training on Social-Emotional Development Ratings	38,500	1	1/2	19,250
Head Start Teachers: Complete Social-Emotional Development Ratings	38,500	11	1/6	70,583
Head Start Teachers: Complete Child Health Questions	38,500	11	1/12	35,292
Head Start Staff: Complete Health and Safety of Program Questions	1,800	1	1/12	150
Head Start Staff: Enter Information on CBRS	1,800	1	3/2	2,700
Total Annual Burden Estimates	.....	.....	.....	917,300

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of this proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail: *infocollection@acf.hhs.gov.*

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 2, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–1160 Filed 2–7–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0307]

Determination of Regulatory Review Period for Purposes of Patent Extension; ALIMTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ALIMTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ALIMTA (pemetrexed). ALIMTA in combination with cisplatin is indicated for the treatment of patients with malignant pleural mesothelioma whose disease is unresectable or who are otherwise not candidates for curative surgery. ALIMTA as a single agent is indicated

for the treatment of patients with locally advanced metastatic non-small cell lung cancer after prior chemotherapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ALIMTA (U.S. Patent No. 5,344,932) from Eli Lilly and Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 31, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ALIMTA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ALIMTA is 4,166 days. Of this time, 4,038 days occurred during the testing phase of the regulatory review period, while 128 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 10, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 10, 1992.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: September 30, 2003. The applicant claims September 29, 2003, as the date the new drug application (NDA) for ALIMTA (NDA 21–462) was initially submitted. However, FDA records indicate that NDA 21–462 was submitted on September 30, 2003.

3. *The date the application was approved*: February 4, 2004. FDA has verified the applicant's claim that NDA 21–462 was approved on February 4, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,784 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may, submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by April 10, 2006, Furthermore, any interested person may petition FDA, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 7, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 5, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–1642 Filed 2–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NIH Intramural Research, Training Program Application

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 Office of the Director, 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: NIH Intramural Research Training Program Applications.

Type of Information Collection Request: Revision/OMB No. 0925–0299; February 28, 2006.

Need and Use of Information Collection: The proposed information collection activity is for the purpose of collecting data related to the availability of Training Fellowships in the NIH Intramural Research Program. This information must be submitted in order to receive due consideration for a fellowship and will be used to determine the eligibility and quality of potential awardees.

Frequency of Response: On occasion.

Affected Public: Individuals seeking Intramural Training Opportunities and references for these individuals.

Type of Respondents: Postdoctoral, predoctoral, post-baccalaureate, technical, clinical, and student IRTA applicants. There are no capital costs, operating costs, and/or maintenance costs to report.

Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral	1,000	3.00	1.00	3,000
Predoctoral	175	1.00	1.00	175
Postbaccalaureate	2,090	1.00	1.00	2,090
Technical	175	1.00	1.00	175
Clinical	300	1.00	1.00	300
Student	7,000	1.00	1.00	7,000
References for all categories	31,395	1.00	0.33	10,360
Total	42,135	1.0474665	0.5482378	23,100

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 agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of 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: Steve Alves, Web site Programs Specialist, Office of Intramural Training and Education, OD, NIH, Building 2, Room 2W17, 2 Center Drive MSC 0240, Bethesda, MD 20892–0240, or call non-toll-free number (301) 402–1294, or e-mail your request, including your address to: *alvess@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 23, 2006.

Christine Major,

Acting Director, Office of Human Resources, National Institutes of Health.

[FR Doc. 06–1140 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Oligodeoxyribonucleotides Comprising O^{6}6-Benzylguanine and Their Use

Robert C. Moschel *et al.* (NCI)
U.S. Patent No. 6,060,458 issued 09 May 2000 (HHS Reference No. E–104–1998/0–US–01).
Licensing Contact: George G. Pipia, PhD.; 301/435–5560; *pipiag@mail.nih.gov.*

Chemotherapy is a common treatment for a variety of cancers. Chemotherapeutic alkylating agents represent a key category of commonly used antineoplastic drugs. These drugs are active against chronic leukemias, non-Hodgkin lymphoma, Hodgkin disease, multiple myeloma, lung, breast, ovarian cancer, and certain other cancers. The DNA repair protein, O^6-alkylguanine-DNA alkyltransferase (AGT), is a primary source of tumor cell resistance to the alkylating drugs that alkylate the O^6 position of guanine in DNA. AGT therefore becomes the prime target for modulation. Currently, AGT inactivators are used as adjuvants to enhance chemotherapy by the alkylating drugs.

O^6-Benzylguanine is the prototype AGT inactivator in phase I, II and III clinical trials as an adjuvant to improve chemotherapy. Although O^6-benzylguanine is a promising AGT inactivator, it is not an ideal drug. O^6-Benzylguanine is only sparingly soluble in water, and it is not effective in inactivating some mutant alkyltransferase proteins that could possibly be produced after repeated chemotherapy cycles. The present invention describes oligodeoxyribonucleotides containing O^6-benzylguanine residues as another class of AGT inactivators, and discusses the advantages of their use in comparison to O^6-benzylguanine as the free base. Oligodeoxyribonucleotides containing O^6-benzylguanine residues are extremely water soluble and can efficiently inactivate AGT at much lower concentrations than O^6-benzylguanine. In addition, they are effective in inactivating several mutant alkyltransferase proteins that are highly resistant to inactivation by O^6-benzylguanine. Furthermore, positioning O^6-benzylguanine near the 3′-or 5′-terminus of these oligodeoxyribonucleotides improves their resistance to degradation by cellular nuclease proteins. Therefore, oligodeoxyribonucleotides containing multiple O^6-benzylguanine residues may be more effective chemotherapy adjuvants than O^6-benzylguanine.

The CCHC Zinc Fingers of the Retroviral Nucleocapsid Protein Comprises a New Target Useful in Identification and Evaluation of Anti-HIV Therapeutics

Louis E. Henderson *et al.* (NCI)
U.S. Patent No. 6,001,555 issued 14 Dec 1999 (HHS Reference No. E–174–1993/1–US–01).
Licensing Contact: Sally H. Hu, PhD., M.B.A.; 301/435–5606; *hus@mail.nih.gov.*

According to a recently released report from the WHO, an estimated 40.3 million people worldwide are currently living with HIV infection, and more than three million people died of AIDS-related illnesses in 2005. In response to increased prevalence of HIV/AIDS, the search for effective antiretroviral therapy is intensive. The present invention describes compounds that may be useful for developing new types of antiretroviral therapeutics for HIV infection.

HIV–1 contains domains known as ''CCHC zinc fingers'' in the retroviral nucleocapsid (NC) protein. Nucleocapsid CCHC zinc fingers are highly conserved throughout nearly all retroviruses. They are sequences of 14 amino acids with four invariant residues, $Cys(X)_2Cys(X)_4His(X)_4Cys$, which chelate zinc and perform essential functions in viral infectivity. HIV–1 NC has two CCHC zinc fingers, both of which are necessary for infectivity. Many compounds that disrupt the CCHC zinc fingers also inactivate HIV–1 by preventing the initiation of reverse transcription and by blocking production of infectious virus from previously infected cells. Compounds with this activity may be useful for developing new types of antiretroviral drugs. In addition, compounds with this activity can be useful for production of chemically inactivated retroviral particles that lack infectivity but retain structurally and functionally intact envelope glycoproteins. Such inactivated particles may be useful both as in vitro reagents in a variety of applications and as immunogens for whole inactivated virus vaccines.

The present invention concerns antiretroviral compounds that disrupt the CCHC zinc fingers and assays for identifying such compounds. The invariant nature of retroviral zinc fingers also extends the usefulness of these compounds to other retroviruses. Thus these assays are also useful for screening compounds effective against

adult T cell leukemia, tropical spastic paraparesis caused by HTLV–I and HTLV–II, feline leukemia virus, feline immunodeficiency virus, equine infectious virus, and lentivirus infections in other animals, and potentially useful for the production of whole inactivated particle vaccines against the pathogens.

Use of Inhibitors of 3-Hydroxy-3-Methylglutaryl Coenzyme A Reductase as a Modality in Cancer Therapy

Charles Myers et al. (NCI)
U.S. Patent No. 6,040,334 issued 21 Mar 2000 (HHS Reference No. E–146–1992/0–US–23).
Licensing Contact: George G. Pipia, PhD.; 301/435–5560; *pipiag@mail.nih.gov.*

HMG Co-A reductase inhibitors, also known as statins, are a type of drugs taken by millions of Americans to lower blood cholesterol levels. In the United States, statins available by prescription include atorvastatin (Lipitor™), lovastatin (Mevacor™), and simvastatin (Zocor™). Recently, there has been a surge in interest in the potential use of statins in the treatment or prevention of cancer. By exploring the effects of statins on the process of cancer at the molecular level, scientists have found that they work against critical cellular functions that may help control tumor initiation, tumor growth, and metastasis. With years of strong evidence that these agents are relatively safe, statins present themselves as good candidates for cancer therapeutics with added advantages.

This invention describes a method for treating mammalian adenocarcinomas and sarcomas with an effective amount of an inhibitor of HMG Co-A reductase or homologues of the inhibitor. Adenocarcinoma is known to afflict the prostate, stomach, lung, breast and colon, as well as other sites. Lovastatin and simvastatin, as well as their homologues, are examples of compounds useful in the present invention. Also included are compounds classified as HMG Co-A reductase inhibitors, as well as their homologues or analogues. Though the inhibitors of HMG Co-A reductase are generally known to reduce serum cholesterol in humans, the present invention focuses rather on the compounds' ability to treat selected cancers, such as adenocarcinomas of the prostate, stomach, lung, breast and colon and certain sarcomas such as Ewing's sarcoma.

Also provided by the invention is a method of reducing prostate specific antigen (PSA) levels in a patient having prostatic adenocarcinoma by administration of an effective amount of a compound which is an inhibitor of HMG Co-A reductase or a homologue of such inhibitor, as well as a method of reducing PSA in conjunction with another treatment modality.

Potent Peptide for Stimulation of Cytotoxic T Lymphocyte Specific for the HIV–1 Envelope

Jay A. Berzofsky et al. (NCI)
U.S. Patent No. 5,976,541 issued 02 Nov 1999 (HHS Reference No. E–072–1992/0-US–01).
Licensing Contact: Robert M. Joynes, J.D.; 301/594–6565; *joynesr@mail.nih.gov.*

According to a new annual report from the WHO, an estimated 40.3 million people worldwide are currently living with HIV infection, and more than three million people died of AIDS-related illnesses in 2005. Despite intensive efforts to improve antiretroviral treatment, a safe and effective HIV preventive vaccine is the best long-term hope to bring the HIV/AIDS epidemic under control. Though there are many clinical trial studies being conducted for HIV/AIDS vaccine, there is no such vaccine approved for use yet.

This invention described peptide constructs that may be of clinical importance in HIV/AIDS vaccine development. A vaccine for the prevention and/or treatment of HIV infection would ideally elicit a response in a broad range of the population. It would also have the capability of inducing high titered neutralizing antibodies, cytotoxic T lymphocytes, and helper T cells specific for HIV–1 gp160 envelope protein. A vaccine based on the synthetic or recombinant peptides has been developed which elicits these responses while avoiding the potential safety risks of live or killed viruses. Unlike previously developed vaccines, this invention avoids those regions of gp 160 which may contribute to acceleration of infection or the development of immune deficiency. Peptides having high activity in the eliciting of a cytotoxic T lymphocyte response to the HIV–1 envelope glycoprotein gp160 are described. The activation of 12–15 residue peptides by proteolytic degradation to shorter peptides is shown as are general techniques for characterizing such activation processes. The peptide described is recognized by both human and murine cytotoxic T lymphocytes, and is immunodominant in H–2d mice such as BALB/c, B10.D2, DBA/2, etc. This makes it ideal for determining responses in animal models preclinically before use in human trials. It is also ideal for detecting cytotoxic T lymphocyte responses to HIV envelope in these strains of mice.

Multideterminant Peptides That Elicit Helper T-Lymphocyte Cytotoxic T-Lymphocyte and Neutralizing Antibody Responses Against HIV–1

Jay A. Berzofsky et al. (NCI)
U.S. Patent No. 6,294,322 issued 25 Sep 2001 (HHS Reference No. E–152–1991/1–US–01).
Licensing Contact: Robert M. Joynes, J.D.; 301/594–6565; *joynesr@mail.nih.gov.*

According to a new annual report from the WHO, an estimated 40.3 million people worldwide are currently living with HIV infection, and more than three million people died of AIDS-related illnesses in 2005. Despite intensive efforts to improve antiretroviral treatment, a safe and effective HIV preventive vaccine is the best long-term hope to bring the HIV/AIDS epidemic under control. Though there are many clinical trial studies being conducted for HIV/AIDS vaccine, there is no such vaccine approved for use yet.

This invention described peptide constructs that may be of clinical importance in HIV/AIDS vaccine development. A vaccine for the prevention and/or treatment of HIV infection would ideally elicit a response in a broad range of the population. It would also have the capability of inducing high titered neutralizing antibodies, cytotoxic T lymphocytes, and helper T cells specific for HIV–1 gp 160 envelope protein. A vaccine based on synthetic or recombinant peptides has been developed which elicits these responses while avoiding the potential safety risks of live or killed viruses. Unlike previously developed vaccines this invention avoids those regions of gp 160 which may contribute to acceleration of infection or the development of immune deficiency. This invention provides peptides up to 44 amino acid residues long that stimulate helper T-cell response to HIV in a range of human subjects. Six multideterminant regions have been identified in which overlapping peptides are recognized by mice of either three or all four MHC types. Four of the six regions have sequences relatively conserved among HIV–I isolates. These multideterminant cluster peptides are recognized by T cells from humans of multiple HLA types, and have been found in a phase I clinical trial to elicit neutralizing antibodies, cytotoxic T cells, and helper T cells in at least some of the human subjects. These peptides are currently being

tested in primates. Once delivery systems and a stronger mucosal response are induced, NCI plans to use these peptides in human clinical trials.

Dated: January 30, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–1653 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Genetics Network.

Date: March 7, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Marvin L. Salin, PhD., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1132 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Ruth L. Kirschstein NRSA Fellowships in Cancer Nanotechnology Research (RFA–A–CA–06–010).

Date: March 17, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Morrison House Hotel, 116 S. Alfred Street, Alexandria, VA 22314.

Contact Person: Robert Bird, PhD., Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8113, MSC 8328, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1133 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: February 10, 2006.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: The Panel will discuss the Annual Report 2005/2006, Assessing Progress, and Advancing Change. The premature disclosure of these discussions would result in the release of proprietary information.

Place: National Cancer Institute, National Institutes of Health, Office of the Director, 6116 Executive Blvd., Suite 212, Bethesda, MD 20892, (Teleconference).

Contact Person: Abby Sandler, PhD., Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301/451–9399.

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93,393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1135 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Specialized Center (P50s).

Date: February 21–22, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: William J. Johnson, PhD, Review Branch, Division of Extramural Affairs, NIH/NHLBI, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301–435–0317, *johnsonw@nhibi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1125 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: March 16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute/NIH, 6701 Rockledge Drive, RM 7208, Bethesda, MD 20892, (301) 435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1126 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Scientist Development and Clinical Investigator Awards (K02s and K08s).

Date: March 6–7, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rina Das, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–435–0297, *dasr2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1127 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung and Blood Institute Special Emphasis Panel, Specialized Center (P50s).

Date: March 9–10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton at BWI, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Shelley S Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301/435–0303, *ssehnert@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1129 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Clinical Trial Review Committee.

Date: February 27–28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, 300 Light Street, Baltimore, MD 21202.

Contact Person: Patricia A. Haggerty, PhD, Section Chief, Clinical Studies and Training Scientific Review Group, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7194, MSC 7924, Bethesda, MD 20892, 301/435–0288, *haggertp@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research, 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1130 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Specialized Center (P50s).

Date: February 23–24, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton BWI Airport, 7032 Elm Street, Baltimore, MD 21240.

Contact Person: Charles Joyce, PhD., Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, (301) 435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1131 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Health, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Project (RO1s).

Date: March 13, 2006.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact of Persons: Valerie L. Prenger, PhD., Health Scientist Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892–7924. (301) 435–0275. *prengerv@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Programs Nos. 93.233, National Center for Sleep Disorders Research; 93.387, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1137 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Nanoscience-based Design of Therapies for Substance Abuse Treatment.

Date: February 15, 2006.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1128 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Sharper Focus on Peer Influence Context: Modeling Avenues to Risk or Prevention.

Date: February 28, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Ernestine Vanderveen, Acting Chief, EPRB, NIH/NIAAA, Extramural Project Review Branch, 5635 Fishers Lane, Room 3039, Office of Extramural Activities, Bethesda, MD 20892–9304, (301) 443–2531, *tvanderv@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: February 28, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD., Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

Date: March 2–3, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Judith A. Arroyo, Scientific Review Administrator, Division of Epidemiology and Prevention Research, National Institute of Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2084, Bethesda, MD 20892–9804, 301–402–0717, *jarroyo@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 3, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Judith A. Arroyo, PhD., Scientific Review Administrator, National Institute of Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3041, Bethesda, MD 20892–9804, 301–443–0800, *jarroyo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1134 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Units for HIV/AIDS Clinical Trials Network—ZAI1–LD–A–M1.

Date: February 28, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Leyla S. Diaz, PhD., Scientific Review Administrator, Scientific Review Program, NIH/NIAID/DEAS/DHHS, Room 3257, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *diazl@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1136 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Units for HIV/AIDS Clinical Trials Network—ZAl1–MPM–A–M1.

Date: February 24, 2006.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 1202, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Mini Paulose-Murphy, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. (301) 451–2640. *murphym@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Units for HIV/AIDS Clinical Trials Network—ZAl1–MPM–A–M2.

Date: February 27, 2006.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3143, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Mini Paulose-Murphy, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. (301) 451–2640. *murphym@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1138 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biomedical Imaging Technology/ Medical Imaging Study Sections.

Date: February 8, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Xiang-Ning Li, PhD., MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1744. *lixiang@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Medical Imaging/Bone Imaging.

Date: February 8, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Xiang-Ning Li, PhD., MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1744. *lixiang@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Damage and Radiation Biology.

Date: February 14, 2006.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892. 301–435–1211. *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Physiology of obesity and Diabetes Study Section.

Date: February 16–17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Reed A. Graves, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892. (301) 402–6297. *gravesr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Biology.

Date: February 21, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–4522. *gibsonj@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Dynamics.

Date: February 23–24, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892. (301) 435–1022. *ehrenspg@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: February 26–28, 2006.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 435–1213. *meyerjl@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Biomarkers Study Section.

Date: February 26–28, 2006.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Bell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892. (301) 451–8754. *bellmar@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Cell Biology Study Section.

Date: February 26–28, 2006.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Angela Y. Ng, PhD., MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892. 301–435–1715. *nga@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 27–28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044. *leszczyd@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.

Date: February 27–28, 2006.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. 301–435–4522. *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Oncogenesis.

Date: February 27–28, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Joanna M. Watson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892. 301–435–1048. *watsonjo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and Neuroprosthetics/Brain Disorders and Clinical Neuroscience/SBIR.

Date: February 27–28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Vinod Charles, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. 301–435–0902. *charlesvi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Imaging and Bioinformatics.

Date: February 27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892. 301–435–1032. *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Host Interactions with Bacterial Pathogens.

Date: February 27–28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marian Wachtel, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892. 301–435–1148. *wachtelm@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.

Date: February 27–28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Suzanne L. Forry-Schaudies, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892. 301–451–0131. *forryscs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Medical Imaging: Optical and Video.

Date: February 27, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert J. Nordstrom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. 301–435–1175. *nordstrr@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: February 27–28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Larry Pinkus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. 301–435–1214. *pinkusl@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: February 27–28, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Maqsood A. Wani, PhD., DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892. 301–435–2270. *wanimaqs@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: February 27–28, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–594–6376. *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retinopathy.

Date: February 27, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *rayam@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.

Date: February 27–28, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Arlington and Towers, 950 N. Stafford Street, Arlington, VA 22203.

Contact Person: Marc Rigas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892. 301–402–1074. *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–C(02) Childhood Constipation and Encopresis.

Date: February 27, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Claire E. Gutkin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301–594–3139. *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR Member Conflicts.

Date: February 27, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0696. *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Carcinogenesis.

Date: February 27, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892. 301–451–0132. *zouzhiq@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Learning and Memory.

Date: February 27, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Edwin C. Clayton, PhD., Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892–7844. (301) 402–1304. *claytone@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Globin Gene Expression and Sickle Cell Anemia.

Date: February 27, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. (301) 435–1739. *gangulyc@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.

Date: February 28–March 1, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Galleria Park Hotel, 191 Sutter Street, San Francisco, CA 94104.

Contact Person: Harold M. Davidson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892. 301/435–1776. *davidsoh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of R21 and R15 Structure-Function Applications.

Date: February 28, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Medical Imaging: PET/MRIX-Ray.

Date: February 28–March 1, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert J. Nordstrom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. (301) 435–1175. *nordstrr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business In Vivo Imaging and Image-guided Cancer Interventions.

Date: February 28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892. 301–435–1032. *xuguofen@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: February 28–March 1, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Olga A. Tjurmina, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7814, Bethesda, MD 20892. (301) 451–1375. *ot3d@nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: February 28–March 1, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD., Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301–435–1781. *hoffeldt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership.

Date: February 28, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0696. *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Photodynamic Therapy in Cancer.

Date: February 28, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892. (301) 435–1717. *padaratm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IDM–Q (04): Leishmania and Trypanosoma Biology.

Date: February 28, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Rossana Berti, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3015–G, MSC 7846, Bethesda, MD 20892. 301–402–6411. *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research Partnership for Improving Functional Outcome PAR–04–077.

Date: February 28, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Seetha Bhagavan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1126, MSC 7846, Bethesda, MD 20892. (301) 435–1121. *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN Bioengineering Research Partnerships.

Date: February 28, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Vinod Charles, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. 301–435–0902. *charlesvi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2006

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–1139 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Food Quality Indicator Device

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, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the JP patent application H11–507724, filed 16 July 1998, to MBL, Co., Ltd., located in Nagoya-shi, Japan.

The prospective exclusive license territory may be Japan and the field of use may be limited to the development, manufacturing and sales of the food indicator devise.

DATES: Only written comments and/or application for a license which are received by the National Institutes of Health on or before April 10, 2006 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: George G. Pipia, PhD., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; E-mail: *pipiag@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Description of the Technology

E–093–1997/0: Scientists at the U.S. Food and Drug Administration have invented an effective way to monitor food quality and freshness in real time. The major factor for food spoilage is the release of volatile gases due to the action of enzymes contained within the food or produced by microorganisms, such as bacteria, yeasts and molds growing in the food. The rate of release of such gases depends on food's storage history. In this technology, a reactive dye locked in a water-repellent material reacts with the gases released during food decomposition and changes color. Thus a rapid and informed decision can be made about quality of food and its shelf life under the storage conditions used. Since the detection is based on biological processes that are the root cause for food spoilage, these indicators are much more reliable.

This technology provides an excellent alternative to the current methods for assessing food quality that cannot accurately estimate shelf life of food products due to unreliable storage history. This technology is also much less expensive than the current methods. These indicators have been successfully tested on seafood and meats and can be easily adapted to dairy products. This product is fully developed and is ready for full commercial rollout.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted 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: February 1, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–1650 Filed 2–7–06; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Aminoflavone Compounds as Anti-Cancer Agents

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, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the

(1) U.S. Provisional Patent Application 60/195,507, filed April 6, 2000, entitled ''Aminoflavone Compounds, Compositions, and

Methods of Use Thereof'' and all related foreign patents/patent applications (HHS Ref. No. E–279–1999/0);

(2) U.S. Patent Application 08/014,696, filed February 8, 1993, entitled ''5-Aminoflavone Derivatives'' and all related foreign patents/patent applications (HHS Ref. No. E–296–2005/1);

(3) PCT Patent Application PCT/US96/00181, filed August 10, 1994, entitled ''5-Aminoflavone Derivatives, Their Preparation and Their Use as Antibacterial, Anti-estrogenic and/or Antitumor Agent'' and all related foreign patents/patent applications (HHS Ref. No. E–295–2005/0), with the exception of the JP patent application JP204356/93, filed on August 18, 1993;

to Tigris Pharmaceuticals, Inc. located in New York, NY. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to human pharmaceutical uses of aminoflavone compounds as anti-cancer agents.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before April 10, 2006 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: George G. Pipia, PhD., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; E-mail: *pipiag@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Description of the Technology

E–279–1999/0: This invention is related to aminoflavone compounds with pharmaceutically acceptable properties, claiming pharmaceutical compositions and a method of inhibiting tumor growth. The invention improves the pharmaceutical property of aminoflavone compounds. The present invention addresses these problems by providing a method of producing water-soluble analogues of water-insoluble drugs. In particular, the present invention describes novel analogues derived from 5-aminoflavone (TK2339) compounds. These derivatives have shown good differential activity in the NCI 60-cell line *in vitro* cancer drug screen with potent and selective cytotoxicity against CAKI–1 and A498 renal, MCF–7 breast, and OVCAR–5 ovarian carcinoma cell lines. In addition, these derivatives have shown *in vivo* activity against CAKI–1 and A498 renal carcinoma xenographs.

The novel compounds display improved solubility in aqueous solutions over the parent compounds (see below) without sacrificing potent antitumor activity. Since these compounds possess very favorable pharmaceutical properties, they have greater potential to be useful in the treatment of human cancers. The claims of the issued patent or pending patent applications of this patent family are directed to compositions comprising aminoflavone derivatives and to methods of their use.

E–296–2005/0 and E–296–2005/1: These two inventions describe 5-aminoflavone derivatives, having antibacterial, anti-estrogenic and anti-cancer activity. These inventions constitute earlier, parent 5-aminoflavone compounds, which have inferior solubility in aqueous solutions compared to new compounds outlined in E–279–1999/0 technology.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted 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 30, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–1651 Filed 2–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–23736]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers 1625–0047, 1625–0063, 1625–0070, and 1625–0084

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to seek the approval of OMB for the renewal of four Information Collection Requests (ICRs). The ICRs are: (1) 1625–0047, Plan Review and Records for Vital System Automation; (2) 1625–0063, Marine Occupational Health and Safety Standards for Benzene—46 CFR 197 Subpart C; (3) 1625–0070, Vessel Identification System; and (4) 1625–0084, Audit Reports under the International Safety Management Code. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before April 10, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2006–23736] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 1900 Half Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov;* they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2006–23736], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

1. *Title:* Plan Review and Records for Vital System Automation.

Omb Control Number: 1625–0047.

Summary: This collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S. flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate regulations for the safety of personnel and property on board vessels. Various sections within parts 52, 56, 58, 62, 110, 111, and 113 of 46 CFR contain these rules.

Respondents: Designers, manufacturers, and owners of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 57,375 hours to 65,400 hours a year.

2. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR 197 Subpart C.

OMB Control Number: 1625–0063.

Summary: To protect marine workers from exposure to toxic Benzene vapor, the Coast Guard implemented 46 CFR 197 Subpart C.

Need: This information collection is vital to verifying compliance.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 59,766 hours a year.

3. *Title:* Vessel Identification System.

OMB Control Number: 1625–0070.

Summary: The Coast Guard established a nationwide Vessel Identification System (VIS). VIS provides participating States and Territories with access to data on vessels numbered by States and Territories. Participation in VIS is voluntary.

Need: 46 U.S.C. 12501 mandates the establishment of a VIS. 33 CFR part 187 prescribe the requirements of VIS.

Respondents: Governments of States and Territories.

Frequency: Daily.

Burden Estimate: The estimated burden has decreased from 6,045 hours to 5,829 hours a year.

4. *Title:* Audit Reports under the International Safety Management (ISM) Code.

Omb Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to International Convention for the Safety of Life at Sea (SOLAS) 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety management systems.

Need: 46 U.S.C. 3203 authorizes the Coast Guard to prescribe regulations regarding safety management systems. 33 CFR part 96 contains the rules for those systems and hence the safe operation of vessels.

Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the U.S.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 8,440 hours to 12,676 hours a year.

Dated: February 2, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–1643 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–07]

Notice of Submission of Proposed Information Collection to OMB; Mortgagee's Certification/Application/ Monthly Summary of Assistance Payments Due

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagee's application for assistance payments on behalf of lower income homeowners under Section 235. HUD uses the information to determine the correct amount of periodic assistance

payments to mortgagees on behalf of homeowners.

DATES: Comments Due Date: March 10, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0081) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title Of Proposal: Mortgagee's Certification/Application/Monthly Summary of Assistance Payments Due.

OMB Approval Number: 2502–0081.

Form Numbers: HUD–300 and HUD–93102.

Description of the Need for the Information and its Proposed Use: Mortgagee's application for assistance payments on behalf of lower income homeowners under Section 235. HUD uses the information to determine the correct amount of periodic assistance payments to mortgagees on behalf of homeowners.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	50	24		0.625		750

Total Estimated Burden Hours: 750.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 1, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–1645 Filed 2–7–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–28]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of the upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of the upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. The meeting is a continuation of the Committee's meeting held by telephone conference on January 23, 2006, and recessed until the next meeting. The meeting is open to the general public, which may participate by following the instructions below.

DATES: The conference call meeting will be held on Thursday, February 23, 2006, from 11 a.m. to 3 p.m. eastern standard time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can link onto NFPA's Web site for instructions concerning how to participate, and for contact information for the conference call from a HUD Web site, in the section marked ''Business'' ''Manufactured Housing Consensus Committee Information''. The link can be found at: *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm.*

Alternately, interested parties may contact Jill McGovern of NFPA by phone at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5403(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of the conference call meeting is to permit the Committee, at its request, to review, and to take action on further recommendations to the Secretary regarding proposed changes to 24 CFR part 3282, §§ 3282.401 through 3282.418 (Subpart I—Consumer Complaint Handling and Remedial Actions). It is necessary to have this meeting on this date, which is a continuation of its January 23, 2006, meeting called to discuss this matter, to

permit the Committee to continue its consideration and take action regarding the foregoing matter in a timely manner.

Tentative Agenda

A. Roll Call.
B. Welcome and Opening remarks.
C. Full Committee meeting to take actions on proposed changes to 24 CFR Part 3282, Subpart I.
D. Adjournment.

Dated: February 2, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–1644 Filed 2–7–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Bird Banding Laboratory Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The second meeting of the Advisory Committee on the bird Banding laboratory (Committee) will take place February 22 ad 23, 2006, at the national headquarters for Ducks Unlimited, One Waterfowl Way, Memphis, Tennessee 38120. The meeting, which runs from 8:30 a.m. to 4:30 p.m. each day, will take place in DU's Conference Center. The purpose of the Advisory Committee, which is co-chaired by the USGS and the U.S. Fish and Wildlife Service, is to represent the interests of the bird banding community, including both game and non-game birds, in advising the U.S. Department of the Interior, USGS, on current and future management of the bird Banding Laboratory. The agenda for this meeting will focus on a Committee review of the results of the work done since the last meeting by four smaller subgroups. Each subgroup was charged with developing draft issue statement for one of the following topics: (1) Bird banding permits; (2) data collection and storage; (3) data dissemination; and (4) partnerships. Subsequent to the review discussion, the Committee will finalize statements for each issue and begin developing recommendations for action.

The meeting is open to all members of the interested public, and time on the agenda has been reserved at the conclusion of each day's work for the Committee to receive verbal comments (limited to 5 minutes per person) from the public. To speak before the Committee, please register in advance with Mr. Daniel James (see contact information below), the USGS Designated Federal Official (DFO) for the Committee.

FOR FURTHER INFORMATION CONTACT: Daniel L. James, 12201 Sunrise Valley Drive, MS 301, Reston, Virginia 20192; 703–648–4253, e-mail: *dan_james@usgs.gov*.

Dated: February 2, 2006.

Byron K. Williams,

Acting Associate Director for Biology.

[FR Doc. 06–1150 Filed 2–7–06; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO640 1020 PF 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. The BLM will consider public nominations for 45 days after the publication date of this notice.

DATES: Send all nominations to the appropriate BLM State Office by no later than March 27, 2006.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the locations to send your nominations.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson Gore, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, 1849 C Street, MS–LS–406, Washington, DC 20240; 202–452–0377.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR 1784.b. These include three categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation users, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office; representatives and employees of a State agency responsible for management of natural resources; representatives of Indian Tribes within or adjacent to the area for which the Council is organized; representatives of and employed as academicians involved in natural sciences; and the public-at-large. Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decisionmaking. The following must accompany all nominations:

—Letters of reference from represented interests or organizations,
—A completed background information nomination form,
—Any other information that speaks to the nominee's qualifications

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

Alaska

Alaska RAC

Danielle Allen, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513; (907) 271–3335.

Arizona

Arizona RAC

Deborah Stevens, Arizona State Office, BLM, One North Central Avenue, Phoenix, Arizona 85004; (602) 417–9215.

California

Central California RAC

Deane Swickard, Folsom Field Office, BLM, 63 Natoma Street, Folsom, California 95630; (916) 985–4474.

Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130; (530) 257–0456.

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130; (530) 257–0456.

Colorado

Front Range RAC

Ken Smith, Royal Gorge Field Office, BLM, 3170 E. Main Street, Canon City, Colorado 81212; (719) 269–8553.

Northwest RAC

David Boyd, Glenwood Springs Field Office, BLM, 50629 Highways 6 and 24, Glenwood Springs, Colorado 81601; (970) 947–2800.

Southwest RAC

Melodie Lloyd, Grand Junction Field Office, BLM, 2815 H Road, Grand Junction, Colorado 81506; (970) 244–3097.

Idaho

Coeur d'Alene District RAC

Stephanie Snook, Coeur d'Alene District Office, BLM, 1808 North Third Street, Coeur d'Alene, Idaho 83814; (208) 769–5004.

Idaho Falls District RAC

David Howell, Idaho Falls District Office, BLM, 1405 Hollipark Drive, Idaho Falls, Idaho 83401; (208) 524–7559.

Boise District RAC

MJ Byrne, Boise District Office, BLM, 3948 Development Avenue, Boise, Idaho 83705; (208) 384–3393.

Twin Falls District RAC

Sky Buffat, Twin Falls District Office, BLM, 2536 Kimberly Road, Twin Falls, Idaho 83301; (208) 735–2068.

Montana and Dakotas

Eastern Montana RAC

Mary Apple, Montana State Office, BLM, 5001 Southgate Drive, Billings, Montana 59101; (406) 896–5258.

Central Montana RAC

Kaylene Patten, Lewistown Field Office, BLM, 920 Northeast Main, Lewistown, Montana 59457; (406) 538–1957.

Western Montana RAC

Marilyn Krause, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701; (406) 533–7617.

Dakotas RAC

Lonny Bagley, North Dakota Field Office, BLM, 2933 Third Avenue West, Dickinson, North Dakota 58601; (701) 227–7703.

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC

Debra Kolkman, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502; (775) 289–1946.

New Mexico

New Mexico RAC

Theresa Herrera, New Mexico State Office, BLM, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87505; (505) 438–7517.

Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC

Pam Robbins, Oregon State Office, BLM, 333 SW First Avenue, P.O. Box 2965, Portland, Oregon 97208; (503) 808–6306.

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 440 West 200 South, Suite 500, P.O. Box 45155, Salt Lake City, Utah 84101; (801) 539–4195.

Lawrence E. Benna,

Deputy Director, Bureau of Land Management.

[FR Doc. E6–1719 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Establishing and Call for Nominations for the Sonoran Desert National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice under section 9 (a)(2) of the Federal Advisory Committee Act. The BLM is giving notice that the Secretary of the Interior is establishing the Sonoran Desert National Monument Advisory Council (SDNMAC) and calling for nominations for positions on the SDNMAC. This notice requests the public to submit nominations for membership on the SDNMAC. Any individual or organization may nominate one or more persons to serve on the SDNMAC. Individuals may nominate themselves for SDNMAC membership.

DATES: Submit nominations to the address listed below no later than 45 days after date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: SDNM Advisory Council, c/o Karen Kelleher, Monument Manager, BLM, Phoenix District, 21605 North 7th Avenue, Phoenix, Arizona 85027, Phone 623–580–5500, FAX 623–580–5580, e-mail: *AZ_SDNMAC@blm.gov*, Internet: *http://www.blm.gov/az/sonoran/council.htm*.

SUPPLEMENTARY INFORMATION: The purpose of the SDNMAC is to advise BLM on the management of the Sonoran Desert National Monument as described in the Secretary of the Interior's January 19, 2001 Memorandum. Each member will be a person qualified through education, training, knowledge, or experience to give informed and objective advice regarding the purposes for which the Monument was established, have demonstrated experience or knowledge of the geographical area under the purview of the Council, and have demonstrated a commitment to collaborate in seeking solutions to a wide spectrum of resource management issues. The authority to establish this Committee is found in section 309 of the Federal Land Policy and Management Act, Pub. L. 94–579 and in section 14(b) of the Federal Advisory Committee Act, 5 U.S.C. Appendix.

You may obtain nomination forms on the Internet at *www.blm.gov/az/sonoran/council.htm* or from the SDNM, Bureau of Land Management (see address above). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the SDNM, Bureau of Land Management (see address above). Nominees must reside in Arizona or those portions of adjoining states which the BLM in Arizona administers (including St. George, Utah). The Secretary will appoint 15 members to the Council.

The Council shall consist of the following:

• Four persons, one from each tribe, who are selected from nominees submitted by the governing bodies of

the following tribes: Tohono O'odham Nation, Ak Chin Indian Community, Gila River Indian Community, and Salt River Pima-Maricopa Indian Community, and who represent interests of the nominating tribe.

- A person who represents and participates in what is commonly called dispersed recreation, such as hiking, camping, hunting, nature viewing, nature photography, bird watching, horseback riding, or trail walking.
- A person who represents and participates in what is commonly called mechanized recreation or off-highway driving.
- A person who is a recognized environmental representative from Arizona.
- A person who is an elected official from a city or community in the vicinity of the Monument.
- A person who is a livestock grazing permittee or who represents the permittees on the allotments within the Monument.
- A person who represents the rural communities around the Monument and who is selected at-large from these communities.
- Two persons who represent sciences such as wildlife biology, archaeology, ecology, botany, history, social sciences, or other applicable disciplines.
- A person who represents Maricopa County's interests, to be appointed from nominees submitted by the Supervisors of Maricopa County.
- A person who represents Pinal County's interests, to be appointed from nominees submitted by the Supervisors of Pinal County.
- A person who represents the State of Arizona, to be appointed from nominees submitted by the Governor of Arizona.

You should identify the specific category that the nominee will represent in your letter of nomination. The SDNM, Bureau of Land Management (see address above) will collect the nomination forms and letters of reference and distribute them to the officials responsible for recommending nominees. BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

Members of the SDNMAC serve for 3-year terms. For the initial Council, five members will be appointed to 2-year terms, five members will be appointed for 3 years, and five members will be appointed for 4 years. Thereafter, members of the SDNMAC will be appointed to 3-years. One Native American position, the elected official from a local community, the State of Arizona position, the livestock permittee position, and one science position will be 2-year terms that will expire 2 years from the date of appointment to the Council by the Secretary. These five positions will be replaced with 3-year terms, to begin no earlier than 2 years from the date of appointment to the Council by the Secretary. The mechanized recreation position, the Arizona environmental organization position, the Pinal County representative, and two of the Native American positions will be 3-year terms and will expire 3 years from the date of appointment to the Council by the Secretary. These five positions will all be replaced with 3-year terms, to begin no earlier than 3 years from the date of appointment to the Council by the Secretary. The non-mechanized recreation position, the fourth Native American position, the second science position, the rural at-large position, and the Maricopa County representative will be 4-year terms and will expire 4 years from the date of appointment to the Council by the Secretary. These five positions will all be replaced with 3-year terms, to begin no earlier than 4 years from the date of appointment to the Council by the Secretary.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The SDNMAC will meet only at the call of the Monument Manager, who is the Designated Federal Official with respect to the Council. The charter requires the SDNMAC to meet no less than 2 times per year.

Dated: February 1, 2006.

Karen Kelleher,

Monument Manager, Bureau of Land Management.

[FR Doc. 06–1094 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–038–1220–AL; HAG 06–0066]

Meeting Notice for National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: Bureau of Land Management (BLM), Vale District, Interior.

SUMMARY: The National Historic Oregon Trail Interpretive Center Advisory Board will meet March 7, 2006, from 8 a.m. to 12 p.m. (PST) at the Best Western Sunridge Inn, One Sunridge Way, Baker City, Oregon.

Meeting topics will include a Center update, education and outreach, and other topics as may come before the board. The meeting is open to the public. Public comment is scheduled for 10 to 10:15 a.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the National Historic Oregon Trail Interpretive Center Advisory Board may be obtained from Debbie Lyons, Public Affairs Officer, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *Debra_Lyons@or.blm.gov*.

Dated: February 1, 2006.

David R. Henderson,

District Manager.

[FR Doc. E6–1678 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

[OR–027–1020–PH–029H; HAG 06–0068]

Bureau of Land Management

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

ACTION: Meeting notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting Monday, February 27 from 8 a.m. to 5 p.m. and Tuesday, February 28, from 8 a.m. to 3:30 p.m., in the conference room at the U.S. Bureau of Land Management (BLM) Burns District Office, 28910 Hwy 20 West, Hines, Oregon.

Agenda items for the 2-day meeting include updates from the Chair and Designated Federal Official; remarks from Oregon/Washington BLM Associate State Director Jim Kenna; updates on the Energy Corridor Process Programmatic Environmental Impact Statement (EIS) and the Vegetation Management Programmatic EIS; a presentation on the High Desert Partnership; discussion of SEORAC priorities (1) off-highway vehicle use and management, and (2) sage-grouse; an opportunity for SEORAC subgroups to meet; subgroup and liaison reports; member round-table; a presentation on The Pay-off of Collaboration; and agenda development for the May meeting. Other matters that may reasonably come before the SEORAC may also be addressed anytime Monday or Tuesday.

The public is welcome to attend all portions of the meeting and may contribute during the public comment sessions at 11 a.m. each day. Those who

verbally address the SEORAC during public comment are asked to also provide a *written* statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

If you have information you would like distributed to SEORAC members, please send it to Sally Nelson at the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, prior to the start of the meeting. If you send information or general correspondence to anyone at the Burns District Office and would like a copy given to the SEORAC, please write ''COPY TO SEORAC'' on the envelope and enclosed document(s).

FOR FURTHER INFORMATION CONTACT: Tara Wilson, Southeast Oregon Resource Advisory Council Facilitator, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4519, or *Tara_Wilson@blm.gov.*

Dated: February 1, 2006.

Dana R. Shuford,

District Manager.

[FR Doc. E6–1647 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW140768]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, Antelope Coal Company timely filed a petition for reinstatement of oil and gas lease WYW140768 from lands in Converse County, Wyoming, and it was accompanied by all the required rentals and royalties accuring from January 1, 2005, the date of termination.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW140768 effective January 1, 2005, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 06–1111 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW153586

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of section 371(a) of the Energy Policy Act of 2005, the lessee, Charles A. Einarsen, timely filed a petition for reinstatement of competitive oil and gas lease WYW153586 in Natrona County, Wyoming. The lessee paid the required rental accruing from the date of termination, September 1, 2002, and submitted a signed agreement, specifying future rental and royalty rates for this lease would be at $10.00 per acre or fraction of an acre and 16⅔ percent respectively. In accordance with 43 CFR 3103.4–1 and 43 CFR 3108.2–3(f) the lessee petitioned to reduce the rental and royalty rates for the subject lease to the rates specified in sections 1 and 2 of the original lease agreement and submitted justification and rationalization for the request. After thoroughly reviewing the lessee's petition and taking into consideration the information submitted, we have granted the request to reduce the rental rates to those in Section 1 of the original lease agreement but have denied the request for a reduced royalty rate. The purpose of granting a reduced royalty rate is to extend the productive life of an existing well. Normally it cannot be determined whether a lease can be successfully operated at the higher royalty rate required for reinstated leases until the lease has been fully developed. Because the productivity of the leasehold has not been fully determined, the request for a reduced royalty rate is premature.

No leases were issued that affect these lands. The lessee had paid the required $500 administrative fee for lease reinstatement and $166 cost for publishing this Notice.

The lessee has met all the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The rental rates specified in section 1 of the original lease agreement; and
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–1641 Filed 2–7–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electronics Manufacturing Initiative (Formerly National Electronics Manufacturing Initiative)

Notice is hereby given that, on January 5, 2006, pursuant to seciton 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Electronics Manufacturing Initiative (''iNEMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objectives. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

National Electronics Manufacturing Initiative (NEMI) has changed its name to: International Electronics Manufacturing Initiative (iNEMI). The nature and objectives of iNEMI are to facilitate research and development in connection with materials, components, manufacturing-related technologies, and equipment for the manufacture of electronics products. In that connection,

iNEMI plans to create technology roadmaps for future needs with respect to electronics products and propose and describe technical goals for materials, components, equipment, and manufacturing processes; promote research and development, and perform the evaluation of the ability to commercialize such technologies with members in conjunction with the aforementioned goals. iNEMI's project participants will collect, exchange, and, where appropriate, license or make public the results of the evacuations, research, and development; work closely with various governmental and private agencies, and perform other acts allowed by the National Cooperative Research and Production Act that would advance iNEMI's objectives.

In addition, Coherent, Inc., Santa Clara, CA; Guidant CRM (Cardiac Rhythm Management), St. Paul, MN; KLA-Tencor, San Jose, CA; Medtronic Microelectronics Center, Tempe, AZ; NanoDynamics, Inc., Buffalo, NY; ERSA North America, Plymouth, WI; Nihon Superior Co., Ltd., Osaka, JAPAN; PCNalert, Pasadena, CA; Purdue University, West Lafayette, IN; Symbol Technologies, Holtsville, NY; Total Parts Plus, Fort Walton Beach, FL; and Henkel Corporation, Irvine, CA have been added as parties to this venture. Also, Aurora Instruments, Inc., Ambler, PA; BTU International, North Billerica, MA; Cray, Inc., Chippewa Falls, WI; Centor Software, Irvine, CA; LACE Technologies, St. Charles, IL; Meta Group, Stamford, CT; Kulicke & Soffa Industries, Inc., Willow Grove, PA; Vytran Corporation, Morganville, NJ; and Sumitomo Electric Lightwave Corporation, Research Triangle Park, NC have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and iNEMI intends to file additional written notification disclosing all changes in membership.

On June 6, 1996, NEMI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 1996 (61 FR 33774).

The last notification was filed with the Department on April 23, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 25, 2004 (69 FR 29755).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–1166 Filed 2–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on January 17, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTRA, The Alliance for Science & Technology Research in America, Washington, DC; Cabot Corporation, Albuquerque, NM; Centerline (Windsor) Limited, Windsor, Ontario, Canada; Control Gaging, Inc., Ann Arbor, MI; DEKA Research & Development Corporation, Manchester, NH; GFM GmbH, North Richland Hills, TX; Intrepid Solutions, LLP, The Woodlands, TX; Millennium Cell Inc., Eatontown, NJ; MTI Micro Fuel Cells Inc., Albany, NY; Parker Emerging Technology Segment, New Britain, CT; Proto Manufacturing Inc., Ypsilanti, MI; Protonex Technology Corporation, Southborough, MA; Pukoa Scientific, LLC, Oviedo, FL; and VCD Technologies, LLC, San Dimas, CA have been added as parties to this venture. Also, The Aerostructures Corporation, Nashville, TN; ComauPico, Southfield, MI; CTA Inc., Madison, AL; Cubic Systems, Inc., Ann Arbor, MI; Fidelis Security Systems, Inc., Bethesda, MD; Goodrich Aerostructures Group, Chula Vista, CA; Intel Corporation, Santa Clara, CA; MicroFab Technologies, Inc., Plano, TX; Parker Technologies International, Inc., Warrenville, IL; Toolmen Corporation, Round Rock, TX; University of Arkansas, Fayetteville, AR; and University of Tennessee, Tullahoma, TN have withdrawn as parties to this venture.

In addition, Unigraphics Solutions, Inc. has changed its name to UGS Corp., Plymouth Meeting, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department of Justice on October 19, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 2005 (70 FR 71332).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–1168 Filed 2–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Technologies for Target Assessment

Notice is hereby given that, on January 6, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Technologies for Target Assessment (''TATS member firm Icoria, Inc.'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IO Informatics, Inc., Emeryville, CA has been added as a party to this venture. Also, Agilent Technologies, Inc., Santa Clara, CA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TATS member firm Icoria, Inc. intends to file additional written notification disclosing all changes in membership.

On August 1, 2002, TATS member firm Icoria, Inc. filed its original

notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 12, 2002 (67 FR 57853).

The last notification was filed with the Department of Justice on October 18, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5488).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–1167 Filed 2–7–06; 8:45 am]

BILLING CODE 4410–11–M

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–02]

Notice of the Millennium Challenge Corporation Environmental Guidelines

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: On January 17, 2006, the Board of Directors of the Millennium Challenge Corporation (the ''Corporation'') approved the Corporation's Environmental Guidelines (''Environmental Guidelines'') and authorized the Corporation to apply them for the purpose of ensuring that projects funded under Millennium Challenge Compacts are environmentally sound, are designed to operate in compliance with relevant regulatory requirements, and, as required by section 605(e)(3) of the Millennium Challenge Act of 2003, are not likely to cause a significant environmental, health or safety hazard.

The full text of the Environmental Guidelines can be found on the Corporation's Web site at *http://www.mcc.gov/public_affairs/press_releases/pr_012406_env_guidelines.shtml.*

FOR FURTHER INFORMATION CONTACT: Information regarding the Environmental Guidelines may be obtained from: Environment and Social Assessment Team, Millennium Challenge Corporation, 875 15th Street, NW., Washington, DC 20005–2203, Telephone: 202–521–3600, E-mail: *esa@mcc.gov.*

Dated: February 2, 2006.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 06–1142 Filed 2–7–06; 8:45 am]

BILLING CODE 9210–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–03]

Notice of Quarterly Report (October 1, 2005–December 31, 2005)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter October 1, 2005 through December 31, 2005 with respect to either assistance provided under section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), or transfers of funds to other Federal agencies pursuant to section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Madagascar Year: 2006 Quarter 1 Total Obligation: $109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: $1.756 million				
Land Tenure Project	$37.803 mil	Increase Land Titling and Security.	$0	Legislative proposal (''loin de cadrage'') reflecting the PNF submitted to Parliament and passed. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property-related transactions at the local and/or national land services offices. Time/cost to respond to information request, issue titles and to modify titles after the first land right. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land in the zones that is demarcated and ready for titling. Promote knowledge and awareness of land tenure reforms among inhabitants in the zones (surveys).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Finance Project	$35.888 mil	Increase Competition in the Financial Sector.	$0	Submission to Parliament and passage of new laws recommended by outside experts and relevant commissions. CPA Association (CSC) list of accountants registered. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Public awareness of new financial instruments (surveys). Report of credit and payment information to a central database. Number of holders of new denomination T-bill holdings, and T-bill issuance outside Antananarivo as measured by Central Bank report of redemption date. Volume of production covered by warehouse receipts in the zones. Volume of MFI lending in the zones. MFI portfolio-at-risk delinquency rate. Number of new bank accounts in the zones.
Agricultural Business Investment Project.	$17.683 mil**	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$0	Number of rural producers receiving or soliciting information from ABCs about the opportunities. Zones identified and description of beneficiaries within each zone submitted. Number of cost-effective investment strategies developed. Number of plans prepared. Number of farmers and business employing technical assistance received.
Program Administration and Control, Monitoring and Evaluation.	$18.399 mil	.....	$1.756 mil.	

Program objective	Obligated	Program goal	Disbursements	Measures
Country: Honduras Year: 2006 Quarter 1 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $00				
Rural Development Project.	$72.195 mil	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$0	Hours of technical assistance delivered to Program Farmers (thousands). Funds lent by MCA-Honduras to financial institutions (cumulative). Hours of technical assistance to financial institutions (cumulative). Lien Registry equipment installed. Kilometers of farm-to-market road upgraded (cumulative).
Transportation Project	$125.700 mil ...	Reduce transportation costs between targeted production centers and national, regional and global markets.	$0	Kilometers of highway upgraded. Kilometers of secondary road upgraded. Number of weight stations built.
Program Administration and Control, Monitoring and evaluation.	$17.105 mil	.....	$0.	

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Cape Verde Year: 2006 Quarter 1 Total Obligation: $110,078,000 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $7.527 million				
Watershed and Agricultural Support.	$10.848 mil	Increase agricultural production in three targeted watershed areas on three islands.	$0	Productivity: Horticulture (tons per hectare). Value-added for farms and agribusiness (millions of dollars).

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Infrastructure Improvement.	$78.760 mil	Increase integration of the internal market and reduce transportation costs.	$0	Volume of goods shipped between Praia and other islands (tons). Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements (million dollars).
Private Sector Development.	$7.200 mil	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$0	Value added in priority sectors above current trends (escudos). Volume of private investment in priority sectors above current trends.
Program Administration and Control, Monitoring and Evaluation.	$13.270 mil	.....	$7.527 mil.	

619 Transfer Funds

U.S. agency to which funds were transferred	Amount	Country	Description of program or project
N/A	N/A	N/A	N/A

**Quarter 4 reported a misprint under the Madagascar, Agricultural Business Investment Project. The corrected number (in millions) is as above.

Dated: February 2, 2006.

Frances C. McNaught,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. 06–1141 Filed 2–7–06; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research #1203.

Dates and Times:

March 2, 2006; 7:45 a.m.–9 p.m.

March 3, 2006; 8 a.m.–3 p.m.

Place: University of Colorado in Boulder, Colorado.

Type of Meeting: Partially Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4938.

Purpose of Meeting: To provide advice and recommendations concerning a proposal submitted to NSF for financial support.

Agenda

March 2, 2006

7:45 a.m.–9 a.m. Closed—Executive Session

9 a.m.–4:30 p.m. Open—Presentations by members of the Materials Research Science and Engineering Center (MRSEC) at the U. of Colorado; Topics: Status and Plans of Research and Education Program of the MRSEC.

4:30 p.m.–6 p.m. Closed—Executive Session, review and evaluation

March 3, 2006

8 a.m.–9 a.m. Closed

9 a.m.–10:45 a.m. Open—Presentations by members of the Materials Research Science and Engineering Center (MRSEC) at the U. of Colorado; Topics: Status and Plans of Research and Education Program of the MRSEC.

10:45 a.m.–3 p.m. Closed—Executive Session, review and drafting of report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 3, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–1155 Filed 2–7–06; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that

include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning 703/292–8182.

Dated: February 3, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–1156 Filed 2–7–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''Generic Customer Satisfaction Surveys and NRC Form 671, Request for Review of a Customer Satisfaction Survey Under Generic Clearance''.

2. *Current OMB approval number:* 3150–0197.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Voluntary reporting by the public and NRC licensees.

5. *The number of annual respondents:* 1,770.

6. *The number of hours needed annually to complete the requirement or request:* 393 hours.

7. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

Submit, by April 10, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 1st day of February 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E6–1773 Filed 2–7–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of federal advisory committee meetings.

SUMMARY: The Office of Management and Budget announces two meetings of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are two meetings announced in this **Federal Register** Notice. Public meetings of the Panel will be held on February 23rd and March 17th, 2006. All meetings will begin at 10 a.m. Eastern Standard Time and end no later than 5 p.m.

ADDRESSES: The two meetings will be held at the White House Conference Center, Truman Room, 726 Jackson Place NW., Washington, DC 20503. The public is asked to pre-register one week in advance for all meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION: Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meetings, should contact Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov*, phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Ms. Anne Terry, AAP Staff Analyst, *in writing* at: *anne.terry@gsa.gov*, by fax at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at both meetings. Any change will be announced in the **Federal Register**.

All Meetings—While the Panel may hear from additional invited speakers, the focus of these two meetings will be discussions of working group findings and recommendations. Selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will discuss with the full Panel the findings and recommendations briefed at the October and November 2005 public meetings. It

is anticipated that some voting may occur at one or both of these meetings. The Panel welcomes oral public comments at these meetings and has reserved one hour for this purpose at each meeting. Members of the public wishing to address the Panel during the meeting must contact Ms. Anne Terry, *in writing,* as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports and Preliminary Findings and Recommendations:* Members of the public are encouraged to regularly visit the Panel's Web site to view draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://www.acqnet.gov/aap* under ''Working Group Reports.'' Additionally, many of the preliminary findings and recommendations may be found in Power Point slides under ''Meeting Materials'' for the October, November, and December meetings. The Panel voted on some small business recommendations on January 31, 2006 as well. The results of the vote are available on the slides under ''Meeting Materials'' for that date.

(c) *Availability of Materials for the Meetings:* Please see the Panel's Web site for any available materials, including draft agendas and minutes (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(d) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Ms. Anne Terry, in writing (via mail, e-mail, or fax identified above for Ms. Terry) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Terry one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this **Federal Register** Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM-PC/Windows 98/2000/XP format). *Please note:* Since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(e) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. E6–1720 Filed 2–7–06; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53205; File No. SR–Amex–2005–124]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto Relating to Increases in the Original Listing and Annual Fees

February 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On December 28, 2005, Amex filed Amendment No. 1 to the proposed rule change.[3] On January 23, 2006, Amex filed Amendment No. 2 to the proposed rule change.[4] On January 27, 2006, Amex filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the principal office of Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 explains the differences in the percentage increases in the original listing and annual fees for smaller and larger companies and also makes technical corrections to the rule text in Exhibit 5.

[4] Amendment No. 2 was withdrawn on January 31, 2006.

[5] Amendment No. 3 discusses the reasons why the original listing and annual issuer fees vary depending on the size of the company and corrects non-substantive typographical errors in the text of the Amex Fee Schedule submitted as Exhibit 5.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to amend Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. The Exchange believes these fee increases are necessary to cover increased costs it has incurred in the enhancement and development of its trading technology and improvements in the overall level of services provided to its members and listed companies. The Exchange's original and annual listing fees have not increased since 2002. Should the Commission approve the proposed rule change, the Exchange proposes to implement the increased annual fees retroactively to January 2006 and the increased original listing fees prospectively upon the Commission's approval of this proposal.[6]

Currently the original listing fees pursuant to Section 140 of the Amex Company Guide for stock issues range from $35,000 to $65,000 (which includes a non-refundable application processing fee of $5,000) depending on the number of shares to be listed. Amex proposes that the original listing fees be increased as follows:

Number of shares	Current fee*	Proposed fee*	Percentage increase
Less than 5,000,000 shares	$35,000	$45,000	28
5,000,000 to 10,000,000 shares	45,000	55,000	22
10,000,001 to 15,000,000 shares	55,000	60,000	9
In excess of 15,000,000 shares	65,000	70,000	8

* Includes the non-refundable application-processing fee of $5,000.

As indicated in the chart above, the percentage increase in the original listing fees varies depending upon the number of shares to be listed. Rather than increase each level the same percentage, the Exchange chose to vary the percentage increases in order to remain competitive with the original listing fees charged by other market places. Based upon original listing fees in place at its competitors, the Exchange determined to increase the fees by a larger percentage for smaller companies than for larger companies. The proposed increases in the original listing fees will not change the manner in which these fees are applied—companies with a fewer number of shares will be charged less than companies with a greater number of shares. The Exchange's purpose for differentiating its original listing fees is based on the Amex's business objective of attracting small to mid-size companies and the recognition that the costs associated with listing can be significant to a small or mid-size company. In addition, as a general matter, companies with fewer shares tend to have less complex structures, which may result in less staff time spent reviewing the company's listing application.

In addition, the original listing fee for non-U.S. companies listed on a foreign stock exchange is currently 50% of the fees charged to U.S. companies. Amex proposes that the original listing fee for non-U.S. companies be a flat fee of $40,000, which will include the one-time, non-refundable application-processing fee of $5,000. The original listing fees currently paid by non-U.S. companies are significantly lower than the rates paid by U.S. companies due to the additional costs non-U.S. companies incur when listing in the United States. In order to continue to recognize the costs faced by non-U.S. companies, the Exchange chose to set a single rate that is below the lowest rate it charges to U.S. companies, but is still competitive with rates charged by other markets. Finally, the original listing fees for issues listed pursuant to Sections 106 (currency and index warrants) and 107 (other securities) of the Amex Company Guide will remain at the current rates.

The annual fees set forth in Section 141 of the Amex Company Guide currently range from $15,000 to $30,000 depending on the number of shares outstanding. Amex proposes that the annual fees be increased as follows:

Number of shares	Current fee	Proposed fee	Percentage increase
5,000,000 shares or less	$15,000	$16,500	10
5,000,001 to 10,000,000 shares	17,500	19,000	9
10,000,001 to 25,000,000 shares	20,000	21,500	8
25,000,001 to 50,000,000 shares	22,500	24,500	9
50,000,001 to 75,000,000 shares	30,000	32,500	8
In excess of 75,000,000 shares	30,000	34,000	13

As indicated in the chart above, the percentage increase in the annual fees varies depending upon the number of shares outstanding. Rather than increase each level the same percentage, the Exchange chose to vary the percentage increases in order to remain competitive with the annual fees charged by other market places. Based upon annual fees in place at its competitors, the Exchange determined to increase the fees by a larger percentage for its largest companies. The Exchange's purpose for having lower annual fees for companies with fewer shares outstanding is similarly based on its objective to retain the listings of small to mid-size companies and a recognition that the on-going costs associated with being a listed company have a greater impact on the small to mid-size company. It should be noted that the Amex's competitors also use a sliding scale

[6] Amex clarified that the annual fees will be applied retroactively to January 2006 and the original listing fees will be applied prospectively. Telephone conversation between Claire McGrath, Senior Vice President and General Counsel, Amex and Jan Woo, Attorney, Division of Market Regulation, Commission, on February 1, 2006.

when applying original listing and annual issuer fees.

In addition, the annual fees for issues listed pursuant to Sections 106 (currency and index warrants) and 107 (other securities) of the Amex Company Guide will remain at their current rates.

Finally, the Exchange is also proposing other minor technical changes to Sections 140 and 141 of the Amex Company Guide, which will not further alter the fees but will clarify the text of these Sections.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(4) of the Act [8] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In addition, increasing original listing and annual fees will provide the Exchange with the ability to cover increased expenses related to enhancements in its trading technology, business services, and regulatory programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2005–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2005–124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–124 and should be submitted on or before March 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1728 Filed 2–7–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53202; File No. SR–PCX–2006–04]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc.

January 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2006, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to submit to the Commission a proposed rule change to further extend certain temporary exceptions from the voting and ownership limitations in the certificate of incorporation of PCX Holdings, Inc. (''PCXH''), a Delaware corporation and a parent company of PCX, originally approved by the Commission in an order issued on September 22, 2005 (the ''SEC Order'') [5] and extended pursuant to a proposed rule change filed with the Commission on December 19, 2005 (the ''Original Extension Rule Filing'') [6] and amended on December 23, 2005,[7] so as to allow: (a) Archipelago Holdings, Inc. (''Archipelago''), a Delaware corporation and the ultimate parent company of PCXH and PCX, to continue to (i) own Wave Securities, L.L.C. (''Wave'') and (ii) own and operate the ATS Inbound Router Function (as defined below) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90) (the ''SEC Order'').

[6] *See* Pacific Exchange, Inc., Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc., File No. SR–PCX–2005–139 (December 19, 2005).

[7] *See* Amendment No. 1 to the Original Extension Rule Filing (December 23, 2005).

Archipelago Trading Services, Inc. (''ATS'') and the Inbound Router Clearing Function (as defined below) of Archipelago Securities, L.L.C. (''Archipelago Securities''); and (b) Gerald D. Putnam, Chairman and Chief Executive Officer of Archipelago (''Mr. Putnam''), to own in excess of 5% of Terra Nova Trading, L.L.C. (''TNT'') and continue to serve as a director of TAL Financial Services (''TAL''), in each case until the earlier of (x) the closing date of the merger of Archipelago and the New York Stock Exchange, Inc. (the ''Archipelago NYSE Merger'') and (y) March 31, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *PCXH Acquisition and the Amendment of the PCXH Certificate of Incorporation.* Archipelago operates the Archipelago Exchange (''ArcaEx''), an open, all-electronic stock market for the trading of equity securities. On September 26, 2005, Archipelago completed its acquisition of PCXH and all of its wholly-owned subsidiaries, including PCX and PCXE (the ''PCXH Acquisition''). The PCXH Acquisition was accomplished by way of a merger of PCXH with a wholly-owned subsidiary of Archipelago, with PCXH being the surviving corporation in the merger and becoming a wholly-owned subsidiary of Archipelago.

The certificate of incorporation of PCXH (as amended to date, the ''PCXH Certificate of Incorporation'') contains various ownership and voting restrictions on PCXH's capital stock, which are designed to safeguard the independence of the self-regulatory functions of PCX and to protect the Commission's oversight responsibilities. In order to allow Archipelago to own 100% of the capital stock of PCXH, prior to the completion of the PCXH Acquisition, PCX filed with the Commission a proposed rule change which sought to, among other things, amend the PCXH Certificate of Incorporation to create an exception from the voting and ownership restrictions for Archipelago and certain of its related persons (the ''Original Rule Filing'').[8] The Original Rule Filing, as amended by Amendment No. 1 and Amendment No. 2 thereto, was approved by the Commission on September 22, 2005 [9] and the amended PCXH Certificate of Incorporation became effective on September 26, 2005, upon the closing of the PCXH Acquisition.

Article Nine of the PCXH Certificate of Incorporation provides that no Person,[10] either alone or together with its Related Persons,[11] may own, directly or indirectly, shares constituting more than 40% of the outstanding shares of any class of PCXH capital stock,[12] and that no Person, either alone or together with its Related Persons who is a trading permit holder of PCX or an equities trading permit holder of PCXE, may own, directly or indirectly, shares constituting more than 20% of any class of PCXH capital stock.[13] Furthermore, the PCXH Certificate of Incorporation provides that, for so long as PCXH controls, directly or indirectly, PCX, no Person, either alone or with its Related Persons, may directly or indirectly vote or cause the voting of shares of PCXH capital stock or give any proxy or consent with respect to shares representing more than 20% of the voting power of the issued and outstanding PCXH capital stock.[14] The PCXH Certificate of Incorporation also places limitations on the right of any Person, either alone or with its Related Persons, to enter into any agreement with respect to the withholding of any vote or proxy.[15]

PCX proposed and the Commission approved an exception from the ownership and voting limitations described above to add a new paragraph at the end of Article Nine of the PCXH Certificate of Incorporation, which provides that for so long as Archipelago directly owns all of the outstanding capital stock of PCXH, these ownership and voting limitations shall not be applicable to the ownership and voting of shares of PCXH by (i) Archipelago, (ii) any Person which is a Related Person of Archipelago, either alone or together with its Related Persons, and (iii) any other Person to which Archipelago is a Related Person, either alone or together with its Related Persons.[16] These exceptions to the ownership and voting limitations, however, shall not apply to any ''Prohibited Persons,'' [17] which is defined to mean any Person that is, or that has a Related Person that is (i) an OTP Holder or an OTP Firm (as defined in the rules of PCX) [18] or (ii) an ETP Holder (as defined in the rules of PCXE),[19] unless such Person is also a

[8] *See* Pacific Exchange, Inc., Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc., PCX Rules, and Bylaws of Archipelago Holdings, Inc., File No. SR–PCX–2005–90 (August 1, 2005).

[9] *See* SEC Order.

[10] ''Person'' is defined to mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. PCXH Certificate of Incorporation, Article Nine, Section 1(b)(iv).

[11] The term ''Related Person,'' as defined in the PCXH Certificate of Incorporation, means (i) with respect to any person, all ''affiliates'' and ''associates'' of such person (as such terms are defined in Rule 12b–2 under the Act); (ii) with respect to any person constituting a trading permit holder of PCX or an equities trading permit holder of PCXE, any broker dealer with which such holder is associated; and (iii) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of PCXH. PCXH Certificate of Incorporation, Article Nine, Section 1(b)(iv).

[12] PCXH Certificate of Incorporation, Article Nine, Section 1(b)(i). However, such restriction may be waived by the Board of Directors of PCXH pursuant to an amendment to the Bylaws of PCXH adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of PCX to carry out its functions and responsibilities as an ''exchange'' under the Act and is otherwise in the best interests of PCXH and its stockholders and PCX, and will not impair the ability of the Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission; *provided that* the Board of Directors of PCXH shall have determined that such Person and its Related Persons are not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act). PCXH Certificate of Incorporation, Article Nine, Sections 1(b)(i)(B) and 1(b)(i)(C).

[13] *Id.*, Article Nine, Section 1(b)(ii).

[14] *Id.*, Article Nine, Section 1(c).

[15] *Id.*

[16] *Id.*, Article Nine, Section 4.

[17] *Id.*

[18] PCX rules define an ''OTP Holder'' to mean any natural person, in good standing, who has been issued an Options Trading Permit (''OTP'') by the Exchange for effecting approved securities transactions on the Exchange's trading facilities, or has been named as a Nominee. PCX Rule 1.1(q). The term ''Nominee'' means an individual who is authorized by an ''OTP Firm'' (a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's trading facilities) to conduct business on the Exchange's trading facilities and to represent such OTP Firm in all matters relating to the Exchange. PCX Rule 1.1(n).

[19] PCXE rules define an ''ETP Holder'' to mean any sole proprietorship, partnership, corporation,

Continued

''Permitted Person'' under the PCXH Certificate of Incorporation.[20] The PCXH Certificate of Incorporation further provides that any Prohibited Person not covered by the definition of a Permitted Person who is subject to and exceeds the voting and ownership limitations imposed by Article Nine as of the date of the closing of the PCXH Acquisition shall be permitted to exceed the voting and ownership limitations imposed by Article Nine only to the extent and for the time period approved by the Commission.[21]

b. *Wave.* Wave is an introducing broker for Archipelago's institutional customers and provides such customers with access to ArcaEx and other market centers. Because Wave, a broker-dealer and an ETP Holder of PCXE, is a wholly-owned subsidiary and, consequently, a Related Person, of Archipelago, it falls within the definition of ''Prohibited Persons'' under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago's ownership of PCXH would cause Wave, as an ETP Holder, to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation. Therefore, in connection with the PCXH Acquisition, PCX requested a temporary exception from the ownership and voting limitations in the PCX Certificate of Incorporation for Archipelago's ownership of Wave until December 31, 2005, subject to the condition that during that interim period Archipelago would continue to maintain and comply with its current information barriers between Wave, on the one hand, and PCX, PCXE and other subsidiaries of Archipelago that are facilities of PCX or PCXE, on the other hand.[22]

The Commission approved PCX's rule proposal regarding Wave (the ''Original Wave Exception'').[23] In the SEC Order, the Commission stated that the affiliation of an exchange with one of its members that provides inbound access to the exchange—in direct competition with other members of the exchange—raises potential conflicts of interest between the exchange's regulatory responsibilities and its commercial interests, and the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[24] However, noting that the conditions to be imposed during the interim period were designed to mitigate potential conflicts of interest and the potential for unfair competitive advantage, the Commission concluded that it would be appropriate and consistent with the Act to allow a limited, temporary exception for Archipelago to continue its ownership of Wave.[25] In granting the approval for the Original Wave Exception, the Commission also noted that in addition to being a member of PCX, Wave is a member of the National Association of Securities Dealers, Inc. (''NASD''), a self-regulatory organization (''SRO'') not affiliated with Archipelago, and the NASD has been designated by the Commission as the ''Designated Examining Authority'' for Wave pursuant to Rule 17d–1 of the Act.[26] Furthermore, during the interim period, Wave would continue to be covered by the scope of an agreement between NASD and PCX, which was entered into pursuant to Rule 17d–2 under the Act[27] (the ''17d–2 Agreement'') and provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including Wave.[28]

In accordance with the terms of the Original Wave Exception, Archipelago has been working to sell its ownership interests in Wave. On December 19, 2005, the Exchange submitted the Original Extension Rule Filing requesting an extension of the Original Wave Exception to January 31, 2006, subject to the same conditions as applied to the Original Wave Exception described above.[29] The extension took effect immediately upon the filing of the Original Extension Rule Filing (the ''Original Wave Extension''). On January 19, 2006, Archipelago entered into a definitive agreement for the sale of Wave. The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of certain regulatory approvals, and Archipelago intends to complete the sale as soon as possible following the satisfaction of these conditions.

c. *ATS Inbound Router Function and the Inbound Router Clearing Function.* Archipelago currently owns ATS, a wholly owned subsidiary that is a broker-dealer and an ETP Holder of PCXE. The business of ATS consists of, among other things, acting as an introducing broker for non-ETP Holder broker or dealer clients for securities traded on ArcaEx (the ''ATS Inbound Router Function''). Archipelago Securities, a wholly-owned subsidiary of Archipelago, is a registered broker-dealer, a member of the NASD and an ETP Holder. In addition to its other functions, Archipelago Securities provides clearing functions for trades executed by the ATS Inbound Router Function (the ''Inbound Router Clearing Function'').

Because ATS, a broker-dealer and an ETP Holder of PCXE, is a wholly-owned subsidiary and, consequently, a Related Person, of Archipelago, it falls within the definition of ''Prohibited Persons'' under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago's ownership of PCXH would cause ATS to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation. Likewise, because Archipelago Securities, a broker-dealer and an ETP Holder of PCXE, is a wholly owned subsidiary and, consequently, a Related Person, of Archipelago, and the approvals of

limited liability company or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the PCXE for effecting approved securities transactions on the trading facilities of PCXE. PCXE Rule 1.1(n).

[20] ''Permitted Person'' is defined to mean (A) any broker or dealer approved by the Commission after June 20, 2005 to be a facility (as defined in Section 3(a)(2) of the Act) of PCX; (B) any Person that has been approved by the Commission prior to it becoming subject to the provisions of Article Nine of the PCXH Certificate of Incorporation with respect to the voting and ownership of shares of PCXH capital stock by such Person; and (C) any Person that is a Related Person of Archipelago solely by reason of beneficially owning, either alone or together with its Related Persons, less than 20% of the outstanding shares of Archipelago capital stock. PCXH Certificate of Incorporation, Article Nine, Section 4.

[21] *Id.*

[22] *See* Original Rule Filing at 36–37 and Amendment No. 2 to the Original Rule Filing (September 16, 2005) (''Amendment No. 2''), at 4.

[23] *See* SEC Order at 56960.

[24] *Id.* at 56959.

[25] *Id.*

[26] *Id.* Pursuant to Rule 17d–1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one SRO, the Commission shall designate to one of such organizations the responsibility of examining such member for compliance with the applicable financial responsibility rules. In making such designation, the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among SROs, and the development of a national market system for the clearance and settlement of securities transactions. 17 CFR 240.17d–1.

[27] Rule 17d–2 under the Act provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibilities to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. 17 CFR 240.17d–2.

[28] *See* SEC Order at 56959.

[29] The Original Extension Rule Filing at 13–14.

Archipelago Securities set forth elsewhere in the SEC Order were limited in scope and did not include its Inbound Router Clearing Function, it falls within the definition of ''Prohibited Persons'' under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago's ownership of PCXH would cause Archipelago Securities to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation.

Therefore, in connection with the PCXH Acquisition, PCX requested a temporary exception from the ownership and voting limitations in the PCX Certificate of Incorporation for Archipelago's ownership and operation of the ATS Inbound Router Function and the Inbound Router Clearing Function until the earlier of (i) the closing date of the Archipelago NYSE Merger and (ii) March 31, 2006, subject to the following conditions: (1) The revenues derived by Archipelago from the ATS Inbound Router Function will not exceed 7% of the consolidated revenues of Archipelago (determined on a quarterly basis); (2) the ATS Inbound Router Function will not accept any new clients following the closing of Archipelago's acquisition of PCXH; and (3) Archipelago will continue to maintain and comply with its current information barrier between the ATS Inbound Router Function on the one hand and PCX, PCXE and the other subsidiaries of Archipelago that are facilities of PCX or PCXE on the other hand.[30] The Commission approved PCX's rule proposal regarding the ATS Inbound Router Function and the Inbound Router Clearing Function (the ''Original Inbound Router Exception'').[31] In the SEC Order, the Commission stated that the affiliation of an exchange with one of its members that provides inbound access to the exchange—in direct competition with other members of the exchange—raises potential conflicts of interest between the exchange's regulatory responsibilities and its commercial interests, and the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[32] However, noting that the conditions to be imposed during the interim period were designed to mitigate potential conflicts of interest and the potential for unfair competitive advantage, the Commission concluded that it would be appropriate and consistent with the Act to allow a limited, temporary exception for Archipelago to continue its ownership of the ATS Inbound Router Function and the Inbound Router Clearing Function.[33] In granting the approval for the Original Inbound Router Exception, the Commission also noted that in addition to being a member of PCX, ATS is a member of the NASD and the NASD has been designated by the Commission as the ''Designated Examining Authority'' for ATS pursuant to Rule 17d–1 of the Act.[34] Furthermore, during the interim period, ATS would continue to be covered by the scope of the 17d–2 Agreement,[35] which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including ATS.[36]

In accordance with the terms of the Original Inbound Router Exception, Archipelago has been working to sell its ownership interest in the ATS Inbound Router Function. Given the uncertainty of the closing date of the Archipelago NYSE Merger, in the Original Extension Rule Filing, as amended by Amendment No. 1 thereto, the Exchange requested an extension of the Original Inbound Router Exception to January 31, 2006, subject to the same conditions as applied to the Original Inbound Router Exception described above.[37] The extension took effect immediately upon the filing of Amendment No. 1 to the Original Extension Rule Filing (the ''Original Inbound Router Extension''). On December 23, 2005, Archipelago entered into a definitive agreement for the sale of the ATS Inbound Router Function to Order Execution Services Holdings, Inc. (''OES'').[38] The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of NASD and other regulatory approvals, and Archipelago intends to complete the sale as soon as possible following the satisfaction of these conditions.

d. *TNT.* TNT is a wholly owned subsidiary of TAL. Mr. Putnam indirectly owns in excess of 5% of TNT and serves as a director of TAL.[39] Because TNT, a broker-dealer and an ETP Holder of PCXE, is a Related Person of Archipelago by virtue of Mr. Putnam's ownership of in excess of 5% of TNT and service as a director of TAL, it falls within the definition of ''Prohibited Persons'' under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago's ownership of PCXH would cause TNT to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation. Therefore, in connection with the PCXH Acquisition, the Commission approved the Exchange's request for a temporary exception for Mr. Putnam to continue to own in excess of 5% of TNT and continue to serve as a director of TAL until December 31, 2005 (the ''Original TNT Exception'').[40] In the SEC Order, the Commission stated that it believes that such a temporary exception is appropriate and consistent with the Act because it will eliminate the affiliation between TNT and Archipelago but allow Mr. Putnam a reasonable amount of time to effectuate such actions necessary to eliminate the affiliation.[41]

Mr. Putnam has been working to eliminate the affiliation with TNT. In light of the fact that the sale of Mr. Putnam's interest in TNT was unlikely to be consummated by December 31, 2005, in the Original Extension Rule Filing, as amended by Amendment No. 1 thereto, the Exchange also requested an extension of the Original TNT Exception to January 31, 2006.[42] The extension took effect immediately upon the filing of Amendment No. 1 to the Original Extension Rule Filing (the ''Original TNT Extension'').

e. *Further Extensions of the Temporary Exceptions.*

i. *Wave.* On January 19, 2006, Archipelago entered into a definitive agreement for the sale of Wave.[43] The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of certain regulatory approvals, and Archipelago intends to complete the sale as soon as possible following the satisfaction of these conditions. The Original Wave Extension expires on January 31, 2006. In light of the fact that

[30] *See* Amendment No. 2 at 5–6.

[31] *See* SEC Order at 56960.

[32] *Id.* at 56959.

[33] *Id.*

[34] *Id. See supra* note 26 for a description of Rule 17d–1 under the Act.

[35] *See supra* note 27.

[36] *See* SEC Order at 56959.

[37] Original Extension Rule Filing at 13–14, and Amendment No. 1 to the Original Extension Rule Filing at 6.

[38] OES is neither a Related Person of Archipelago nor a ''Prohibited Person'' under the PCXH Certificate of Incorporation.

[39] PCX clarified that Mr. Putnam's ownership in TNT is indirect. Telephone conversation between Kevin J.P. O'Hara, General Counsel, PCX and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission, on January 30, 2006 (''Telephone Conversation'').

[40] *See* SEC Order at 56960.

[41] *Id.*

[42] Original Extension Rule Filing at 14, and Amendment No.1 to the Original Extension Rule Filing at 6.

[43] The purchaser of Wave is neither a Related Person of Archipelago nor a ''Prohibited Person'' under the PCXH Certificate of Incorporation.

the sale is unlikely to be consummated by January 31, 2006, the Exchange hereby proposes to further extend the Original Wave Exception to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006, subject to the same conditions as applied to the Original Wave Exception described above. In requesting such extension, Archipelago and the Exchange note that the NASD is the ''Designated Examining Authority'' for Wave pursuant to Rule 17d–1 of the Act. Furthermore, during the interim period, Wave would continue to be covered by the scope of the 17d–2 Agreement, which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including Wave. Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original Wave Exception and the Original Wave Extension outlined above, while allowing Archipelago to complete the sale of Wave.

ii. *ATS Inbound Router Function and the Inbound Router Clearing Function.* On December 23, 2005, Archipelago entered into a definitive agreement for the sale of the ATS Inbound Router Function to OES.[44] The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of NASD and other regulatory approvals, and Archipelago intends to complete the sale as soon as possible following the satisfaction of these conditions. The Original Inbound Router Extension expires on January 31, 2006. Because of the uncertainties associated with the timing of the regulatory approvals, it is unclear whether Archipelago would be able to complete the sale by January 31, 2006. Therefore, the Exchange hereby proposes to further extend the Original Inbound Router Exception to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006, subject to the same conditions as applied to the Original Wave Exception described above. In requesting such extension, Archipelago and the Exchange note that the NASD is the ''Designated Examining Authority'' for ATS pursuant to Rule 17d–1 of the Act. Furthermore, during the interim period, ATS would continue to be covered by the scope of the 17d–2 Agreement, which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including ATS. Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original Inbound Router Exception and the Original Inbound Router Extension outlined above, while allowing Archipelago to complete the sale of the ATS Inbound Router Function.

iii. *TNT.* Mr. Putnam has been working to eliminate the affiliation with TNT. Once he has reduced his interest in TNT, Mr. Putnam would also cease serving as a director of TAL.[45] The Original TNT Extension expires on January 31, 2006. In light of the fact that the sale of Mr. Putnam's interest in TNT is unlikely to be consummated by January 31, 2006, the Exchange hereby proposes to extend the Original TNT Exception to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006. In requesting such extension, Archipelago and the Exchange note that the NASD is the ''Designated Examining Authority'' for TNT pursuant to Rule 17d–1 of the Act. Furthermore, during the interim period, TNT would continue to be covered by the scope of the 17d–2 Agreement, which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including TNT. Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original TNT Exception and the Original TNT Extension outlined above, while allowing Mr. Putnam a reasonable amount of time to effectuate the actions necessary to eliminate the affiliation between TNT and Archipelago.

2. Statutory Basis

The Exchange believes that the proposed rule change in this filing is consistent with Section 6(b)[46] of the Act, in general, and furthers the objectives of Section 6(b)(1),[47] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),[48] in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of the equities and options business of PCX that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)[49] of the Act and Rule 19b–4(f)(6) thereunder.[50] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[44] PCX clarified that the Inbound Router Clearing Function will be discontinued after the sale of the ATS Inbound Router Function subject only to the provision of transition services by Archipelago Securities to OES, and that PCX intends to file a proposed rule change requesting approval of such services. Telephone Conversation.

[45] PCX clarified that Mr. Putnam would cease serving as a director of TAL once he has reduced his interest in TNT. Telephone Conversation.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(1).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6). The Exchange provided the Commission with written notice of its intent to file this proposed rule change on January 23, 2006.

PCX has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because the Original Wave Extension, the Original Inbound Router Extension and the Original TNT Extension each expire on January 31, 2006, such waiver will allow each of Wave, ATS (with respect to the ATS Inbound Router Function), Archipelago Securities (with respect to the Inbound Router Clearing Function), and TNT to remain in compliance with the voting and ownership limitations in the PCXH Certificate of Incorporation. The Commission notes that the Exchange has represented that Archipelago entered into definitive agreements for the sale of Wave on January 19, 2006 and for the sale of the ATS Inbound Router Function on December 23, 2005. The time period for each of the extensions is short and will terminate on the earlier of (1) the closing date of the Archipelago NYSE Merger and (2) March 31, 2006. In addition, the Commission notes that the following protections are and will continue to be in place during the interim period: (i) Wave, ATS, and TNT are members of the NASD as well as PCX, (ii) the NASD is the Designated Examining Authority for Wave, ATS, and TNT pursuant to Rule 17d–1 of the Act, and (iii) Wave, ATS, and TNT are, and will continue to be during the extension, covered by the scope of the 17d–2 Agreement. Further, Archipelago's ownership and operation of Wave, the ATS Inbound Router Function of ATS, and the Inbound Router Clearing Function of Archipelago Securities will continue to be subject to the same conditions as the Original Wave Exception and the Original Inbound Router Exception, as described above and as approved by the Commission in the SEC Order.

For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[51]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2006–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2006–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2006–04 and should be submitted on or before March 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Nancy M. Morris,

Secretary.

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[51] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection package included in this notice is for approval of an existing OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400. E-mail: *OPLM.RCO@ssa.gov.*

The information collection listed below has been submitted to OMB for clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Medicare Subsidy Quality Review Case Analysis Forms—20 CFR 418(b)(5)—0960–0707. Under the aegis of the Medicare Modernization Act of 2003, SSA will make Medicare Part D subsidy determinations for the Medicare Prescription Drug program for Medicare beneficiaries with limited income and resources. The subsidy determination is based on applicants' answers to questions about categories such as household size, income, and resources. This information is self-reported by applicants using form OMB No. 0960–0696 (SSA–1020), and thus, SSA needs a way to determine if this form is being completed accurately and completely and a way to validate its determination decisions. To this end, SSA will use the Medicare Quality Review system to check the accuracy of the determination. In this system, SSA will conduct phone interviews with selected applicants and will confirm information such as

household size, income, and resources. A questionnaire and several other forms will be used as part of the Medicare Quality Review System. The collection instruments, their descriptions, and burden information are listed in the table below.

Note: This Notice is for the permanent approval of this collection, which was cleared by OMB temporarily through February 2006 as an emergency information collection.

Type of Request: Extension of a currently approved information collection.

Form number and name	Description of form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–9301 (Medicare Subsidy Quality Review Case Analysis Questionnaire).	Telephone questionnaire which will be administered by SSA employees to applicants for Medicare Part D Subsidy. Includes questions about family size, marriage, income, assets, etc.	10,000	1	35	5,833
SSA–9302 (Notice of Quality Review Acknowledgement Form for those with Phones).	After receiving notice of the scheduled date/time of the telephone questionnaire, Part D applicants will return this form confirming their availability for the interview and making note of any special needs for the call.	10,000	1	15	2,500
SSA–9303 (Notice of Quality Review Acknowledgement Form for those without Phones).	Same as for SSA–9302, except used by participants without phones or whose phone numbers are not known by SSA. On form SSA–9303, however, participants confirm receipt of the letter and are asked to call SSA on a specified date.	1,000	1	15	250
SSA–9304 (Checklist of Required Information).	This checklist, which accompanies forms SSA–9302 and SSA–9303, is a list of the documentation respondents are supposed to have prepared when SSA calls them to conduct the Quality Review phone interview. Their burden is accounted for in the burdens for forms SSA–9302 and SSA–9303.	.....	.....	.....	.....
SSA–9308 (Request for Information).	Form which SSA will send to various third parties to obtain/confirm information reported by beneficiaries.	20,000	1	15	5,000
SSA–9310 (Request for Documents).	Following the phone interview, SSA sends this notice to the participants advising them of the documents they must return to SSA.	10,000	1	5	833
SSA–9309 (Life Insurance Verification Form).	Form completed by insurance companies confirming type, face value, cash surrender value and dividends for insurance policies of applicants for Medicare Part D subsidy.	8,000	1	15	2,000
SSA–8510 (Authorization to the Social Security Administration to Obtain Personal Information).	Beneficiaries give their permission for SSA to contact third parties to obtain/confirm information.	10,000	1	5	833
Total	.....	69,000	.....	.....	17,249

Dated: February 2, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–1690 Filed 2–7–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Juan County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements in San Juan County, Utah.

FOR FURTHER INFORMATION CONTACT: Jeffrey Berna, Environmental Specialist, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Mr. Kim Manwill, Project Manager, Utah Department of Transportation, 1345 South 350 West, Richfield, Utah 84701, Telephone: (435) 893–4799.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation will prepare an environmental impact statement (EIS) on proposed transportation improvements on State Route 162 (formerly known as State Route 262). The proposed improvements will be developed after a study has been completed to determine the current and future transportation needs in the study area, which extends from a point approximately 0.75 mile beyond (NW) of the intersection of State Routes 162 and 262 in Montezuma Creek to point approximately 1.25 miles beyond (SE) of the McElmo Creek bridge. The FHWA will evaluate a reasonable range of alternatives to reconfigure State Route 162 so that it meets current safety standards, including such alternatives as adjusting horizontal curves, installing guard rails, adding shoulder width and/or providing sufficient roadside clear zone. FHWA will fully evaluate the indirect and cumulative effects of the proposed project as required by law. The proposed project study area lies within San Juan County and the Navajo Nation, Aneth Chapter, and includes portions of the towns of Montezuma Creek and Aneth.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings, including scoping meetings, will be held in the project area. In addition, a public hearing will be held. Public notice will be given for the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 2, 2006.

Jeffrey Berna,

Environmental Specialist, Salt Lake City, Utah.

[FR Doc. 06–1144 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2006–23838]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–3423; FAX: 202–366–3128, or E-mail: *taylor.jones@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen-Owned Documented Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0006.

Form Numbers: MA–29, MA–29A, and MA–29B.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens; or the transfer of such vessels to foreign registry and flag; or the transfer of foreign flag vessels by their owners as required by various contractual requirements.

Need and Use of the Information: The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Description of Respondents: Respondents are vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Annual Responses: 100 responses.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: February 2, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–1680 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board, DOT.

ACTION: Correction to proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment published in the **Federal Register** January 31, 2006, at 71 FR 5117.

SUMMARY: The Surface Transportation Board proposes to adopt 1.019 (1.9%) as the measure of average change in railroad productivity for the 2000–2004 (5-year) averaging period. This value is a decline of 1 percentage point from the current measure of 2.9% that was developed for the 1999–2003 period.

DATES: Comments are due February 15, 2006. *Effective Date:* The proposed productivity adjustment is effective March 1, 2006.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 23, 2006.

By the Board, Chairman Buttrey, and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–1696 Filed 2–7–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Pools and Associations—Annual Letter

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Pools and Associations—Annual Letter.''

DATES: Written comments should be received on or before April 10, 2006.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rose Miller, Manager, Surety Bond Branch, Room 632F, 3700 East West Highway, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Pools and Association—Annual Letter.

OMB Number: 1510–0008.

Form Number: None.

Abstract: The information is collected for the determinations of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 150.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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 19, 2006.

Wanda Rogers,

Assistant Commissioner, Financial Operations.

[FR Doc. 06–1115 Filed 2–7–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Voucher for Payment of Awards

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Voucher for Payment of Awards.''

DATES: Written comments should be received on or before April 10, 2006.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kevin McIntyre, Manager, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, MD 20782, (202) 874–1130.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Voucher for Payment of Awards.

OMB Number: 1510–0037.

Form Number: TFS 5135.

Abstract: Awards certificate to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to awardholders showing payments due. Awardholders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as a basis for payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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 19, 2006.

Wanda Rogers,

Assistant Commissioner, Financial Operations.

[FR Doc. 06–1116 Filed 2–7–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''States Where Licensed for Surety.''

DATES: Written comments should be received on or before April 10, 2006.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, Room 632F, 3700 East West Highway, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: States Where Licensed for Surety.

OMB Number: 1510–0013.

Form Number: FMS 2208.

Abstract: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, ''Surety Companies Acceptable on Federal Bonds.''

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 318.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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 26, 2006.

Wanda Rogers,

Assistant Commissioner, Financial Operations.

[FR Doc. 06–1117 Filed 2–7–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0671]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a current collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine veterans' and servicemembers' eligibility requirements for payment of traumatic injury protection benefits covered under Servicemembers' Group Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 10, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0671'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Traumatic Injury Protection (TSGLI).

OMB Control Number: 2900–0671.

Type of Review: Extension of a currently approved collection.

Abstract: Service members who experienced a traumatic injury such as loss of limbs on or after October 7, 2001 through November 30, 2005 are eligible to receive Traumatic Injury Protection benefits if the loss was incurred during Operation Enduring Freedom or Operation Iraqi Freedom. TSGLI provides severely injured service members and the member's family with monetary assistance through an often long and difficult rehabilitation period. The service members must be insured under the Servicemembers' Group Life Insurance to be eligible for TSGLI. The service member, the attending physician, the branch of service must complete Prudential Form GL.2005.261, Certification of Traumatic Injury Protection in order for the service member to receive such benefits. VA uses the data collected to determine the member's eligibility for TSGLI benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 475 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 950.

Dated: January 24, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–1722 Filed 2–7–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 10, 2006.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–6950 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0098.'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0098'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–5490 is completed by a veteran's spouse, surviving spouse, or children to apply for Survivors' and Dependents' Educational Assistance (DEA) benefits. DEA benefits are payable if the veteran is permanently and totaled disabled, died as a result of a service-connected disability, missing in action, capture or detained for more than 90 days. VA uses the data collected to determine the claimant's eligibility to DEA benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 06, 2006 at pages 169–170.

Affected Public: Individuals or households.

Estimated Annual Burden: 28,000 hours.

a. Electronically—4,000 hours.

b. Paper Copy—24,000 hours.

Estimated Average Burden Per Respondent:

a. Electronically—30 minutes.

b. Paper Copy—45 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 40,000.

a. Electronically—32,000.

b. Paper Copy—8,000.

Dated: January 26, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–1724 Filed 2–7–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
February 8, 2006

Part II

Securities and Exchange Commission

17 CFR Parts 228, 229, 239, et al.
Executive Compensation and Related Party Disclosure; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 239, 240, 245, 249 and 274

[Release Nos. 33–8655; 34–53185; IC–27218; File No. S7–03–06]

RIN 3235–AI80

Executive Compensation and Related Party Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters and security ownership of officers and directors. These amendments would apply to disclosure in proxy and information statements, periodic reports, current reports and other filings under the Securities Exchange Act of 1934 and to registration statements under the Exchange Act and the Securities Act of 1933. We also propose to require that disclosure under the amended items generally be provided in plain English. The proposed amendments are intended to make proxy statements, reports and registration statements easier to understand. They are also intended to provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors. In addition, they are intended to provide better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members.

DATES: Comments should be received on or before April 10, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–03–06 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–03–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Carloyn Sherman, or Daniel Greenspan, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–3010 or, with respect to questions regarding investment companies, Kieran Brown in the Division of Investment Management, at (202) 551–6784.

SUPPLEMENTARY INFORMATION: We propose to amend: Items 201,[1] 306,[2] 401,[3] 402,[4] 403 [5] and 404 [6] of Regulations S–K [7] and S–B,[8] Item 601 [9] of Regulation S–K, Item 1107 [10] of Regulation AB,[11] and Rule 100 [12] of Regulation BTR.[13] We also propose to add new Item 407 to Regulations S–K and S–B. In addition, we propose to amend Rules 13a–11,[14] 14a–6,[15] 14c–5,[16] 15d–11 [17] and 16b–3 [18] under the Securities Exchange Act of 1934.[19] We propose to add Rules 13a–20 and 15d–20 under the Exchange Act. We further propose to amend Schedule 14A [20] under the Exchange Act, as well as Exchange Act Forms 8–K,[21] 10,[22] 10SB,[23] 10–Q,[24] 10–QSB,[25] 10–K,[26] 10–KSB [27] and 20–F.[28] Finally, we propose to amend Forms SB–2,[29] S–1,[30] S–3,[31] S–4 [32] and S–11 [33] under the Securities Act, Forms N–1A,[34] N–2,[35] and N–3 [36] under the Securities Act and the Investment Company Act of 1940,[37] and Form N–CSR [38] under the Investment Company Act and the Exchange Act.

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[1] 17 CFR 229.201 and 17 CFR 228.201.
[2] 17 CFR 229.306 and 17 CFR 228.306.
[3] 17 CFR 229.401 and 17 CFR 228.401.
[4] 17 CFR 229.402 and 17 CFR 228.402.
[5] 17 CFR 229.403 and 17 CFR 228.403.
[6] 17 CFR 229.404 and 17 CFR 228.404.
[7] 17 CFR 229.10 *et seq.*
[8] 17 CFR 228.10 *et seq.*
[9] 17 CFR 229.601.
[10] 17 CFR 229.1107.
[11] 17 CFR 229.1100 *et seq.*
[12] 17 CFR 245.100.
[13] 17 CFR 245.100 *et seq.*
[14] 17 CFR 240.13a–11.
[15] 17 CFR 240.14a–6.
[16] 17 CFR 240.14c–5.
[17] 17 CFR 240.15d–11.
[18] 17 CFR 240.16b–3.
[19] 15 U.S.C. 78a *et seq.*
[20] 17 CFR 240.14a–101.
[21] 17 CFR 249.308.
[22] 17 CFR 249.210.
[23] 17 CFR 249.210b.
[24] 17 CFR 249.308a.
[25] 17 CFR 249.308b.
[26] 17 CFR 249.310.
[27] 17 CFR 249.310b.
[28] 17 CFR 249.220f.
[29] 17 CFR 239.10.
[30] 17 CFR 239.11.
[31] 17 CFR 239.13.
[32] 17 CFR 239.25.
[33] 17 CFR 239.18.
[34] 17 CFR 239.15A and 274.11A.
[35] 17 CFR 239.14 and 274.11a–1.
[36] 17 CFR 239.17a and 274.11b.
[37] 15 U.S.C. 80a–1 *et seq.*
[38] 17 CFR 249.331 and 274.128.

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I. Background and Overview of the Proposals

We are proposing revisions to our rules governing disclosure of executive compensation, director compensation, related party transactions, director independence and other corporate governance matters and current reporting regarding compensation arrangements. The proposed revisions to the compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the other highest paid executive officers and directors.

Closely related to executive officer and director compensation is the participation by executive officers, directors, significant shareholders and other related persons in financial transactions and relationships with the company. We are also proposing to revise our disclosure rules regarding related party transactions and director independence and board committee functions.

Finally, some compensation arrangements must be disclosed under our recently revised rules relating to current reports on Form 8-K. We propose to reorganize and more appropriately focus our requirements on the type of compensation information that should be disclosed on a real-time basis.

Since the enactment of the Securities Act and the Exchange Act,[39] the Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful information about executive and director compensation and relationships with the issuer.[40] The Commission also has had to reconsider executive and director compensation disclosure requirements in light of changing trends in executive compensation. Most recently, in 1992, the Commission adopted amendments to the disclosure rules that eschewed a mostly narrative disclosure approach adopted in 1983 in favor of formatted tables that captured all compensation, while categorizing the various elements of compensation and promoting comparability from year to year and from company to company.[41]

We believe this tabular approach remains a sound basis for disclosure. However, especially in light of the complexity of and variations in compensation programs, the very formatted nature of the current rules results in too many cases in disclosure that does not inform investors adequately as to all elements of compensation. In those cases investors may lack material information that we believe they should receive.

We are thus today proposing an approach that builds on the strengths of

[39] Initially, disclosure requirements regarding executive and director compensation were set forth in Schedule A to the Securities Act and Section 12(b) of the Exchange Act, which list the type of information to be included in Securities Act and Exchange Act registration statements. Item 14 of Schedule A called for disclosure of the ''remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year.'' Section 12(b) of the Exchange Act as enacted required disclosure of ''(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuers and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with the issuer;'' and ''(E) remuneration to others than directors and officers exceeding $20,000 per annum.''

[40] In 1938, the Commission promulgated its first executive and director compensation disclosure rules for proxy statements. Release No. 34–1823 (Aug. 11, 1938). At different times thereafter, the Commission has adopted rules mandating narrative, tabular, or combinations of narrative and tabular disclosure as the best method for presenting compensation disclosure in a manner that is clear and useful to investors. See *e.g.*, Release No. 34–3347 (Dec. 18, 1942) [7 FR 10653] (introducing first tabular disclosure); Release No. 34–4775 (Dec. 11, 1952) [17 FR 11431] (introducing separate table for pensions and deferred remuneration); *Uniform and Integrated Reporting Requirements: Management Remuneration,* Release No. 33–6003 (Dec. 4, 1978) [43 FR 58151] (expanding tabular disclosure to cover all forms of compensation); and *Disclosure of Executive Compensation*, Release No. 33–6486 (Sept. 23, 1983) [48 FR 44467] (the ''1983 Release'') (limiting tabular disclosure to cash remuneration).

[41] *Executive Compensation Disclosure,* Release No. 33–6962 (Oct. 16, 1992) [57 FR 48125] (the ''1992 Release''); See also *Executive Compensation Disclosure; Securityholder Lists and Mailing Requests,* Release No. 33–7032 (Nov. 22, 1993) [58 FR 63010], at Section II.

the current requirements rather than discarding them. However, today's proposals do represent a thorough rethinking of our current rules that would combine a broader-based tabular presentation with improved narrative disclosure supplementing the tables. This proposed approach would promote clarity and completeness of numerical information through an improved tabular presentation, continue to provide the ability to make comparisons using tables, and call for material qualitative information regarding the manner and context in which compensation is awarded and earned.

The proposals that we publish for comment today would require that all elements of compensation must be disclosed. We also seek to structure the revised requirements sufficiently broadly so that, if they are adopted, they will continue to operate effectively as new forms of compensation are developed in the future.

Under our proposals, compensation disclosure would begin with a narrative providing a general overview. Much like the overview that we have encouraged companies to provide with their Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A),[42] the proposed Compensation Discussion and Analysis would call for a discussion and analysis of the material factors underlying compensation policies and decisions reflected in the data presented in the tables. This overview would address in one place these factors with respect to both the separate elements of executive compensation and executive compensation as a whole.

Following the Compensation Discussion and Analysis, we propose to organize detailed disclosure of executive compensation into three broad categories:

- Compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in a revised Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by two tables providing back-up information for certain data in the Summary Compensation Table;
- Holdings of equity-related interests that relate to compensation or are potential sources of future gains, with a focus on compensation-related equity interests that were awarded in prior years (and disclosed as current compensation for those years) and are ''at risk,'' as well as recent realization on these interests, such as through vesting of restricted stock and similar instruments or the exercise of options and similar instruments; and
- Retirement and other post-employment benefits, including retirement and defined contribution and other deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.

We propose to require improved tabular disclosure for each of the above three categories that would be supplemented by appropriate narrative that provides material information necessary to an understanding of the information presented in the individual tables.[43] We are also proposing a new disclosure requirement of the total compensation and job description of up to an additional three most highly compensated employees who are not executive officers or directors but who earn more than the highest paid executive officers.

Finally, we propose a director compensation table that is similar to the proposed Summary Compensation Table.[44]

We also propose to modify some of the recently expanded Form 8–K requirements regarding compensation. Form 8–K requires disclosure on a current basis of the entry into, amendment of, and termination of, material definitive agreements entered into outside the ordinary course of business within four business days of the triggering event. Under our pre-existing definitions of material contracts, many agreements regarding executive compensation are deemed to be material agreements entered into outside the ordinary course, and when, for purposes of consistency, we adopted those definitions for use in the expanded Form 8–K requirements, we incorporated all of these executive compensation agreements into the current disclosure requirements. Therefore, many agreements regarding executive compensation, including some not related to named executive officers, are required to be disclosed within four business days of the applicable triggering event. Consistent with our intent in adopting the expanded Form 8–K to capture only events that are unquestionably or presumptively material to investors, we believe it is appropriate to modify the Form 8–K requirements.

We believe that executive and director compensation is closely related to financial transactions and relationships involving companies and their directors, executive officers and significant shareholders and respective immediate family members. Disclosure requirements regarding these matters historically have been interconnected, given that relationships among these parties and the company can include transactions that involve compensation or analogous features. Such disclosure also represents material information in evaluating the overall relationship with a company's executive officers and directors. Further, this disclosure provides material information regarding the independence of directors. The current related party transaction disclosure requirements were adopted piecemeal over the years and were combined into one disclosure requirement beginning in 1982.[45] In light of the many developments since then, including the increasing focus on corporate governance and director independence, we believe it is necessary to revise our requirements. Today's proposals include amendments to update, clarify and slightly expand the related party transaction disclosure requirements. The proposed amendments would fold into the disclosure requirements for related party transactions the currently separate

[42] Item 303 of Regulation S–K [17 CFR 229.303]. See also *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–8350 (Dec. 19, 2003) [68 FR 75055], at Section III.A.

[43] As discussed in more detail below, this narrative disclosure, together with the Compensation Discussion and Analysis noted above, would replace the currently required Compensation Committee Report and the Performance Graph. Unlike the current requirements under which both the report and the graph, although physically included in the proxy statement, need only be furnished to the Commission, the proposed narrative disclosure, along with the rest of the proposed executive officer and director compensation, would be company disclosure filed with the Commission.

Current Item 402(a)(9) of Regulation S–K provides that the Compensation Committee Report and Performance Graph ''shall not be deemed to be ''soliciting material'' or to be ''filed'' with the Commission or subject to Regulations 14A or 14C [17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*], other than as provided in this item, or to the liabilities of section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.''

[44] We made similar proposals, which we did not act on, regarding director compensation in 1995. *Streamlining and Consolidation of Executive and Director Compensation Disclosure*, Release No. 33–7184 (Aug. 6, 1995) [60 FR 35633] (the ''1995 Release''), at Section I.B.

[45] *Disclosure of Certain Relationships and Transactions Involving Management*, Release No. 33–6441 (Dec. 2, 1982) [47 FR 55661] (the ''1982 Release'').

disclosure requirement regarding indebtedness of management and directors.[46] Further, we propose a requirement that calls for a narrative explanation of the independence status of directors under a company's director independence policies, consistent with recent significant changes to the listing standards of the nation's principal securities trading markets.[47] We also propose to consolidate this and other corporate governance disclosure requirements regarding director independence and board committees into a single expanded disclosure item.[48]

In order to ensure that these amended requirements result in disclosure that is clear, concise and understandable for investors, we propose to add Rules 13a–20 and 15d–20 under the Exchange Act to require that most of the disclosure provided in response to the amended items be presented in plain English. This proposal would extend the plain English requirements currently applicable to portions of registration statements under the Securities Act to the disclosure required under the amended items in Exchange Act reports and proxy or information statements incorporated by reference into those reports.

Finally, we propose to amend our beneficial ownership disclosure requirements to require disclosure of shares pledged by named executive officers, directors and director nominees, as well as directors' qualifying shares.

II. Executive and Director Compensation Disclosure

As discussed above, executive and director compensation disclosure has been required since 1933, and the Commission has had disclosure rules in this area since 1938. In 1992, the Commission proposed and adopted substantially revised rules that embody our current requirements.[49] In doing so, the Commission moved away from narrative disclosure and back to using tables that permit comparability from year to year and from company to company. We believe that while the reasoning behind this approach remains fundamentally sound, significant changes are appropriate. Much of the concern with the current tables is also their strength: they are highly formatted and rigid.[50] Thus, information not specifically called for in the tables is sometimes not provided. For example, the highly formatted and specific approach has led some to suggest that items that do not fit squarely within a ''box'' specified by the rules need not be disclosed.[51] As another example, because the tables do not call for a single figure for total compensation, that information is generally not provided, although there is considerable commentary indicating that a single total figure is high on the list of information that some investors wish to have. To preserve the strengths of the current approach and build on them, we propose several steps:

- First, retaining the tabular approach to provide clarity and comparability while improving the tabular disclosure requirements;
- Second, confirming that all elements of compensation must be included in the tables;
- Third, providing a format for the Summary Compensation Table that requires disclosure of a single figure for total compensation; and
- Finally, requiring narrative disclosure comprising both a general discussion and analysis of compensation and specific material information regarding tabular items where necessary to an understanding of the tabular disclosure.[52]

A. Compensation Discussion and Analysis

We propose requiring a new Compensation Discussion and Analysis section.[53] This section would be an overview that would provide narrative disclosure that puts into context the compensation disclosure provided elsewhere.[54] This overview would explain material elements of the particular company's compensation for named executive officers by answering the following questions:

- What are the objectives of the company's compensation programs?
- What is the compensation program designed to reward and not reward?
- What is each element of compensation?
- Why does the company choose to pay each element?
- How does the company determine the amount (and, where applicable, the formula) for each element?
- How does each element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

1. Intent and Operation of the Proposed Compensation Discussion and Analysis

The purpose of the Compensation Discussion and Analysis disclosure would be to provide material information about the compensation objectives and policies for named executive officers without resorting to boilerplate disclosure. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it.

The proposed Compensation Discussion and Analysis requirement would be principles-based, in that it identifies the disclosure concept and provides several illustrative examples. The application of a particular example must be tailored to the company. However, the scope of the

[46] Related party transactions are currently disclosed under Items 404(a) of Regulations S–K and S–B. Indebtedness is currently disclosed under Item 404(c) of Regulation S–K.

[47] See, e.g., *NASD and NYSE Rulemaking: Relating to Corporate Governance*, Release No. 34–48745 (Nov. 4, 2003) [68 FR 64154] (the ''NASD and NYSE Listing Standards Release''). This proposal would replace our existing disclosure requirement about director relationships that can affect independence.

[48] Proposed Item 407 of Regulation S–K and Regulation S–B.

[49] 1992 Release.

[50] See, *e.g.*, Council of Institutional Investors' Discussion Paper on Executive Pay Disclosure, *Executive Compensation Disclosure: How It Works Now, How It Can Be Improved*, at 11 (available at *www.cii.org/site_files/pdfs/CII%20pay%20primer%20edited.pdf).*

[51] For examples, see, *e.g.*, The Corporate Counsel (Sept.–Oct. 2005) at 6–7; The Corporate Counsel (Sept.–Oct. 2004) at 7; but see Alan L. Beller, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, *Remarks Before Conference of the NASPP, The Corporate Counsel and the Corporate Executive* (October 20, 2004) (indicating that the explicit language of the current rules requires disclosure of such items), available at *www.sec.gov/news/speech/spch102004alb.htm.*

[52] The discussion that follows focuses on changes to Item 402 of Regulation S–K, with Section II.C.1 explaining the different modifications proposed for Item 402 of Regulation S–B. References throughout the following discussion are to current or proposed Items of Regulation S–K, unless otherwise indicated.

[53] Proposed Item 402(b). In addition to the narrative Compensation Discussion and Analysis, we are proposing revisions to the rules so that, to the extent material, additional narrative disclosure would be provided following certain tables to supplement the disclosure in the table. See, *e.g.*, Section II.B.3., discussing the narrative disclosure to the Summary Compensation Table and supplemental tables. We are also proposing disclosure of compensation committee procedures and processes as well as information regarding compensation committee interlocks and insider participation in compensation decisions as part of proposed Item 407 of Regulation S–K. See Section V.D., below.

[54] See Jeffrey N. Gordon, *Executive Compensation: What's the Problem, What's the Remedy? The Case for Compensation Discussion and Analysis*, 30 J. Corp. L. (forthcoming Spring 2006) (arguing that the SEC should require proxy disclosure that includes a ''Compensation Discussion and Analysis'' section that collects and summarizes all the compensation elements for senior executives, providing a ''bottom line assessment'' of the different compensation elements and an explanation as to why the board thinks such compensation is warranted). Also available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=686464*.

Compensation Discussion and Analysis is intended to be comprehensive, so that it would call for discussion of post-termination as well as in-service compensation arrangements.[55] Boilerplate disclosure would not comply with the proposed item. Examples of the issues that would potentially be appropriate for the company to address in given cases in the Compensation Discussion and Analysis include the following:

- Policies for allocating between long-term and currently paid out compensation;
- Policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- For long-term compensation, the basis for allocating compensation to each different form of award;
- For equity-based compensation, how the determination is made as to when the award is granted;
- What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;
- How specific elements of compensation are structured to reflect these items of the company's performance and the executive's individual performance;
- The factors considered in decisions to increase or decrease compensation materially;
- How compensation or amounts realizable from prior compensation (*e.g.*, gains from prior option or stock awards) are considered in setting other elements of compensation (*e.g.*, how gains from prior option or stock awards are considered in setting retirement benefits);
- The impact of accounting and tax treatments of a particular form of compensation;
- The company's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any company policies regarding hedging the economic risk of such ownership;
- Whether the company engaged in any benchmarking of total compensation or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and
- The role of executive officers in the compensation process.

[55] Forward looking information in the Compensation Discussion and Analysis would fall with the safe harbor for disclosure of such information. See Securities Act Section 27A [15 U.S.C. 77z–2] and Exchange Act Section 21E [15 U.S.C. 78u–5]).

The Compensation Discussion and Analysis should be sufficiently precise to identify material differences in compensation policies and decisions for individual named executive officers where appropriate. Where policies or decisions are materially similar, officers could be grouped together. Where, however, the policy for an executive officer is materially different, for example in the case of a principal executive officer, his or her compensation would be discussed separately.

2. Proposed Instructions to Compensation Discussion and Analysis

We are proposing instructions to make clear that the Compensation Discussion and Analysis should focus on the material principles underlying the company's executive compensation policies and decisions, and the most important factors relevant to analysis of those policies and decisions, without using boilerplate language or repeating the more detailed information set forth in the tables and related narrative disclosures that follow. We also propose to include an instruction to make clear, as is currently the case, that companies are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the company, similar to the instruction with respect to the Compensation Committee Report today. In applying this instruction, we intend the standard for companies to use when determining whether disclosure would have an adverse effect on the company to be the same one that would apply when companies request confidential treatment of confidential trade secrets and commercial or financial information that otherwise is required to be disclosed in registration statements, periodic reports and other documents filed with us.[56] Similarly, to the extent a performance target has otherwise been disclosed publicly, disclosure under Item 402 would be required.

[56] See Securities Act Rule 406 [17 CFR 230.406] and Exchange Act Rule 24b–2 [17 CFR 240.24b–2] (incorporating the criteria for non-disclosure set forth in Exemption 4 of the Freedom of Information Act [5 U.S.C. 552(b)(4)] and Exchange Act Rule 80(b)(4) [17 CFR 200.80(b)(4)]). Today's proposed rules, like the current rules, would not require a company to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b–2.

3. ''Filed'' Status of Compensation Discussion and Analysis

The Compensation Discussion and Analysis will be considered a part of the proxy statement and any other filing in which it is included. Unlike the current Compensation Committee Report and Performance Graph, which would be eliminated under our proposals, as discussed below, the proposed Compensation Discussion and Analysis would be soliciting material and would be filed with the Commission. Therefore, it would be subject to Regulations 14A or 14C and to the liabilities of Section 18 of the Exchange Act.[57] In addition, to the extent that the Compensation Discussion and Analysis and any of the other disclosure regarding executive officer and director compensation or other matters is included or incorporated by reference into a periodic report, the disclosure would be covered by the certifications that principal executives officers and principal financial officers are required to make under the Sarbanes-Oxley Act of 2002.[58]

In adopting the current rules in 1992, the Commission took into account comments that the Compensation Committee Report should be furnished rather than filed to allow for a more open and robust discussion in the reports.[59] Little that we see in current Compensation Committee Reports suggests that this treatment has resulted in such discussions, or at least the more transparent disclosure that the comments suggested would result. Further, we believe that it is appropriate for companies to take responsibility for disclosure involving board matters as with other disclosure.

4. Proposed Elimination of the Performance Graph and the Compensation Committee Report

In light of the Compensation Discussion and Analysis proposal, we propose to eliminate the Performance Graph and the Compensation Committee Report that currently are required by our rules.[60] The graph and

[57] 15 U.S.C. 78r.

[58] Exchange Act Rules 13a–14 [17 CFR 240.13a–14] and 15d–14 [17 CFR 240.15d–14]. See also *Certification of Disclosure in Companies' Quarterly and Annual Reports,* Release No. 34–46427 (Aug. 29, 2002) [67 FR 57275], at note 35 (the ''Certification Release'') (stating that ''the certification in the annual report on Form 10–K or 10–KSB would be considered to cover the Part III information in a registrant's proxy or information statement as and when filed'').

[59] 1992 Release, at Section II.H.

[60] The Compensation Committee Report is currently required by Item 402(k) and the Performance Graph is currently required by Item 402(l).

the report were intended to be intertwined and their purpose was to show the relationship, if any, between compensation and corporate performance, as reflected by stock price. Unfortunately, the Compensation Committee Report today often results in boilerplate disclosure that is of little benefit to investors.[61] Further, given the widespread availability of stock performance information about companies, industries and indexes through business-related Web sites or similar sources, we believe that the requirement for the Performance Graph is outdated, particularly since the disclosure in the Compensation Discussion and Analysis regarding the elements of corporate performance that a given company's policies might reach is intended to allow broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price.

Request for Comment

- Does the proposed Compensation Discussion and Analysis provide companies with the same flexibility as MD&A to provide a clear picture to investors?
- Are there any further changes that we can make to avoid boilerplate disclosure about executive compensation?
- Is there any significant impact by not having the report over the names of the compensation committee of the board of directors? If so, please explain in detail.
- Would any significant impact result from treating the Compensation Discussion and Analysis as filed and not furnished? A commenter that prefers furnishing over filing should describe any benefits that would be obtained by treating the material as furnished. In particular, such a commenter should describe those benefits in the context of the expected benefits of the Commission's decision in 1992 to treat the report of the Compensation Committee as furnished and should address whether and why those benefits were achieved or not achieved.
- Are there any other specific items we should list in the rule as possibly material information? Are there any items that are listed that should not be?
- Are there any items that we should explicitly mandate be disclosed by every issuer?
- Should performance targets continue to be excludable based on the potential adverse competitive effect on the company of their disclosure? Why or why not? If so, what should be the standard for exclusion? Are there any other items that should be excludable based on potential adverse competitive effect on the company of their disclosure?
- Should we retain the Performance Graph?

B. Compensation Tables

We believe that much about the tabular approach to eliciting compensation disclosure is sound.[62] We also believe, however, that the tables should be reorganized and streamlined to provide a clearer and more logical picture of total compensation and its elements for named executive officers. We propose reorganizing the compensation tables and their related narrative disclosure into three broad categories:

1. Compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in a revised Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by two tables providing back-up information for certain data in the Summary Compensation Table;[63]

2. Holdings of equity-based interests that relate to compensation or are potential sources of future compensation, focusing on compensation-related equity-based interests that were awarded in prior years[64] and are ''at risk,'' as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments;[65] and

3. Retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.[66]

Reorganizing the tables along these themes should help investors understand how compensation components relate to each other. At the same time we would retain the ability for investors to use the tables to compare compensation from year to year and from company to company.

We note that in more clearly organizing the compensation tables to explain how the elements relate to each other, we may in some situations be requiring disclosure of both amounts earned (or potentially earned) and amounts subsequently paid out. This approach raises the risk of ''double counting'' some elements of compensation. However, we believe the risk inherent in such double disclosure is outweighed by the clearer and more complete picture it would provide to investors. We would encourage companies to use the narrative following the tables (and where appropriate the Compensation Discussion and Analysis) to explain how disclosures relate to each other in their particular circumstances.

1. Compensation to Named Executive Officers in the Last Three Completed Fiscal Years—The Summary Compensation Table and Related Disclosure

Under today's proposals, the Summary Compensation Table would continue to serve as the principal disclosure vehicle regarding executive compensation. This table, with the proposed revisions, would show the named executive officers compensation for each of the last three years, whether or not actually paid out. Consistent with current requirements, the revised Summary Compensation Table would continue to require disclosure of compensation for each of the company's last three completed fiscal years.[67]

[61] See Martin D. Mobley, *Compensation Committee Reports Post-Sarbanes-Oxley: Unimproved Disclosure for Executive Compensation Policies and Practices,* 2005 Colum. Bus. L. Rev. 111 (2005).

[62] The tabular disclosure and related narrative disclosure under proposed Item 402 would apply, as does existing Item 402, to named executive officers. As discussed below in Section II.B.6.a., we are proposing certain changes to the definition of named executive officer.

[63] The two tables that would supplement the Summary Compensation Table would be the Grants of Performance-Based Awards Table, discussed below in Section II.B.2.a., and the Grants of All Other Equity Awards Table, discussed below in Section II.B.2.b. A proposed narrative disclosure requirement accompanying these three tables is discussed below in Section II.B.3.

[64] Under the proposals, these interests would be disclosed as current compensation for those prior years.

[65] Information regarding holdings of such equity-based interests that relate to compensation would be disclosed in the Outstanding Equity Awards at Fiscal Year-End Table, discussed below in Section II.B.4.a. Information regarding realization on holdings of equity-related interests would be required to be disclosed in the Option Exercises and Stock Vested Table discussed below in Section II.B.4.b.

[66] The proposed disclosure regarding retirement and post-employment compensation would be required in the Retirement Plan Potential Annual Payments and Benefits Table, discussed below in Section II.B.5.a., the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table, discussed below in Section II.B.5.b., and the narrative disclosure requirement for other potential post-employment payments discussed below in Section II.B.5.c.

[67] Current Instruction to Item 402(b), permitting exclusion of information for fiscal years prior to the

Continued

However, the proposals would require disclosure of a figure representing total compensation, as reflected in other columns of the Summary Compensation Table, and would simplify the presentation from that in the current table. As described in greater detail below, the proposals also provide for two supplementary tables disclosing additional information about grants of performance-based awards and all other equity awards, respectively. Narrative disclosure would follow the three tables, providing disclosure of material information necessary to an understanding of the information disclosed in the tables.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Total ($)	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
PEO[68]	—							
	—							
	—							
PFO[69]	—							
	—							
	—							
A	—							
	—							
	—							
B	—							
	—							
	—							
C	—							
	—							
	—							

Request for Comment

- Should the Summary Compensation Table continue as it currently does to require disclosure of compensation for each of the company's last three fiscal years, or is only the last completed fiscal year necessary in light of the availability of historical data on compensation through the Commission's EDGAR system and other sources?
- Should we require all of the proposed disclosures discussed below in addition to those in the Summary Compensation Table, or does the Summary Compensation Table itself provide an adequate picture of compensation? Is there some other combination of the Summary Compensation Table with other proposed disclosures that would fulfill our objectives?

a. Total Compensation Column

We propose to modify the Summary Compensation Table to provide a clearer picture of total compensation. We propose requiring that all compensation be disclosed in dollars and that a total of all compensation be provided.[70] The new column disclosing total compensation would appear as the first column providing compensation information—column (c).[71] This column would aggregate the total dollar value of each form of compensation quantified in the columns that would follow it (columns (d) through (i)). The proposed ''Total'' column would respond to concerns that investors, analysts and other users of Item 402 disclosure cannot compute aggregate amounts of compensation using current disclosure in a manner that is accurate or is comparable across years or companies.

Request for Comment

- Should we include a requirement to disclose a total compensation amount?
- Will a total compensation number provide investors with meaningful information about compensation? If not, why? Would disclosure of a total compensation number result in any unintended consequences? If so, how can they be mitigated?
- Should total compensation be calculated in a different manner from that proposed? For example, with respect to stock-based and option-based awards, should exercise or vesting date valuations be used instead?
- Is the proposed new instruction which would direct that all compensation values are to be reported in U.S. dollars necessary? Are there particular circumstances we should address regarding disclosure of compensation in foreign currencies?

b. Salary and Bonus Columns

The next columns we are proposing are the salary and bonus columns (columns (d) and (e), respectively), which would be retained substantially in their current form. However, we propose certain changes that should give an investor a clearer picture of the total amount earned, the amount deferred for the year, and the total amount of deferred compensation that may be paid out at a later date.

Compensation that is earned, but for which payment will be deferred, would be included in the salary, bonus or other

last completed fiscal year if the registrant was not a reporting company pursuant to Exchange Act Sections 13(a) or 15(d) at any time during that year, unless the registrant previously was required to provide information for any such year in response to a Commission filing requirement, would be retained and redesignated as proposed Instruction 1 to Item 402(c).

[68] ''PEO'' refers to principal executive officer. See Section II.B.6.a. below for a description of the proposed named executive officers for whom compensation disclosure would be required.

[69] ''PFO'' refers to principal financial officer.

[70] Proposed Instruction 2 to Item 402(c) (requiring all compensation values in the Summary Compensation Table to be reported in dollars). Currently, some stock-based compensation is disclosed in per share increments rather than in dollar amounts. The instruction would further require, where compensation was paid or received in a different currency, footnote disclosure identifying that currency and describing the rate and methodology used for conversion to dollars.

[71] Columns (a) and (b) would, as is currently the case, specify the executive officer and the year in question.

column, as appropriate.[72] A new instruction, applicable to the entire Summary Compensation Table, would provide that if receipt of any amount of compensation is currently payable (which must be included in the appropriate column) but has been deferred for any reason, the amount so deferred must be disclosed in a footnote to the applicable column.[73] As described below, the amount deferred would also generally be reflected as a contribution in the deferred compensation presentation.[74] The new footnote disclosure of amounts deferred would help to clarify the extent to which amounts disclosed in the proposed Nonqualified Defined Contribution and Other Deferred Compensation Plans Table described below represent compensation already reported, rather than additional compensation.

We are also proposing a change eliminating the delay that exists under current rules where salary and bonus for the most recent fiscal year are determined following compliance with Item 402 disclosure. Under our proposal, where salary and bonus cannot be calculated as of the most recent practicable date, a current report under Item 5.02 of Form 8–K would be triggered by a payment, decision or other occurrence as a result of which such amounts become calculable in whole or part.[75] The Form 8–K would include disclosure of the salary or bonus amount and a new total compensation figure including that salary or bonus amount.

Request for Comment

- Is the proposed presentation of deferred compensation in the Summary Compensation Table and related footnotes, along with the proposals outlined below, the best means for communicating the portion of compensation that is deferred?
- Are there ways that we could better clarify how the amounts that would be identified as deferred in a footnote to the Summary Compensation Table relate to the amounts that would be required in the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table?
- Is the proposed change to Form 8–K to eliminate the delay in disclosing salary or bonus when they cannot be calculated as of the most recent practicable date appropriate?

c. Plan-Based Awards

The next three proposed columns—Stock Awards, Option Awards and Non-Stock Incentive Plan Compensation — cover plan-based awards.

i. Stock Awards and Option Awards Columns

The Stock Awards Column (proposed column (f)) would disclose stock-related awards that derive their value from the company's equity securities or permit settlement by issuance of the company's equity securities, such as restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar instruments that do not have option-like features.[76] Valuation would be based on the grant date fair value of the award determined pursuant to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (FAS 123R) for financial reporting purposes. Stock awards subject to performance-based conditions would also be included in this column to ensure consistent reporting of stock awards and to ensure their inclusion in the proposed Summary Compensation Table.[77]

Awards of options, stock appreciation right grants, and similar stock-based compensation instruments that have option-like features (proposed column (g)) would be disclosed in a manner similar to the proposed treatment of stock and other stock-based awards.[78] Instead of the current disclosure of the number of securities underlying the awards, this column would require disclosure of the grant date fair value of the award as determined pursuant to FAS 123R for financial reporting purposes. In order to calculate a total dollar amount of compensation, the value rather than the number of securities underlying an award must be used. The FAS 123R valuation would be used whether the award itself is in the form of stock, options or similar instruments or the award is settled in cash but the amount of payment is tied to performance of the company's stock. We propose to eliminate the current requirement in the Options/SAR Grants in Last Fiscal Year Table to report the potential realizable value of each option grant under 5% or 10% increases in value or the present value of each grant (computed under any option pricing model),[79] because these alternative disclosures would no longer be necessary if the grant date fair value of equity-based awards is included in the Summary Compensation Table.

A new instruction would require a footnote referencing the discussion of the relevant assumptions in the notes to the company's financial statements or to the discussion of relevant assumptions in the MD&A.[80] The same proposed instruction would also provide that the referenced sections will be deemed to be part of the disclosure provided pursuant to Item 402. The referenced sections containing this disclosure are required in the company's annual report to

[72] This is the case today for salary and bonus. This aspect of current Instruction 1 to Item 402(b)(2)(iii)(A) and (B) will be expanded and redesignated as Proposed Instruction 4 to Item 402(c).

[73] Currently, the requirement is triggered only if the officer elects the deferral. We propose to revise this to cover all deferrals no matter who has initiated them.

[74] See Section II.B.5.b., describing the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table. Disclosure of these amounts as contributions would be required for nonqualified deferred compensation plans. This disclosure would not be required for qualified plans. Nonqualified deferred compensation plans and arrangements provide for the deferral of compensation that does not satisfy the minimum coverage, nondiscrimination and other rules that ''qualify'' broad-based plans for favorable tax treatment under the Internal Revenue Code.

[75] Proposed Instruction 3 to Item 5.02(e) of Form 8–K and proposed Instruction 1 to Item 402(c)(2)(iv) and (v). Currently, in the event that such amounts are not determinable at the most recent practicable date, they are generally reported in the annual report on Form 10–K or proxy statement for the following fiscal year. We believe providing the information more quickly is appropriate and are therefore proposing the use of a current report on Form 8–K. Proposed Instruction 1 to Item 402(c)(2)(iv) and (v) would require that the company disclose in a footnote that the salary or bonus is not calculable through the latest practicable date and the date that the salary or bonus is expected to be determined.

[76] Generally speaking, a restricted stock award is an award of stock subject to vesting conditions, such as performance-based conditions or conditions based on continued employment for a specified period of time. This type of award is referred to an ''nonvested equity shares'' in FAS 123R. Phantom stock, phantom stock units, common stock equivalent units and other similar awards are typically awards where an executive obtains a right to receive payment in the future of an amount based on the value of a hypothetical, or notional, amount of shares of common equity (or in some cases stock based on that value). To the extent that the terms of phantom stock, phantom stock units, common stock equivalents or other similar awards include option-like features, the awards would be required to be included in the Option Awards column. Currently, restricted stock awards are valued in the Summary Compensation Table by multiplying the closing market price of the company's unrestricted stock on the date of grant by the number of shares awarded.

[77] These performance-based stock awards can currently be reported at the company's election as incentive plan awards. See current Instruction 1 to Item 402(b)(2)(iv). Our proposal would eliminate this option. See the discussion of what are considered performance-based conditions in note 87, below.

[78] A stock appreciation right usually gives the executive the right to receive the value of the increase in the price of a specified number of shares over a specified period of time. These awards may be settled in case or in shares.

[79] Current Item 402(c)(2)(vi).

[80] Proposed Instruction 1 to Item 402(c)(2)(vi) and (vii).

shareholders that must precede or accompany the company's proxy statement.[81] In the case of Internet disclosure of proxy materials, companies could provide hyperlinks from the proxy statement to the referenced sections contained in the annual report.[82]

Under FAS 123R, the compensation cost is initially measured based on the grant date fair value of an award.[83] The key measurement principle behind the accounting standard, measuring stock-based payments at grant date fair value, is also followed in our proposals. Under FAS 123R, the compensation cost calculated as the fair value is generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). Under our proposals, the compensation cost calculated as the grant date fair value will be shown as compensation in the year in which the grant is made. We believe that this approach is more consistent with the purpose of executive compensation disclosure. We are in effect proposing an approach that subscribes to the measurement method of FAS 123R based on grant date fair value, but that also provides for immediate disclosure of compensation as preferable for compensation reporting purposes to the timing of recognition of the compensation cost for the company's financial statement reporting purposes.

To consolidate related elements of compensation, the Stock Awards and Option Awards columns would also require disclosure of the earnings on outstanding awards in the respective categories.[84] New instructions would require footnote identification and quantification of all earnings, whether the earnings were paid during the fiscal year, payable during the period but deferred, or payable by their terms at a later date but earned during the year.[85] Previously awarded options or freestanding stock appreciation awards that the company repriced or otherwise materially modified during the last fiscal year would be disclosed based on the total fair value of the award as so modified.[86]

If the award has no performance conditions, but instead vests with the passage of time and continued employment, then the number of shares underlying the award and other details regarding the award would be disclosed in a separate table covering grants of equity awards supplementing the Summary Compensation Table.[87] If the award has a performance condition, then the details on the estimated future payouts will be disclosed in a second separate supplemental table covering grants of performance-based awards.[88]

Request for Comment

- Is the proposed presentation of stock awards that do not have option-like features in the Summary Compensation Table the best means for presenting restricted stock and similar awards?
- Is FAS 123R the appropriate approach for valuing equity-based awards, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units, options, stock appreciation rights and other similar awards for purposes of Item 402 disclosure? If not, why not and what other valuation methods would be appropriate? Would any other valuation method provide the same comparability? If a different approach were used, would investors be confused by differences between the grant date fair value for financial reporting purposes and the value in the compensation tables? [89]
- Should the expected term assumption used in computing the grant date fair value for financial statement purposes under FAS 123R also be used in measuring the value of an individual named executive officer's compensation for the purposes of Item 402? Or, should an expected term assumption used to determine an individual named executive officer's compensation be used if it differs from the expected term assumption used for FAS 123R purposes? [90] Should companies use the

[81] See Exchange Act Rule 14a-3 [17 CFR 240.14a-3].

[82] We recently proposed rules that would allow companies and other persons to use the Internet to satisfy proxy material delivery requirements. *Internet Availability of Proxy Materials,* Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

[83] Under FAS 123R, the classification of an award as an equity or liability award is an important aspect of the accounting because the classification will affect the measurement of compensation cost. Awards with cash-based settlement, repurchase features, or other features that do not allow an employee to bear the risks and rewards normally associated with share ownership for a specified period of time would be classified as liability awards under FAS 123R. For an award classified as an equity award under FAS 123R, the compensation cost recognized is fixed for a particular award, and absent modification, is not revised with subsequent changes in market prices or other assumptions used for purposes of the valuation. In contrast, liability awards are initially measured at fair value on the grant date, but for purposes of recognition in financial statement reporting are then re-measured at each reporting date through the settlement date under FAS 123R. These re-measurements would not be the basis for executive compensation disclosure unless the award has been modified, as described later in this proposal.

[84] These earnings are currently reportable in the Other Annual Compensation or All Other Compensation columns of the Summary Compensation Table. Current Item 402(b)(2)(iii)(C)(**2**) requires disclosure of earnings on restricted stock, options, and SARs paid during the fiscal year (or payable during that period but deferred at the election of the named executive officer), to the extent those earnings are above-market or preferential. The proposal would require disclosure of all such earnings, rather than merely any above-market or preferential portion. Current item 402(b)(2)(iii)(C)(**3**) requires similar disclosure of all earnings on long-term incentive plan compensation. See also current Item 402(b)(2)(v)(B) and (C).

[85] Proposed Instruction 3 to Item 402(c)(2)(vi) and (vii) and Proposed Instruction 2 to Item 402(c)(2)(viii).

[86] See current instruction 3 to Item 402(b)(2)(iv) and proposed Instruction 2 to Item 402(c)(2)(vi) and (vii). Under FAS 123R, unlike under our proposal, only the incremental compensation cost is recognized for a modified award.

[87] See Section II.B.2.b., discussing the Grants of All Other Equity Awards Table required by proposed Item 402(c). As defined in Appendix E of FAS 123R, a performance condition is ''a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee's rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer's own operations (or activities). Attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financing event, and a change in control are examples of performance conditions for puropses of this Statement. A performance target also may be defined by reference to the same performance measure of another entity or group of entities. For example, attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry is a performance condition for purposes of this Statement. A performance target might pertain either to the performance of the enterprise as a whole or to some part of the enterprise, such as a division or an individual employee.'' An award also would be considered to have a performance condition if it is subject to a market condition, which is ''a condition affecting the exercise price, exercisability, or other pertinent factors used in determining the fair value of an award under a share-based payment arrangement that relates to the achievement of (a) a specified price of the issuer's shares or a specified amount of intrinsic value indexed solely to the issuer's shares or (b) a specified price of the issuer's shares in terms of a similar (or index of similar) equity security (securities).''

[88] See Section II.B.2.a., discussing the Grants of Performance-Based Awards Table.

[89] See, *e.g.,* Jonathan Weil and Betsy McKay, *Coke Developed a New Way to Value Options, But Company Will Return to its Classic Formula,* Wall St. J., Mar. 7, 2003, at C3 (highlighting potential issue of using one valuation methodology for financial statements and another for executive compensation disclosure).

[90] FAS 123R requires a company to aggregate individuals receiving awards into relatively homogeneous groups with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term; for example executives and non-executives. Our proposals today are not intended to change the method used to value employee share options for purposes of FAS 123R or to affect the judgments as to reasonable groups for purposes of determining the expected term assumption required by GAS

full term rather than an expected term assumption for calculations for named executive officers? Would the complexity of such an approach for investors or the additional burden on companies outweigh any advantages, such as possible increased comparability among companies, of adjusting assumptions?

• Is the timing of reporting stock-based compensation in our proposals the best approach? Should stock-based compensation instead be reflected in Item 402 according to the same time schedule by which it is recognized for a company's financial statement reporting purposes?

• Should the valuation method and all of the assumptions regarding the valuation also be disclosed in the proxy statement when they are required to be disclosed, described and analyzed elsewhere in a document furnished to shareholders, including in the notes to the financial statements?

• We propose treating a modification of an award as a new award and requiring disclosure of the total grant date fair value at the time of modification. Would it be more appropriate to require only disclosure of incremental compensation as is the approach under FAS 123R?

• Should we eliminate as proposed the current instruction allowing performance-based stock awards to be reported at the company's election as incentive plan awards? If not, please explain whether the availability of this election is helpful to and not confusing to investors.

ii. Non-Stock Incentive Plan Compensation Column

We propose that the Non-Stock Incentive Plan Compensation column (proposed column (h)) would report the dollar value of all other amounts earned during the fiscal year pursuant to incentive plans.[91] This column would be limited to awards where the relevant performance measure under the incentive plan is not based on the price of the company's equity securities or the award may not be settled by issuance of a company's equity securities; those awards would instead be disclosed in the Stock Awards and Option Awards columns discussed above.[92] Performance-based compensation under a long-term plan that is not tied to the performance of the company's stock (but instead is tied to other measures such as a return on assets, return on equity, performance of a division, or other such measures) would be disclosed in the Summary Compensation Table in the year when the relevant specified performance criteria under the plan are satisfied and the compensation earned, whether or not payment is actually made to the named executive officer in that year. The grant of an award (providing for future compensation if such performance measures are satisfied) under such a plan would be disclosed in the supplemental Grants of Performance-Based Awards Table in the year of grant, which would generally be some year prior to the year in which performance-based compensation under the plan is reported in the Summary Compensation Table.[93] Because there is not one clearly required or accepted standard for measuring the value at grant date of these non-stock based performance-based awards that reflects the applicable performance contingencies, as there is for equity-based awards with FAS 123R, we do not propose to include such a value in the Summary Compensation Table, but instead would continue the current disclosure format of reflecting these items of compensation when earned.[94]

As with the Stock Awards and Option Awards columns, earnings on outstanding awards of other incentive plans would also be included in the Non-Stock Incentive Plan Compensation column.

Request for Comment

• Since there is not one clearly required or accepted standard for measuring the value at grant date of those cash awards that reflect performance contingencies, is our approach to include the amounts in the Summary Compensation Table when earned appropriate? Are there particular models or standards that would provide a basis for measuring the value of these types of awards at grant date that we should consider incorporating into our rules?

• Should earnings on outstanding awards be reported as proposed in the applicable award column or should they be reported in another way, such as in separate or different columns?

d. All Other Compensation Column

The final column in the Summary Compensation Table would disclose all other compensation not required to be included in any other column. This approach would allow the capture of all current compensation in the Summary Compensation Table and also would allow a total compensation calculation. We confirm that disclosure of all compensation would clearly be required under the proposals.[95]

We propose to clarify the disclosure required in the All Other Compensation Column (proposed column (i)) in two principal respects:

• Consistent with the requirement that the Summary Compensation Table disclose *all* compensation, we would state explicitly that compensation not properly reportable in the other columns reporting specified forms of compensation must be reported in this column; and

• To simplify the Summary Compensation Table and eliminate confusing distinctions between items currently reported as ''Annual'' and ''Long Term'' compensation, we would move into this column all items currently reportable as ''Other Annual Compensation.'' [96]

We also propose that each item of compensation included in the All Other Compensation column that exceeds $10,000 be separately identified and quantified in a footnote. We believe that the $10,000 threshold balances our desire to avoid disclosure of clearly *de minimis* matters against the interests of investors in the nature of items comprising compensation. Each item of compensation less than that amount would be included in the column (other than aggregate perquisites and other

123R. Under our proposals, where a company uses more than one group, the measurement of grant date fair value for purposes of Item 402 would be derived using the expected term assumption for the group that includes the named executive officers (or the group that includes directors for purposes of proposed Item 402(l)).

[91] Proposed Item 402(c)(2)(viii). An incentive plan generally provides for compensation intended to serve as an incentive for performance to occur over a specific period, whether such performance is measured by reference to financial performance of the company or an affiliate, the company's stock price, or any other measure. See proposed Item 402(a)(6)(iii) for definitions of ''incentive plan'' and ''non-stock incentive plan.''

[92] Awards disclosed in this column are not covered by FAS 123R for financial reporting purposes because they do not involve share-based payment arrangements. Awards that involve share-based payment arrangements would be disclosed in the Stock Awards or Option Awards columns, as appropriate.

[93] See Section II.B.2.a., discussing the Grants of Performance-Based Awards Table. Under the proposals, once the disclosure has been provided in the Summary Compensation Table when the specified performance criteria have been satisfied and the compensation earned, and the grant of the award has been disclosed in the Grants of Performance-Based Awards Table, no further disclosure would be required under proposed Item 402 when payment is actually made to the named executive officer.

[94] Current Items 402(b)(2)(iv)(C) and 402(e).

[95] The only exception, as discussed below, would be perquisites and personal benefits if they aggregated less than $10,000 for a named executive. The 1992 Release, at Section II.A.4, also noted ''the revised item includes an express statement that it requires disclosure of all compensation to the named executive officers and directors for services rendered in all capacities to the registrant and its subsidiaries.'' See also current Item 402(a)(2).

[96] Current Item 402(b)(2)(iii)(c).

personal benefits less than $10,000 as discussed below), but would not be required to be identified by type and amount.[97] Items that would be disclosed in the All Other Compensation column would include, but would not be limited to, the items discussed below.

Request for Comment

- Should all compensation no matter how *de minimis* be required to be disclosed? Will companies be able to track this information without undue burden? Is $10,000 the appropriate threshold for separate identification and quantification?

i. Earnings on Deferred Compensation

We propose requiring disclosure in the All Other Compensation column of all earnings on compensation that is deferred on a basis that is not tax-qualified, including non-tax qualified defined contribution retirement plans.[98] Currently, these earnings must be disclosed only to the extent of any portion that is ''above-market or preferential.'' [99] This limitation has generated criticism that Item 402 permits companies to avoid disclosure of substantial compensation.[100]

Separate footnote identification and quantification of all such earnings would be required if the amount exceeds $10,000.[101] A company would be permitted to identify by footnote the portion of any earnings that it considered to be paid at an above-market rate, provided that the footnote explained the company's criteria for determining the portion considered ''above-market.'' [102]

Request for Comment

- Should we require, as proposed, disclosure of all earnings on compensation that is deferred on a basis that is not tax-qualified or should we require disclosure only of above-market or preferential earnings? If the latter, please explain why such an approach is more useful or informative for investors than our proposed approach.

ii. Increase in Pension Value

We propose requiring in the All Other Compensation Column the aggregate of increase in actuarial value to the executive officer of defined benefit and actuarial plans (including supplemental plans) accrued during the year.[103]

An instruction would specify that this disclosure applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental employee retirement plans, but excluding defined contribution plans.[104] The retirement section, discussed below, would provide more information regarding these covered plans.[105] In contrast to defined contribution plans, for which the Summary Compensation Table requires disclosure of company contributions,[106] Item 402 does not currently require disclosure of the annual increase in value of defined benefit plans, such as pension plans, in which the named executive officers participate.[107] The annual increase in actuarial value of these plans may be a significant element of compensation that is earned on an annual basis, thus we believe it is appropriate to include these values in the computation of total compensation.

Such disclosure is necessary to permit the Summary Compensation Table to reflect total compensation for the year. Such disclosure would also permit a full understanding of the company's compensation obligations to named executive officers, given that defined benefit plans guarantee what can be a lifetime stream of payments and allocate risk of investment performance to the company and its shareholders. In addition, commentators have noted that the absence of such a disclosure requirement creates an incentive to shift compensation to pensions, results in the understatement of non-performance-based compensation, and distorts pay comparisons between executives and between companies.

Request for Comment

- Is disclosure of any additional information necessary to provide investors with meaningful information about the compensation earned annually through these plans?
- Is there any particular form of defined benefit or actuarial plan for which the proposed disclosure format is not suitable? If so, how could the proposed disclosure requirement be adapted for such plans?
- Should this disclosure instead be provided as a separate column in the Summary Compensation Table?
- Is the aggregate increase in accrued actuarial value the best measure for disclosing annual compensation earned under defined benefit and actuarial plans? If not, why? What other method should be used?
- Rather than requiring disclosure of the value based on the executive officer's benefit, should we require disclosure based on the company's cost for the plan? Under our proposals, disclosure of assumptions would be considered by companies in the narrative disclosure following the Summary Compensation Table and supplementary tables. Are there other preferable approaches? Should we otherwise require disclosure of any of the details of the calculation?
- Is it possible to provide meaningful disclosure about total compensation absent tabular disclosure of the compensation earned annually through these plans? If so, how? Would such an approach be preferable?

iii. Perquisites and Other Personal Benefits

Perquisites and other personal benefits would be included in the All Other Compensation column. We propose changes to disclosure of perquisites and other personal benefits to improve disclosure and facilitate computing a total amount of compensation. We propose to require the disclosure of perquisites and other personal benefits unless the aggregate

[97] See Section II.B.1.d.iii. regarding separate standards for identification of perquisites and other personal benefits.

[98] Proposed Item 402(c)(2)(ix)(B).

[99] Current Items 402(b)(2)(iii)(C)(*2*) and 402(b)(2)(v)(B). An instruction specifies that interest is above-market only if the rate exceeds 120% of the applicable federal long-term rate. Furthermore, earnings disclosure is currently required in the Other Annual Compensation column or the All Other Compensation column, depending upon when paid or payable, complicating the preparation process and generating confusion among users of the Summary Compensation Table.

[100] See, e.g., Ellen E. Schultz, *Buried Treasure: Well-Hidden Perk Means Big Money for Top Executives*, Wall St. J., Oct. 11, 2002, at A1.

[101] Proposed Instruction 3 to Item 402(c)(2)(ix). Consistent with current requirements, if applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Proposed Instruction 5 to Item 402(c)(2)(ix), which is derived from current Instruction 3 to Item 402(b)(2)(iii)(C).

[102] Proposed Instruction 5 to Item 402(c)(2)(ix).

[103] Proposed Item 402(c)(2)(ix)(G).

[104] Proposed Instruction 6 to Item 402(c)(2)(ix). Defined benefit plans include, for example, cash balance plans in which the retiree's benefit may be determined by the amount represented in an account rather than based on a formula referencing salary while still employed.

[105] See Section II.B.5.a., discussing the proposed Retirement Plan Potential Annual Payments and Benefits Table.

[106] Current Item 402(b)(2)(v)(D), which requires annual registrant contributions or other allocations to vested and unvested defined contribution plans to be disclosed in the All Other Compensation column.

[107] A typical defined contribution plan is a retirement plan in which the company and/or the executive makes contributions of a specified amount, and the amount that is paid out to the executive depends on the return on investments from the contributed amounts. A typical defined benefit plan is a retirement plan in which the company pays the executive specified amounts at retirement which are not tied to investment performance of the contributions that fund the plan.

amount of such compensation is less than $10,000. We realize this may result in the total amount of compensation reportable in the Summary Compensation Table being slightly less than a complete total amount of compensation, but we believe $10,000 is a reasonable balance between investors' need for disclosure of total compensation and the burden on a company to track every benefit, no matter how small. The current provision permits omission of perquisites and other personal benefits if the aggregate amount of such compensation is the lesser of either $50,000 or 10% of the total of annual salary and bonus.[108] We believe this current rule permits the omission of too much information that investors may consider material.

We propose requiring footnote disclosure that identifies perquisites and other personal benefits. We propose modifying the current requirement that only perquisites and other personal benefits that are 25% of the total amount for each named executive officer are required to be identified and quantified. We propose modifying this requirement so that, unless the aggregate value of perquisites and personal benefits is less than $10,000, any perquisite or other personal benefit is identified and, if it is valued at the greater of $25,000 or ten percent of total perquisites and other personal benefits, its value would be disclosed.[109] Consistent with our objective to streamline the Summary Compensation Table, the revised threshold is intended to avoid requiring separate quantification of perquisites having *de minimis* value. As is the case today, tax ''gross-ups'' or other reimbursement of taxes owed with respect to any compensation, including but not limited to perquisites and other personal benefits, would be separately quantified and identified in the tax reimbursement category described below, even if the associated perquisites or other personal benefits are eligible for exclusion or would not require identification or footnote quantification under the proposal. Where perquisites are subject to identification, they must be described in a manner that identifies the particular nature of the benefit received. For example, it is not sufficient to characterize generally as ''travel and entertainment'' different company-financed benefits, such as clothing, jewelry, artwork, theater tickets and housekeeping services.[110]

For decades questions have arisen as to what is a perquisite or other personal benefit required to be disclosed. We continue to believe that it is not appropriate for Item 402 to define perquisites or personal benefits, given that different forms of these items continue to develop, and thus a definition would become outdated. Further, we are concerned that sole reliance on a bright line definition in our rules might provide an incentive to characterize perquisites or personal benefits in ways that would attempt to circumvent the bright lines.[111]

In today's proposals, perquisites and personal benefits are required to be disclosed for both named executive officers and directors. This discussion regarding perquisites and personal benefits therefore applies in the context of disclosure for both named executive officers and directors.[112] The concepts of perquisites and personal benefits should not be interpreted artificially narrowly to avoid disclosure. Based on our long experience with disclosure in this area, we are providing interpretive guidance that among the factors to be considered in determining whether an item is a perquisite or other personal benefit are the following:

- An item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive's duties.
- Otherwise, an item is a perquisite or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.

The concept of a benefit that is ''integrally and directly related'' to job performance is a narrow one. As discussed below, it may extend, among other things, to office space at a company business location, a reserved parking space that is closer to business facilities but not otherwise preferential or additional clerical or secretarial services devoted to company matters. It does not extend to items that facilitate job performance, such as use of company-provided aircraft, yachts or other watercraft, commuter transportation services, additional clerical or secretarial services devoted to personal matters, or investment management services. The fact that the company has determined that an expense is an ''ordinary'' or ''necessary'' business expense for tax or other purposes or that an expense is for the benefit or convenience of the company is not responsive to the inquiry as to whether the expense provides a perquisite or other personal benefit for disclosure purposes. Whether the company should pay for an expense relates principally to questions of state law regarding use of corporate assets; our disclosure requirements are triggered by different and broader concepts.

Applying the concepts that we outline above, examples of items requiring disclosure as perquisites or personal benefits under Item 402 include, but are not limited to: club memberships not used exclusively for business entertainment purposes, personal financial or tax advice, personal travel using vehicles owned or leased by the company, personal travel otherwise financed by the company, personal use of other property owned or leased by the company, housing and other living expenses (including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residence), security provided at a personal residence or during personal travel, commuting expenses (whether or not for the company's convenience or benefit), and discounts on the company's products or services not generally available to employees on a non-discriminatory basis.

In addition, as noted, business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job. Therefore, for example, a company's decision to provide an item of personal benefit for security purposes

[108] Current Item 402(b)(2)(iii)(C)(*1*).

[109] Proposed Instruction 3 to Item 402(c)(2)(ix). *Compare* current Instruction 1 to Item 402(b)(2)(iii)(C).

[110] See *In the Matter of Tyson Foods, Inc. and Donald Tyson,* Litigation Release No. 34–51625 (Apr. 28, 2005) (failure to identify perquisites).

[111] In the 1970s and early 1980s, the Commission issued several interpretive releases regarding executive compensation disclosure issues, including disclosure of perquisites and personal benefits. See *Disclosure of Management Remuneration,* Release No. 33–5856 (Aug. 18, 1977) [42 FR 43058]; *Disclosure of Management Remuneration,* Release No. 33–5904 (Feb. 6, 1978) [43 FR 6060]; *Disclosure of Management Remuneration,* Release No. 33–6027 (Feb. 22, 1979) [44 FR 16368]; *Disclosure of Management Remuneration,* Release No. 33–6166 (Dec. 12, 1979) [44 FR 74803]; and *Interpretation of Rules Relating to Disclosure of Management Remuneration,* Release No. 33–6364 (Dec. 3, 1981) [46 FR 60421]. In Section I of the 1983 Release, as part of a substantial revision to Item 402 adopted at the time, the Commission rescinded those interpretive releases. Subsequently, neither the Commission nor its staff has published interpretations addressing what must be disclosed as a perquisite or personal benefit.

[112] For directors, the disclosure would be required in the Director Compensation Table discussed below in Section B.9.

does not affect its characterization as a perquisite or personal benefit. A company policy that for security purposes an executive (or an executive and his or her family) must use company aircraft or other company means of travel for personal travel, or must use company or company-provided property for vacations, does not affect the conclusion that the item provided is a perquisite or personal benefit.

Examples of items that would not be perquisites or personal benefits would include, among other things, travel to and from business meetings, other business travel, business entertainment, security during business travel, and itemized expense accounts the use of which is limited to business purposes.

In seeking to interpret current rules, some legal advisers have put forward to the Commission staff examples of arrangements that they believe raise issues requiring more detailed bright line guidance regarding the definition of perquisites. These examples include larger offices or a level of secretarial service not available to employees generally. We believe that the factors enumerated above provide sufficient guidance in these areas. For example, an office at the job location, even if larger than that of other employees, is integrally and directly related to performance of the executive's job, as is secretarial service used for business purposes, even if at a higher level than other employees. On the other hand, provision of additional secretarial services, such as a second secretary, that is not directly related to performance of an executive's job would be a perquisite or personal benefit.

Beyond these examples, we assume companies and their advisors, who are more familiar with the detailed facts of a particular situation and who are responsible for providing materially accurate and complete disclosure satisfying our requirements, can assess whether particular arrangements require disclosure as perquisites or personal benefits. In light of the importance of the subject to many investors, all participants should approach the subject of perquisites and personal benefits thoughtfully.[113]

Finally, we observe that the proposal calls for aggregate incremental cost to the company and its subsidiaries as the proper measure of value of perquisites and other personal benefits.[114] The amount attributed to such benefits for federal income tax purposes is not the incremental cost for purposes of our disclosure rules unless, independently of the tax characterization, it constitutes such incremental cost. Therefore, for example, the cost of aircraft travel attributed to an executive for federal income tax purposes is not generally the incremental cost of such a perquisite or personal benefit for purposes of our disclosure rules.[115]

Request for Comment

- Is $10,000 the proper minimum below which disclosure of the total amount of perquisites and personal benefits should not be required? Should there be no minimum? Should the minimum be a higher amount, such as $25,000 or $50,000? Should the current minimum of the lesser of $50,000 or 10% of total salary and bonus be retained? Would some other ratio be more appropriate?
- Should all perquisites be required to be separately identified when the $10,000 aggregate threshold is exceeded, as proposed?
- Is the greater of $25,000 or 10% of the total amount of perquisites and personal benefits the proper minimum below which perquisites and personal benefits should not be required to be separately identified and their value reported? Should there be a lower minimum, such as $10,000, or no minimum? Should the current minimum of 25% of the total amount be retained?
- Should perquisites and personal benefits below the proposed threshold be separately identified by category, even if not separately quantified? Alternatively, is separate identification and quantification of all perquisites and personal benefits so significant to investors that no threshold should apply for either purpose?
- We propose to retain the current standard for valuing perquisites and other personal benefits, based on the aggregate incremental cost to the company and its subsidiaries which has applied since 1983.[116] We believe that this approach is consistent with the approach we are taking otherwise in valuing compensation, including in respect of share-based compensation. Nevertheless, we realize that there may be an issue whether the retail value of what is received by the executive officer or director, rather than the aggregate incremental cost to the company, better measures the compensation provided by perquisites and other personal benefits. Therefore we request comment as to whether we should require perquisites and other personal benefits to be valued based on the retail price of the item or, if none, the retail price of a commercially available equivalent. In determining the commercially available equivalents, for example, for travel on the company's aircraft, the retail price of a commercially available equivalent would be the retail price to charter the same model aircraft. First-class airfare would not be considered equivalent to travel on a private aircraft.
- Would the proposed valuation standard facilitate Item 402 compliance while providing meaningful compensation disclosure? Is there any other valuation methodology that is preferable for valuing perquisites and other personal benefits? If so, why?
- Under the proposals a ''gross-up'' or other reimbursement of taxes owed with respect to perquisites and other personal benefits would be required to be included in the table and separately quantified and identified in the tax reimbursement category if it meets the relevant threshold, even if the associated perquisites or other personal benefits would not be required to be included in the table or separately quantified. Is separate identification of items such as tax gross-ups material to investors even if it is clear the amount must be included in the All Other Compensation column?
- Should Item 402 include a definition of perquisites or other personal benefits? If so, how should perquisites or other personal benefits be defined? How can we assure that new perquisites will not be developed in a manner intended to avoid the definition and therefore disclosure? If such a definition is principles-based, what principles in addition to those described in this release should be considered?
- We are providing interpretive guidance above regarding perquisites and personal benefits. Are there any areas regarding perquisites and personal benefits where we should consider providing additional or different interpretive guidance? Should any of our interpretive guidance be codified?

[113] The Commission has recently taken action in circumstances where perquisites were not properly disclosed. See *In the Matter of Tyson Foods, Inc. and Donald Tyson,* note 110 above. See also Alex Berenson, *From Coffee to Jets, Perks for Executives Come Out in Court,* N.Y. Times, Feb. 22, 2004, at 11 (citing criminal and civil litigation in which perquisites were identified and commentators discussing the benefits of improved perquisite disclosure).

[114] Proposed Instruction 4 to Item 402(c)(2)(ix).

[115] See IRS Regulation § 1.61–21(g) [26 CFR 1.61–21(g)] regarding Internal Revenue Service guidelines for imputing taxable personal income to an employee who travels for personal reasons on corporate aircraft. These complex regulations are known as the Standard Industry Fare Level or SIFL rules.

[116] See the 1983 Release, at Section III.C.

iv. Additional All Other Compensation Column Items

The proposals also would specify that items disclosed in the All Other Compensation column would include, but not be limited to, the following items: [117]

- Amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or constructive termination) of employment or a change in control; [118]
- Annual company contributions or other allocations to vested and unvested defined contribution plans; [119]
- The dollar value of any insurance premiums paid by the company with respect to life insurance for the benefit of a named executive officer; [120]
- ''Gross-ups'' or other amounts reimbursed during the fiscal year for the payment of taxes; [121] and
- For any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of fees or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally either to all security holders or to all salaried employees of the company, the compensation cost computed in accordance with FAS 123R.[122]

Request for Comment

- Are there other items that should be specifically enumerated for inclusion in the All Other Compensation Column? If so, what are they and how should they be valued and reported?
- Will the combination of the current Other Annual Compensation Column and the All Other Compensation Column result in too many compensation items being aggregated and separately identified within one column of the table? Is there another reason to continue to show the two groups of items separately?
- Should we retain the treatment of securities purchased at a discount in current Item 402(b)(2)(iii)(C)(*5*), which requires inclusion in the Other Annual Compensation column of the dollar value of the difference between the price paid by a named executive officer for any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of salary or bonus, or otherwise), and the fair market value of such a security at the date of purchase? If so, why?
- Because so many different types of compensation would be reportable in the ''All Other Compensation'' column, would this disclosure be clearer if it were presented as a supplemental table in the following or similar format:

Name	Perquisites and other personal benefits	Earnings on deferred compensation	Tax reimbursements	Discounted securities purchases	Payments/ accruals on termination plans	Registrant contributions to defined contribution plans	Increase in pension actuarial value	Insurance premiums	Other
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

e. Captions and Table Layout

Currently a portion of the table is labeled as ''annual compensation'' and another portion as ''long term compensation.'' These captions create distinctions that may be confusing to both users and preparers of the Summary Compensation Table. Today's proposal would not separately identify some columns as ''annual'' and other columns as ''long term'' compensation. In eliminating this distinction, we also propose to revise the definition of ''long term incentive plan'' to eliminate any distinction between a ''long term'' plan and one that may provide for periods shorter than one year, because, like the captions, the current approach creates distinctions that may be confusing to users and preparers. The proposals would thus define an ''incentive plan'' as any plan providing compensation intended to serve as incentive for performance to occur over a specified period.[123] Consistent with this change, as described above, we propose to merge the current Other Annual Compensation column into the proposed All Other Compensation column, and include current information regarding incentive plan compensation in the appropriate column for the relevant form of award.

Request for Comment

- Will these changes improve the table? Are there any other changes to the captions and table layout that would improve the table?

2. Supplemental Annual Compensation Tables

Following the Summary Compensation Table, we propose requiring two supplemental tables. These two tables are intended to help explain information in the Summary Compensation Table and would be derived from two tables currently required.

[117] These items are all currently required to be disclosed either under All Other Compensation or under Other Annual Compensation.

[118] Unlike the current Item 402(b)(2)(v)(A) requirement, proposed Item 402(c)(2)(ix)(E) does not refer to amounts payable under post-employment benefits, because the focus for this item is current year compensation rather than aggregate amounts potentially payable in the future. These items are also the subject of disclosure as post-termination compensation, as described in Section II.B.5., below. For any compensation as a result of a business combination, other than pursuant to a plan or arrangement in connection with any termination of employment or change-in-control, such as a retention bonus, acceleration of option or stock vesting periods, or performance-based compensation intended to serve as an incentive for named executive officers to acquire other companies or enter into a merger agreement, disclosure would be required in the appropriate Summary Compensation Table column and in the other tables or narrative disclosure where the particular element of compensation is required to be disclosed.

[119] Proposed Item 402(c)(2)(ix)(F).

[120] Proposed Item 402(c)(2)(ix)(H). Because the proposal calls for disclosure of the dollar value of any life insurance premiums, rather than only premiums with respect to term life insurance, as currently required, the requirement of current Items 402(b)(2)(v)(E)(*1*) and (*2*) to disclose the value of any remaining premiums with respect to circumstances where the named executive officer has an interest in the policy's cash surrender value would be deleted.

[121] Proposed Item 402(c)(2)(ix)(C).

[122] Proposed Item 402(c)(2)(ix)(D).

[123] Proposed Item 402(a)(6)(iii).

a. Grants of Performance-Based Awards Table

The first table that would supplement the Summary Compensation Table would include information regarding non-stock grants of incentive plan awards, stock-based incentive plan awards and awards of options, restricted stock and similar instruments under plans that are performance-based (and thus provide the opportunity for future compensation if conditions are satisfied).[124] This would ensure consistent reporting treatment of these performance-based awards, disclosing information equivalent to that currently required for grants of other long-term incentive plan awards. For purposes of this table, awards would be considered performance-based if they are subject to either a performance condition, or a market condition, as those terms are defined in FAS 123R.[125]

Disclosure in this table of grants of incentive plan awards would complement Summary Compensation Table disclosure of grant date fair value of stock awards and option awards, and the disclosure of annual amounts earned under non-stock based incentive compensation. This supplemental table would show the terms of grants made during the current year, including estimated future payouts, with separate disclosure for each grant.[126]

GRANTS OF PERFORMANCE-BASED AWARDS

Name	Perform-ance-based stock and stock-based incentive plans: num-ber of shares, units or other rights (#)	Perform-ance-based options: number of securities underlying options (#)	Non-stock incentive plan awards: number of units or other rights (#)	Dollar amount of consider-ation paid for award, if any ($)	Grant date for stock or option awards	Perform-ance or other period until vesting or payout and option expiration date	Estimated future payouts		
							Threshold ($) or (#)	Target ($) or (#)	Maximum ($) or (#)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

Request for Comment

- Will the proposed Grants of Performance-Based Awards Table effectively supplement the equity awards and non-stock incentive plan compensation information to be disclosed in the Summary Compensation Table? In particular, should tabular disclosure be required of any additional information relating to performance-based equity awards and non-stock incentive plan awards?
- Is the information required by columns (b), (c) and (d) of this proposed table redundant with the information required in the Grants of Performance-Based Awards Table describing estimated future payouts to be required in columns (h), (i) and (j) of the Table, such that any of these columns should be eliminated? Is any other tabular information needed to describe estimated future payouts in addition to the information that would be required in proposed columns (h), (i) and (j)?
- Are the references to the definitions of ''performance condition'' and ''market condition'' in FAS 123R appropriate in defining performance-based awards?

b. Grants of All Other Equity Awards Table

The second table supplementing the Summary Compensation Table would show the equity-based compensation awards granted in the last fiscal year that are not performance-based, such as stock, options or similar instruments where the payout or future value is tied to the company's stock price, and not to other performance criteria.[127]

GRANTS OF ALL OTHER EQUITY AWARDS

Name	Number of securities underlying options granted (#)	Exercise or base price ($/Sh)	Expiration date	Number of shares of stock or units grant-ed (#)	Vesting date	Grant date
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
PFO						
A						
B						
C						

[124] This table would contain the information in the current Long-Term Incentive Plan Awards Table, augmented with information regarding performance-based stock, option and similar awards. See current Item 402(e). This table would also include awards with performance, market and other conditions affecting the terms of the award (exercise price, for example) rather than vesting.

[125] See note 87.

[126] Proposed Instruction 1 to Item 402(d).

[127] Proposed Item 402(e). Proposed Instruction 2 to Item 402(e) would require that if more than one award is made to a named executive officer during the last completed fiscal year, a separate line should be used to disclose each award.

Instructions would require options and stock appreciation rights granted in connection with a repricing transaction to be included in the table, and footnote descriptions of any material terms of a grant.[128] Because the Summary Compensation Table would disclose grant date fair value of the options, stock appreciation rights or similar instruments, the columns in the current Option/SAR Grants in Last Fiscal Year table requiring disclosure of that value or, alternatively, potential realizable value at assumed five percent and ten percent annual rates of return, would be eliminated.[129] This table would also supplement the Summary Compensation Table disclosure of the aggregate grant date fair value of stock, units and similar instruments with disclosure relating to the number of underlying securities and other material terms of the grants.

Request for Comment

- Will the Grants of All Other Equity Awards Table, as proposed, effectively supplement the option and stock grants information to be disclosed in the Summary Compensation Table? In particular, should tabular disclosure be required of any additional information relating to these grants?
- Is this table or any aspect of it too repetitive?
- Will it be clear to investors how the two supplemental tables relate to the Summary Compensation Table? If not, how could we make that more clear?
- Are all plan-based awards covered by the two supplemental tables? What additional provisions would we need to add to cover all such awards?
- Instead, would it be preferable to have two separate versions of the Summary Compensation Table, with one showing all awards made during the year and the other having exactly the same columns showing all the amounts earned by services during the year? Would this approach increase the risk of double counting? Would it be duplicative as to cash salary and bonus and other currently earned and paid amounts and benefits?

[128] Proposed Instructions 3 and 4 to Item 402(e).

[129] See current Item 402(c)(2)(vi). We also propose removing the column, required by current Item 402(c)(2)(iii), requiring disclosure of the percent that the grant represents of total options and stock appreciation rights granted to all employees during the fiscal year. At this time, we do not believe that this relatively narrow disclosure is independently material to an understanding of a named executive officer's compensation.

3. Narrative Disclosure to Summary Compensation Table and Supplemental Tables

We propose requiring narrative disclosure in order to give context to the tabular disclosure following the Summary Compensation Table, the Grants of Performance-Based Awards Table and the Grants of All Other Equity Awards Table. A company would be required to provide a narrative description of any additional material factors necessary to an understanding of the information disclosed in the tables.[130] Unlike the Compensation Discussion and Analysis, which would focus on broader topics regarding the objectives and implementation of executive compensation policies, this narrative disclosure would focus on and provide context to the quantitative disclosure in the tables. The material factors will vary depending on the facts, but may include, in given cases, among other things, descriptions of the material terms in the named executive officers' employment agreements, which may be a potential source of material information necessary to an understanding of the tabular disclosure. The proposed narrative disclosure would cover written or unwritten agreements or arrangements. Requiring this disclosure in proximity to the Summary Compensation Table is intended to make the tabular disclosure more meaningful.[131] Mere filing of employment agreements (or summaries of oral agreements) may not be adequate to disclose material factors depending on the circumstances.

The factors that could be material include each repricing or other material modification of any outstanding option or other stock-based award during the last fiscal year. This disclosure would address not only option repricings, but also other significant changes to the terms of stock-based or other awards. We propose to eliminate the current ten-year option repricing table.[132] In its place, the narrative disclosure following the Summary Compensation Table would describe, to the extent material and necessary to an understanding of the tabular disclosure, repricing, extension of exercise periods, change of vesting or forfeiture conditions, change or elimination of applicable performance criteria, change of the bases upon which returns are determined, or any other material modification. The tabular disclosure would reflect the award's total fair value after any such modification as a new award.[133]

Narrative text accompanying the tables would also describe, to the extent material and necessary to an understanding of the tabular disclosure, award terms relating to data provided in the Grants of Performance-Based Awards Table, which could include, for example, a general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule, a description of the performance-based conditions and any other material conditions applicable to the award, whether dividends or other amounts would be paid, the applicable rate and whether that rate is preferential. Consistent with current disclosure requirements, however, companies would not be required to disclose any factor, criteria, or performance-related or other condition to payout or vesting of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the company's competitive position.[134]

[130] Proposed Item 402(f)(1). Disclosure of employment agreement information is currently required by Item 402(h)(1). The standard of materiality that would apply in proposed Item 402(f)(1) is that of *Basic* v. *Levinson*, 485 U.S. 224 (1988) and *TSC Industries* v. *Northway*, 426 U.S. 438 (1976).

[131] Provisions regarding post-termination compensation would need to be addressed in the narrative section only to the extent disclosure of such compensation is required in the Summary Compensation Table; otherwise these provisions would be disclosable as post-termination compensation in the manner described in Section II.B.5., below.

[132] Current Item 402(i). We believe that the disclosure requirement would provide investors with material information regarding repricings and modifications and eliminate the arguably dated information contained in the ten-year option repricing table.

[133] While this approach is different from that required for accounting and financial statement reporting purposes under FAS 123R, it does proceed from the grant date fair value concept embodied in that standard, and we believe it provides more meaningful information for executive compensation disclosure than the financial statement reporting approach and is consistent with our current requirement to treat repricings as a new award. This treatment would continue the current approach of essentially treating a repricing as a new award in Instruction 3 to Item 402(b)(2)(iv). However, this approach would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or stock appreciation right exercise or base price, an antidilution provision, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or stock appreciation rights. See Proposed Instruction 2 to Item 402(f)(1).

[134] Proposed Item 402(f)(1)(iii), which combines some information required by current Instruction 2 to Item 402(b)(2)(iv) with information required by current Instruction 1 to Item 402(e). For a discussion of the standard companies should use when determining whether disclosure would have

Continued

Another factor that may be necessary to an understanding of the information disclosed in the tables is any material waiver or modification of any specified performance target, goal or condition to payout under any reported incentive plan payout because each action can materially affect previously disclosed information about the plans. Companies would be required to disclose as part of this narrative discussion whether the waiver or modification applied to one or more specified named executive officers or applied to all compensation subject to the condition.[135]

Material factors necessary to an understanding of the tabular disclosure could also include information regarding defined benefit and deferred compensation plans. For example, such information could include material assumptions underlying the determination of the amount of increase in actuarial value of defined benefit or actuarial plans or the provisions in a plan or otherwise for determining earnings on deferred compensation plans, including defined contribution plans, that are not tax-qualified.

We also propose an additional item that would require disclosure for up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers.[136] The item would require disclosure of the amount of each of such employee's total compensation for the most recent fiscal year and a description of his or her job position. The individuals would not need to be named. We are proposing this requirement so that shareholders will have information about the use of corporate assets to compensate extremely highly paid employees in a company. More detailed information about these employees and their compensation does not appear appropriate in light of the fact that they do not have a policy making function at the company.[137]

Request for Comment

- Will the proposed narrative disclosure to the Summary Compensation Table enhance an understanding of the table?
- Are there any additional material factors that should be listed as possibly requiring disclosure in the narrative to the Summary Compensation Table?
- Is the difference between the proposed required narrative disclosure and the Compensation Discussion and Analysis requirement sufficiently clear? How can it be made more clear?
- Should we require an additional column in the Summary Compensation Table where companies must indicate by checkmark whether a particular named executive officer has an employment agreement, so that investors will know to look for disclosure about the agreement in the narrative accompanying the table or to look for the agreement as an exhibit to a filing with us?
- Is the proposed treatment of repricings the most appropriate approach for executive compensation disclosure purposes? Should the treatment be consistent with the reporting approach of FAS 123R? Would tabular presentation rather than discussion of material terms in the narrative be preferable? In addition to the disclosure proposed in the Summary Compensation Table and the related narrative, should we also require quantification of the fair value of the award both immediately before and immediately after the repricing or other modification?
- Would the proposed disclosure of up to three employees who are not executive officers but earn more in total compensation than any of the named executive officers be appropriate in the narrative discussion? Should more disclosure be required regarding these employees and their compensation? Is this information material to investors? Will disclosure of this information, particularly in the case of smaller companies, cause competitive harm? Is disclosure of this information consistent with the overall goals of this proposal?

4. Exercises and Holdings of Previously Awarded Equity

The next section of proposed executive compensation disclosure would provide investors with an understanding of the compensation in the form of equity that has previously been awarded and remains outstanding, that is unexercised or unvested. This section also would disclose amounts realized on this type of compensation during the most recent fiscal year when, for example, a named executive officer exercises an option or his or her stock award vests. We propose two tables. One table shows the amounts of prior awards outstanding and the other shows the exercise or vesting of equity awards during the fiscal year.[138]

a. Outstanding Equity Awards at Fiscal Year-End

Outstanding awards that have been granted but the ultimate outcomes of which have not yet been realized in effect represent potential amounts that the named executive officer might or might not realize, depending on the outcome for the measure or measures (for example, stock price or performance benchmarks) to which the award relates. We are proposing a table that would disclose information regarding outstanding awards under, for example, stock option (or stock appreciation rights) plans, restricted stock plans, incentive plans and similar plans and disclose the market-based values of the options, rights, shares or units in question as of the company's most recent fiscal year end.[139]

an adverse impact on the company's competitive position, see Section II.A.2., above.

[135] Proposed Item 402(f)(1)(iv).

[136] Proposed Item 402(f)(2).

[137] See note 162 below for a discussion of the term ''executive officer.''

[138] Some of this information is currently required in one table, the Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Values Table required by current Item 402(d).

[139] Proposed Item 402(g). Under current rules such disclosure is provided only for holdings of outstanding stock options and stock appreciation rights. Consistent with current interpretations, this table, like the Summary Compensation Table, would reflect that the transfer of an option or similar award by an executive does not negate the award's status as compensation that should be reported. *Registration of Securities on Form S–8*, Release No. 33–7646 (Feb. 25, 1999) [64 FR 11103], at Section III.D.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Number of securities underlying unexercised options (#) exercisable/ unexercisable	In-the-money amount of unexercised options ($) exercisable/ unexercisable	Number of shares or units of stock held that have not vested (#)	Market value of shares or units of stock held that have not vested ($)	Incentive plans: number of nonvested shares, units or other rights held (#)	Incentive plans: market or payout value of nonvested shares, units or other rights held ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
PFO						
A						
B						
C						

With respect to options, stock appreciation rights and similar instruments, an instruction, which would be the same as the current standard, would indicate that these instruments are ''in-the-money'' if the market price of the underlying securities exceeds the exercise or base price. The in-the-money amount of options, stock appreciation rights and similar instruments would be calculated by determining the difference, at fiscal year-end, between the market price of the underlying securities and the exercise or base price.[140] The market value of stock (including restricted stock, restricted stock units or other similar instruments) and incentive plan award holdings would be calculated by multiplying the closing market price of the company's stock at the end of the last completed fiscal year by the respective numbers of stock or incentive plan award holdings that were not then vested.[141]

A new instruction would require footnote disclosure of the expiration dates of options, stock appreciation rights and similar instruments held at fiscal year-end, separately identifying those that are exercisable and unexercisable, and the vesting dates of shares of stock (including restricted stock, restricted stock units or other similar instruments) and incentive plan awards held at fiscal year-end. If the expiration date of an option had occurred after fiscal year-end but before the date on which the disclosure is made, the footnote would need to state whether the option had been exercised or had expired.[142]

Request for Comment

- Will the proposed Outstanding Equity Awards at Fiscal Year-End Table provide material information for investors regarding the named executive officers' outstanding awards?
- Should the table include the value of out-of-the-money options and stock appreciation rights? Why or why not? If such instruments were included, how would the value be calculated and presented?
- Should we require, as proposed, that options or similar awards that have been transferred by an executive must still be included in the table? Should continued disclosure depend on the nature of the transfer or the identity of the transferee?

b. Option Exercises and Stock Vesting

We are proposing a table that would show the amounts received upon exercise of options or similar instruments or the vesting of stock or similar instruments during the most recent fiscal year. This table would allow investors to have a picture of the amounts that a named executive officer realizes on equity compensation through its final stage.[143]

OPTION EXERCISES AND STOCK VESTED

Name of Executive Officer	Number of shares acquired on exercise or vesting (#)	Value realized upon exercise or vesting ($)	Grant date fair value previously reported in summary compensation table ($)
(a)	(b)	(c)	(d)
PEO—Options			
Stock			
PFO—Options			
Stock			

[140] Proposed Instruction 1 to Item 402(g)(2), which is based on current Instruction 1 to Item 402(d)(2).

[141] Proposed Instruction 3 to Item 402(g)(2). This standard is based on the current Summary Compensation Table footnote disclosure regarding restricted stock, expanded to cover restricted stock units and incentive plans. Current Instruction 2 to Item 402(b)(2)(iv).

[142] Proposed Instruction 2 to Item 402(g)(2).

[143] This table is similar to a portion of the current Aggregate Options/SAR Exercises in Last Fiscal Year and FY-End Options/SAR Values Table, except unlike that table it would also include the vesting of restricted stock and similar instruments. Commentators have noted a need for comparable disclosure of restricted stock vesting. See, *e.g.*, Phyllis Plitch, *Restricted Stock Grants Cloud Executive Pay Tally,* Wall St. J. Online Edition, Jan. 26, 2005. The number and value of unexercised options and stock appreciation rights, included in the current option exercises table, would be shown in the proposed Outstanding Equity Awards at Fiscal Year-End Table described immediately above. See current Item 402(d).

OPTION EXERCISES AND STOCK VESTED—Continued

Name of Executive Officer	Number of shares acquired on exercise or vesting (#)	Value realized upon exercise or vesting ($)	Grant date fair value previously reported in summary compensation table ($)
(a)	(b)	(c)	(d)
A—Options			
Stock			
B—Options			
Stock			
C—Options			
Stock			

The grant date fair value of these instruments would have been disclosed in the Summary Compensation Table for the year in which they were awarded. Therefore, to eliminate the impact of double disclosure, this table would show that amount from applicable previous years from the Summary Compensation Table.

Request for Comment

- In light of the proposed disclosure in the Summary Compensation Table of the grant date fair value of the awards, is separate reporting of the amounts realized upon exercise or vesting appropriate? Would it provide material information? Would separate reporting of the market value at exercise or vesting confuse users of financial statements and perhaps cause them to call into question the original grant date fair value estimate?
- Would the proposed separate column for grant date fair value previously reported for the same award eliminate potential confusion about the amount of compensation provided by options, stock appreciation rights, stock and similar instruments? Are there other ways we could make this clear, such as an explanatory footnote to the table?
- Will investors understand that the value of equity compensation had already been disclosed in the form of the grant-date fair value of equity-based awards? Are other sources of this information, such as reports filed by officers and directors pursuant to Section 16(a) of the Exchange Act,[144] adequate to inform investors of the information contained in this table?
- Would it be preferable to combine proposed Outstanding Equity Awards at Fiscal Year-End Table and the proposed Option Exercises and Stock Vested Table into one table?

5. Post-Employment Compensation

We are proposing significant revisions to the disclosure regarding post-employment compensation to provide a clearer picture of this potential future compensation. Executive retirement packages and other post-termination compensation may represent a significant commitment of corporate resources and a significant portion of overall compensation. First, we are proposing to replace the current pension plan table, alternative plan disclosure and some of the other narrative descriptions with a table regarding defined benefit pension plans and enhanced narrative disclosure. Second, we are proposing a table and narrative disclosure that will disclose information regarding non-qualified defined contribution plans and other deferred compensation. Finally, we are proposing revised requirements regarding disclosure of compensation arrangements triggered upon termination and on changes in control.

a. Retirement Plan Potential Annual Payments and Benefits Table

We are proposing significant revisions to the rules disclosing retirement benefits to require disclosure of the estimate of retirement benefits to be payable at normal retirement age and, if available, early retirement.[145] Current disclosure frequently does not provide investors useful information regarding specific potential pension benefits. Current disclosure may make it difficult for the reader to understand which amounts relate to any particular named executive officer, and may thus obscure the value of a significant component of compensation.

As a result, we propose a new table disclosing estimated annual retirement payments under defined benefit plans for each named executive officer, followed by narrative disclosure.[146] A separate line of tabular disclosure would be required for each plan in which a named executive officer participates that provides for the payment of specified retirement benefits, or benefits that will be paid primarily following retirement.[147]

[144] 15 U.S.C. 78p(a).

[145] Currently, for defined benefit or actuarial plans, disclosure consists of a general table showing estimated annual benefits under the plan payable upon retirement (including amounts attributable to supplementary or excess pension award plans) for specified compensation levels and years of service. The table does not provide disclosure for any specific named executive officer. See current Item 402(f)(1). This requirement is for plans under which benefits are determined primarily by final compensation (or average final compensation) and years of service, and includes narrative disclosure. If named executive officers are subject to other plans under which benefits are not determined primarily by final compensation (or average final compensation), narrative disclosure is required of the benefit formula and estimated annual benefits payable to the officers upon retirement at normal retirement age. See current Item 402(f)(2).

[146] Proposed Item 402(i).

[147] These would include, but not be limited to, tax-qualified defined benefit plans, supplemental employee retirement plans and cash balance plans, but would exclude defined contribution plans, for which we propose disclosure as described below.

RETIREMENT PLAN POTENTIAL ANNUAL PAYMENTS AND BENEFITS

Name	Plan name	Number of years credited service (#)	Normal retirement age (#)	Estimated normal retirement annual benefit ($)	Early retirement age (#)	Estimated early retirement annual benefit ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
PFO						
A						
B						
C						

An instruction would provide that quantification of benefits should reflect the form of benefit currently elected by the named executive officer, such as joint and survivor annuity or single life annuity, specifying that form in a footnote. Where the named executive officer is not yet eligible to retire, the dollar amount of annual benefits to which he or she would be entitled upon becoming eligible would be computed assuming that the named executive officer continued to earn the same amount of compensation as reported for the company's last fiscal year. If a named executive officer left during the year, the dollar amounts of annual benefits to which he or she would be entitled would be required to be disclosed.

''Normal retirement age'' would mean the normal retirement age defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. ''Early retirement age'' would be defined similarly as early retirement age as defined in the plan, or otherwise available to the executive.[148] If the credited years of service for the executive under any plan differ from the actual years of service with the company, a footnote quantifying the difference and any resulting benefit increase would be required.[149]

The table would be followed by a narrative description of material factors necessary to an understanding of each plan disclosed in the table. Examples of such factors in the proposed rule may include, in given cases, among other things:

- The material terms and conditions of benefits available under the plan, including the plan's retirement benefit formula and eligibility standards, and early retirement arrangements;
- If the executive or company may elect a lump sum distribution, the amount of such distribution that would be available on election as of the end of the company's last fiscal year, disclosing the valuation method and material assumptions applied in quantifying such amount;
- The specific elements of compensation, such as salary and various forms of bonus, included in applying the benefit formula, identifying each such element;
- Regarding participation in multiple plans, the reasons for each plan; and
- Company policies with regard to such matters as granting extra years of credited service.

Request for Comment

- Should any other information (including information that may be disclosed in the narrative) be included in the proposed table? Should any of the information we propose to require to be disclosed be excluded?
- Should this item require quantification of the aggregate actuarial value of a plan benefit as of the end of the company's last fiscal year without regard to whether the plan permits a lump sum distribution? If so, why? Alternatively, would this information provide meaningful disclosure only if the named executive officer currently is eligible to retire under the plan with a lump sum distribution?
- Is there any particular form of plan for which the proposed disclosure format is not suitable? If so, how could the proposed disclosure requirement be adapted for such plans?

b. Nonqualified Defined Contribution and Other Deferred Compensation Plans Table

In order to provide a more complete picture of potential post-employment compensation, we are proposing a new table to disclose contributions, earnings and balances under nonqualified defined contribution and other deferred compensation plans. These plans may be a significant element of retirement and post-termination compensation.[150] Our current rules elicit disclosure of the compensation when earned and only the above-market earnings on nonqualified deferred compensation.[151] The full value of those earnings and the accounts on which they are payable are not currently subject to disclosure, nor are shareholders and investors informed regarding the rate at which these amounts—and the corresponding cost to the company—are growing.[152]

Therefore, as noted above, we are proposing to require disclosure in the Summary Compensation Table of all earnings on compensation that is deferred on a basis that is not tax-qualified and are also proposing new tabular and narrative disclosure of nonqualified deferred compensation.[153]

[148] Proposed Instruction 3 to Item 402(i).

[149] Proposed Instruction 2 to Item 402(i).

[150] Nonqualified defined contribution and other deferred compensation plans are plans providing for deferral of compensation that do not satisfy the minimum coverage, nondiscrimination and other rules that ''qualify'' broad-based plans for favorable tax treatment under the Internal Revenue Code. A typical 401(k) plan, by contrast, is a *qualified* deferred compensation plan. Nonqualified defined contribution and other deferred compensation plans are generally unfunded, and their taxation is governed by Section 409A of the Internal Revenue Code [26 U.S.C. 409A].

[151] See Section II.B.1.d.i. above.

[152] See Lucian A. Bebchuk and Jesse M. Fried, *Stealth Compensation via Retirement Benefits,* 1 Berkeley Bus. L.J. 291, 314–316 (2004); See also The Corporate Counsel (Sept.–Oct. 2005) at 6–7 and Gretchen Morgenson, *Executive Pay, Hiding Behind Small Print,* N.Y. Times, Feb. 8, 2004, § 3, at 1.

[153] Proposed Item 402(j).

NONQUALIFIED DEFINED CONTRIBUTION AND OTHER DEFERRED COMPENSATION PLANS

Name	Executive contributions in last FY ($)	Registrant contributions in last FY ($)	Aggregate earnings in last FY ($)	Aggregate withdrawals/ distributions ($)	Aggregate balance at last FYE ($)
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					
A					
B					
C					

An instruction would require footnote quantification of the extent to which amounts in the contributions and earnings columns are reported as compensation in the year in question and other amounts reported in the table in the aggregate balance column were reported previously in the Summary Compensation Table for prior years.[154] This would complement the proposed instruction to the Summary Compensation Table that would require footnote disclosure of amounts for which receipt has been deferred.[155] Together, these footnotes would operate to provide information so that investors can avoid ''double counting'' of deferred amounts by clarifying the extent to which amounts payable as deferred compensation represent compensation previously reported, rather than additional currently earned compensation.

The table would be followed by a narrative description of material factors necessary to an understanding of the disclosure in the table.[156] Examples of such factors in the proposed rule may include, in given cases, among other things:

- The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;
- The measures of calculating interest or other plan earnings (including whether such measure(s) are selected by the named executive officer or the company and the frequency and manner in which such selections may be changed), quantifying interest rates and other earnings measures applicable during the company's last fiscal year; and
- Material terms with respect to payouts, withdrawals and other distributions.

Request for Comment

- Should tabular or narrative disclosure require presentation of any additional information necessary for investors to clearly understand nonqualified deferred compensation? For example:

—Should the dollar amount of aggregate interest or other earnings accrued from inception of the named executive officer's participation in the plan through the end of the company's last fiscal year be disclosed in the proposed table?

—Is a narrative description of the tax implications for both the participant and the company necessary to a material understanding of these plans?

- In addition to the footnote required by the proposed instruction, are any other provisions necessary or appropriate to avoid ''double counting'' of previously reported compensation that will have been deferred?
- Should only above market or preferential earnings be included in the table? If so, why would such disclosure be more useful or informative to investors?
- Is any of the proposed new disclosure unnecessary? If so, please explain.

c. Other Potential Post-Employment Payments

We are proposing significant revisions to our requirements to describe termination or change in control provisions. The Commission has long recognized that ''termination provisions are distinct from other plans in both intent and scope and, moreover, are of particular interest to shareholders.'' [157] Currently, disclosure does not in many cases capture material information regarding these plans and potential payments under them. We therefore propose disclosure of specific aspects of any written or unwritten arrangement that provides for payments at, following, or in connection with the resignation, severance, retirement or other termination (including constructive termination) of a named executive officer, a change in his or her responsibilities, or a change in control of the company. Our proposals would call for narrative disclosure of the following information regarding termination and change in control provisions: [158]

- The specific circumstances that would trigger payment(s) under the termination or change-in-control arrangements or the provision of other benefits (references to benefits include perquisites);
- The estimated payments and benefits that would be provided in each termination circumstance, and whether they would or could be lump-sum or annual, disclosing the duration and by whom they would be provided; [159]
- The specific factors used to determine the appropriate payment and benefit levels under the various circumstances that would trigger payments or provision of benefits;
- Any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality covenants; and
- Any other material features necessary for an understanding of the provisions.

The item contemplates disclosure of the duration of non-compete and similar agreements, and provisions regarding waiver of breach of these agreements, and disclosure of tax gross-up payments.

As proposed, a company would be required to provide quantitative

[154] Proposed Instruction to Item 402(j)(2).

[155] Proposed Instruction 4 to Item 402(c), described in Section II.B.1.b., above, regarding the Summary Compensation Table.

[156] Proposed Item 402(j)(3).

[157] 1983 Release, at Section III.E.

[158] Proposed Item 402(k), which would replace current Item 402(h)(2).

[159] We propose to eliminate the current $100,000 disclosure threshold. With respect to post-termination perquisites, however, the same disclosure and itemization thresholds proposed for the Summary Compensation Table would apply. See Section II.B.1.d.iii, above.

disclosure under these requirements even where uncertainties exist as to amounts payable under these plans and arrangements. In the event that uncertainties exist as to the provision of payments or benefits or the amounts involved, the company would be required to make reasonable estimates and disclose material assumptions underlying such estimates in its disclosure. In such event, the disclosure would be considered forward-looking information as appropriate that falls within the safe harbor for disclosure of such information.[160]

Request for Comment

- Should we, as proposed, eliminate the current $100,000 threshold for disclosure for compensatory plans or arrangements providing payments upon termination or change-in-control?
- Should the proposed item specifically require narrative disclosure of any additional information? If so, what information and why?
- Would a tabular format result in more effective disclosure of any of this information? If so, how should such a table be constructed so that it is easily understood, given the wide variability of the factors determining payments? For example, should such a table have separate columns for cash payments, stock payments, and perquisites; separate lines for each potential termination event; and narrative disclosure of other material terms, such as duration, renewal and applicable covenants?
- Should we require companies to provide quantitative disclosure as proposed? If not, how can there be assurance that investors can understand the significant amounts of compensation that may be involved?

6. Officers Covered

a. Named Executive Officers

We propose to have the principal executive officer, the principal financial officer[161] and the three most highly compensated executive officers other than the principal executive officer and principal financial officer comprise the named executive officers.[162] In addition, as is currently the case, up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the last completed fiscal year would be included.

We believe that compensation of the principal financial officer is important to shareholders because, along with the principal executive officer, the principal financial officer provides the certifications required with the company's periodic reports and has important responsibility for the fair presentation of the company's financial statements and other financial information.[163] Like the principal executive officer, disclosure about the principal financial officer would be required even if he or she was no longer serving in that capacity at the end of the last completed fiscal year.[164] As is currently the case for the chief executive officer, all persons who served as the company's principal executive officer or principal financial officer during the last completed fiscal year would be named executive officers.

We do not propose to require compensation disclosure for all of the officers listed in Item 5.02 of Form 8–K.[165] Item 5.02 of Form 8–K was adopted to provide current disclosure in the event of an appointment, resignation, retirement or termination of the specified officers, based on the principle that changes in employment status of these particular officers are unquestionably or presumptively material. At the time when a decision is made regarding the employment status of a particular officer, it will not always be clear who will be the named executive officers for the current year. Given these factors, it is reasonable for the two groups not to be identical.

Request for Comment

- Should the principal financial officer be specifically included as a named executive officer?
- Would the proposed named executive officers be those executive officers whose compensation is material to investors? Is only the compensation of the principal executive officer material? The principal executive officer and the principal financial officer?
- Should Item 402 specifically require disclosure of the compensation of any other officers listed in Form 8–K Item 5.02? If so, which officers and why? If we were to require Item 402 disclosure regarding compensation of additional Item 5.02 officers, should we also require Item 402 disclosure for two or three additional officers who receive the highest compensation?
- Are there any other specific executive officers, such as the general counsel or principal accounting officer, who should be specifically identified as named executive officers? If so, which officers and why?
- Should we retain, as proposed, the current requirement that up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the year be included in the disclosure?
- Is the continuation of the current requirement for five named executive officers appropriate? Should that number be higher or lower?

b. Identification of Most Highly Compensated Officers; Dollar Threshold for Disclosure

We propose to identify the most highly compensated executive officers on the basis of total compensation for the most recent fiscal year.[166] We also propose to revise the dollar threshold for disclosure of named executive officers other than the principal executive officer and the principal financial officer to $100,000 of total compensation for the last fiscal year.[167] Both the determination of the most highly compensated officers and the $100,000 disclosure threshold are

[160] See Securities Act Section 27A and Exchange Act Section 21E.

[161] We propose to adopt the nomenclature used most recently in Item 5.02 of Form 8–K, which refers to ''principal executive officer'' and ''principal financial officer.''

[162] Proposed Item 402(a)(3). Currently, the named executive officers for whom disclosure is required include the company's chief executive officer and the four most highly compensated executive officers excluding the chief executive officer. As defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–7 [17 CFR 240.3b–7], ''the term 'executive officer,' when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.'' Therefore, as is currently the case today, a named executive officer may be an executive officer of a subsidiary.

[163] Exchange Act Rules 13a–14 and 15d–14.

[164] Proposed paragraphs (a)(3)(i) and (a)(3)(ii) of Item 402 would provide that all individuals who served as a principal executive officer and principal financial officer or in similar capacities during the last completed fiscal year must be considered named executive officers. Proposed Instruction 4 to Item 402(a)(3) would specify that if the principal executive officer or principal financial officer served in that capacity for only part of a fiscal year, information must be provided as to all of the individual's compensation for the full fiscal year. Proposed Instruction 4 to Item 402(a)(3) would also specify that if a named executive officer (other than the principal executive officer or principal financial officer) served as an executive officer of the company (whether or not in the same position) during any part of the fiscal year, then information is required as to all compensation of that individual for the full fiscal year.

[165] These are the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions.

[166] Proposed Instruction 1 to Item 402(a)(3).

[167] *Id.*

currently based only on total annual salary and bonus for the last fiscal year.[168] Given the proliferation of various forms of compensation other than salary and bonus, we believe that total compensation more accurately identifies those officers who are, in fact, the most highly compensated. Moreover, basing identification of named executive officers solely on the compensation reportable in the salary and bonus categories may provide an incentive to re-characterize compensation.

Under the current rules, companies are permitted to exclude an executive officer (other than the chief executive officer) due to either an unusually large amount of cash compensation that is not part of a recurring arrangement and is unlikely to continue, or cash compensation relating to overseas assignments attributed predominantly to such assignments.[169] Because payments attributed to overseas assignments have the potential to skew the application of Item 402 disclosure away from executives whose compensation otherwise properly would be disclosed, we propose to retain this basis for exclusion. However, we believe that other compensation that is ''not recurring and unlikely to continue'' should be considered compensation for disclosure purposes. There has been inconsistent interpretation of the ''not recurring and unlikely to continue'' standard, and it is susceptible to manipulation. We therefore propose to eliminate this basis for exclusion.[170]

Request for Comment

- Are there any particular circumstances or categories of companies for which a measure other than total compensation should be applied to identify the most highly compensated executive officers? If so, what measure should be applied and why? Is $100,000 the correct disclosure threshold?
- Should payments attributable to overseas assignments be included in determining the most highly compensated officers, given that the purpose of such payments typically is to compensate for disadvantageous currency exchange rates or high costs of living?
- Are there any particular circumstances, such as commissions for executives responsible for sales, for which the ''not recurring and unlikely to continue'' standard should be retained?

[168] Current Instruction 1 to Item 402(a)(3).

[169] Current Instruction 3 to Item 402(a)(3).

[170] Proposed Instruction 3 to Item 402(a)(3).

7. Interplay of Items 402 and 404

We propose that Item 402 require disclosure of all transactions between the company and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. Currently, while Item 402 states that such compensation is reportable under Item 402, even if also called for by another requirement, Item 402 also provides that information may be excluded if a transaction has been reported in response to Item 404.[171] This provision may cause Item 402 disclosure to omit compensation that a transaction disclosed under Item 404 provides to executives. We propose to eliminate that exclusion from Item 402.[172] We also propose instructions to Item 404 that would clarify what compensation does not need to be reported under Item 404.[173] In some cases the result may nevertheless be that compensation information is disclosed under Item 402 while a related person transaction giving rise to that compensation is disclosed under Item 404. We believe the possibility of additional disclosure in the context of each of the respective items is preferable to the possibility that compensation is not properly and fully disclosed under Item 402.

Request for Comment

- In light of the amendments to Item 404 that we also propose, are there any circumstances for which the current exclusion from Item 402 disclosure for transactions reported under Item 404 should be retained? If so, why?

8. Other Proposed Changes

A company is currently permitted to omit from Item 402 disclosure ''information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the company and that are available generally to all salaried employees.'' [174] Because relocation plans, even when available generally to all salaried employees, are susceptible to operation in a discriminatory manner that favors executive officers, this exclusion may deprive investors of disclosure of significant compensatory benefits.[175] For this reason, we propose to delete relocation plans from this exclusion. For the same reason, we are also deleting relocation plans from the exclusion from portfolio manager compensation in forms used by management investment companies to register under the Investment Company Act and offer securities under the Securities Act.[176] We also propose to revise the definition of ''plan'' so that it is more principles-based.[177]

Request for Comment

- Should relocation plans be required to be disclosed as compensation? Should group life, health, hospitalization and medical reimbursement also be included in reportable compensation? Can these plans be operated in a manner that may obscure compensation disclosure? Are there other plans or benefits that should be excluded from the disclosure requirements of Item 402? If so, why?
- Should management investment companies be required to disclose all relocation plans as portfolio manager compensation? Should all group life, health, hospitalization, medical reimbursement, and pension and retirement plans and arrangements also be included in compensation that is disclosed for portfolio managers of management investment companies?

9. Compensation of Directors

Director compensation has continued to evolve from simple compensation packages mostly involving cash compensation and attendance fees to more complex packages, which can also include share-based compensation, incentive plans and other forms of compensation.[178] In light of this complexity, we have determined to propose formatted tabular disclosure for director compensation, accompanied by narrative disclosure of additional material information. In doing so, we are revisiting an approach that the

[171] Current Items 402(a)(2) and 402(a)(5).

[172] Because current Item 402(a)(5) otherwise is redundant with current Item 402(a)(2), we propose to rescind Item 402(a)(5) in its entirety. We propose a conforming amendment to Item 402(a)(2).

[173] Proposed Instructions 5 and 6 to Item 404(a).

[174] Current Item 402(a)(7)(ii), which generally defines the term ''plan.''

[175] See, *e.g.*, Ellen Simon, *At Corporate Helm, Extra Benefits Still Alive and Well,* Assoc. Press, Apr. 26, 2004; and Carrie Johnson, *Former Tyco Executive Takes Stand in Trial,* Wash. Post, Feb. 11, 2004, at E2.

[176] Proposed amendment to Instruction 2 to Item 15(b) of Form N–1A; proposed amendment to Instruction 2 to Item 21.2 of Form N–2; proposed amendment to Instruction 2 to Item 22(b) of Form N–3.

[177] Proposed Item 402(a)(6)(ii).

[178] See, *e.g.*, National Association of Corporate Directors and Pearl Meyer & Partners, *2003–2004 Director Compensation Survey* (2004); National Association of Corporate Directors, *Report of the NACD Blue Ribbon Commission On Director Compensation* (2001); and Dennis C. Carey, *et al.*, *How Should Corporate Directors Be Compensated?*, Investment Dealers' Digest Inc.—Special Issue: Boards and Directors (Jan. 1996).

Commission proposed in 1995 but did not adopt at that time.[179] The commenters supporting the proposal generally believed that it was appropriate to treat director compensation similarly to executive compensation.[180] The commenters opposing the proposal believed that non-executive directors were generally compensated uniformly, and therefore breaking out compensation for each director in a table often could yield repetitious data.[181]

Director compensation has continued to evolve since 1995 so that we are again proposing a Director Compensation Table, which would resemble the proposed Summary Compensation Table, but would present information only with respect to the company's last completed fiscal year.

DIRECTOR COMPENSATION

Name	Total	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
A						
B						
C						
D						
E						

The All Other Compensation column of the proposed Director Compensation Table would include, but not be limited to:

- All perquisites and other personal benefits if the total is $10,000 or greater;
- All earnings on compensation that is deferred on a basis that is not tax-qualified;
- All tax reimbursements;
- Annual company contributions or other allocations to vested and unvested defined contribution plans;
- For any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of fees or otherwise) at a discount from the market price of such security at the date of purchase, unless the discount is generally available to all security holders or to all salaried employees of the company, the compensation cost computed in accordance with FAS 123R;
- Aggregate annual increase in actuarial value of all defined benefit and actuarial pension plans;
- Annual company contributions to vested and unvested defined contribution and other deferred compensation plans;
- All consulting fees;
- Awards under director legacy or charitable awards programs;[182] and
- The dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the director's benefit.

In addition to the disclosure specified in the columns of the table, companies would be required to disclose, for each director, by footnote to the appropriate column, the outstanding equity awards at fiscal year end as would be required if the Outstanding Equity Awards at Fiscal Year-End table for named executive officers were required for directors.[183] The same instructions as provided in the Summary Compensation Table would govern analogous matters in the Director Compensation Table. As with the Summary Compensation Table, the proposed rules make clear that all compensation must be included in the table.[184] As is the case with the current director disclosure requirement, companies would not be required to include in the director disclosure any amounts of compensation paid to a named executive officer and disclosed in the Summary Compensation Table with footnote disclosure indicating what amounts reflected in that table are compensation for services as a director. A proposed instruction to the Director Compensation Table would permit the grouping of directors in a single row of the table if all of their elements and amounts of compensation are identical.[185]

Following the table, narrative disclosure would describe any material factors necessary to an understanding of the table. Such factors may include, for example, a breakdown of types of fees.[186] We are not proposing the supplemental tables for directors.

Request for Comment

- Does the proposed table organize director compensation disclosure in a format that is easy to understand?
- Do the proposed table and narrative disclose information that is material to an investor's analysis of director compensation? Should other tables be required, such as the Grants of Performance-Based Awards Table and

[179] 1995 Release. The 1995 proposal was coupled with a proposal to permit companies to reduce the detailed executive compensation information provided in the proxy statement by instead furnishing that information in the Form 10–K. We did not act upon the proposals.

[180] The Commission received approximately 153 letters supporting the proposal. Of those, 133, all individuals, expressed their views via a brief statement submitted using a form letter. Additional supporting commenters included corporations, associations, unions, and security holder resource providers. See, *e.g.*, comment letters on the 1995 Release in File No. S7–14–95 from Bell Atlantic Network Services, Inc.; Chevron Corporation; and Scott Paper Company (generally offering support for proposal). See also, *e.g.*, coment letters from the Amerian Bar Association; American Institute of Certified Public Accountants; Association of Investment Management and Research; American Society of Corporate Secretaries; Instituional Shareholder Services; and Ernst & Young LLP (favoring tabular disclosure of director compensation, but with suggested improvements to proposed rules).

[181] Approximately 20 commenters, primarily corporations and associations, opposed the rules. See, *e.g.*, comment letters in File No. S7–14–95 from the American Corporate Counsel Association; AT&T Corp.; The Business Roundtable; Consolidated Edison Company of New York; Deere & Communications, Inc.

[182] Under director legacy programs, also known as charitable award programs registrants typically agree to make a future donation to one or more charitable institutions in the director's name, payable by the registrant upon a designated event such as death or retirement. The amount to be disclosed in the table would be the annual cost of such promises and payments, with footnote disclosure of the total dollar amount and other material terms of each such program.

[183] Proposed Instruction to item 402(l)(2)(iv) and (v).

[184] The only exception would be if all perquisites received by the director total less than $10,000, they would not need to be disclosed.

[185] Proposed Instruction to item 402(l)(2).

[186] Proposed Item 402(l)(3).

the Grants of All Other Equity Awards Table?

• Should named executive officers who are also directors be omitted from the table, with any compensation for services as a director reported only in the Summary Compensation Table, as is currently the case? If so, should there be some indication of their status as directors and compensation related to their director service in the Summary Compensation Table, the Director Compensation Table, or both? Should the nature or extent of compensation to the chairman of the board of directors be presented differently from that of other directors?

• With respect to disclosure of perquisites, should the director compensation apply the same $10,000 disclosure threshold as proposed for the Summary Compensation Table? Should separate identification and quantification apply to director perquisites?

• Does the proposed table cover any forms of compensation that typically are not awarded to directors and therefore should be omitted? Should the requirements be modified to make it easier to capture forms of compensation, if any, that develop in the future?

• Does the proposed table omit any forms of compensation awarded to directors that should be specifically included or identified?

• Should narrative disclosure regarding the company's policies and objectives with respect to director compensation and share ownership or retention policies accompany this table? Should it be included in the Compensation Discussion and Analysis?

• Would more specific footnote disclosure, as opposed to the proposed accompanying narrative, provide additional material information regarding director compensation? Should there be supplemental tables for directors, or should we require disclosure of the number of shares, units, options and other securities awarded to directors in addition to the grant date fair value of such awards?

C. Treatment of Specific Types of Issuers

1. Small Business Issuers

The Item 402 proposals would continue to differentiate between small business issuers and other issuers.[187] In crafting the proposals, we recognize that the executive compensation arrangements of small business issuers typically are less complex than those of other public companies. We also recognize that satisfying disclosure requirements designed to capture more complicated compensation arrangements may impose new, unwarranted burdens on small business issuers.

As proposed, small business issuers would be required to provide, along with related narrative disclosure:

• The Summary Compensation Table; [188]

• The Outstanding Awards at Fiscal Year-End Table; [189] and

• The Director Compensation Table.[190]

Also as proposed, small business issuers would only be required to provide information in the Summary Compensation Table for the last two fiscal years. In addition, small business issuers would be required to provide information for fewer named executive officers, namely the principal executive officer and the two most highly compensated officers other than the principal executive officer.[191] Narrative discussion of a number of items to the extent material would replace tabular or footnote disclosure, for example identification of other items in the All Other Compensation column and a description of post-employment payments and other benefits.[192] Small business issuers would not be required to provide a Compensation Discussion and Analysis.[193]

Request for Comment

• Would reliance on narrative disclosure adversely affect comparability of disclosure among small business issuers? Are there particular forms of compensation that for this reason should instead be presented in a tabular format? If so, why?

• Should small business issuers be categorically exempted from providing a Compensation Discussion and Analysis? Are there particular elements of the proposed Compensation Discussion and Analysis in Item 402 of Regulation S–K that small business issuers should be required to address? If so, which elements and why?

• Are there other provisions of our rule proposal that should not apply to small business issuers?

• Should the Summary Compensation Table require disclosure of compensation for each of the last two fiscal years, or is only the last completed fiscal year necessary?

• Should compensation disclosure be provided for a larger group of executive officers than we have proposed? If so, which officers and why?

• Should we require small business issuers to provide an Option Exercises and Stock Vested Table?

• Should the quantitative threshold for identifying the most highly compensated executive officers remain the same in both Regulation S–B and Regulation S–K? For example, if we raise this threshold in Item 402 of Regulation S–K, should it remain $100,000 for Regulation S–B? Should any other threshold be different for small business issuers?

• Should small business issuers also be required to identify perquisites and personal benefits valued, in the aggregate, in excess of $10,000 and to quantify perquisites and personal benefits valued at the greater of $25,000 or ten percent of total perquisites and other personal benefits?

• Should we require the supplemental tables to the Summary Compensation Table?

• Are there other items that should be specifically required to be discussed in the proposed narrative disclosure for small business issuers?

2. Foreign Private Issuers

Currently a foreign private issuer will be deemed to comply with Item 402 of Regulation S–K if it provides the information required by Items 6.B. and 6.E.2. of Form 20–F, with more detailed information provided if otherwise made publicly available. The proposals would continue this treatment of these issuers and clarify that the treatment of foreign

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[187] The term small business issuer is defined by Item 10(a)(1) of Regulation S–B. Currently, under both Item 402 of Regulation S–B and Item 402 of Regulation S–K, a small business issuer is not required to provide the Compensation Committee Report, the Performance Graph, the Compensation Committee Interlocks disclosure, the Ten-Year Option/SAR Repricings Table, and the Option Grant Table columns disclosing potential realizable value or grant date value. The current rules also permit samll business issuers to exclude the Pension Plan Table.

[188] Proposed Items 402(b) and 402(c) of Regulation S–B.

[189] Proposed Item 402(d) of Regulation S–B.

[190] Proposed Item 402(f) of Regulation S–B.

[191] Proposed Item 402(a) of Regulation S–B. Proposed Item 402(c)(1)(vii) of Regulation S–B would require an identification to the extent material of any item included under All Other Compensation in the Summary Compensation Table, however identification of an item wold not be considered material under the proposal if it did not exceed the greater of $25,000 or 10% of all items included in the specified category. All items of compensation would be requred to be included in the Summary Compensatio Table without regard to whether such items are required to be indentified.

[192] Proposed Item 402(c) and 402(e) of Regulation S–B.

[193] We would also eliminate the current provision of Item 402 of Regulation S–K that allows small business issuers using forms that call for Regulation S–K disclosure to exclude the disclosure required by certain paragraphs of that Item. Current Item 402(a)(1)(i) of Regulation S–K.

private issuers under Item 402 parallels that under Form 20–F.

Request for Comment

• Should we eliminate the provision which permits a foreign private issuer to comply with Item 402 by complying with the more limited disclosure requirements under Form 20–F with respect to management remuneration? Should a foreign private issuer that is required to comply with Item 402 (for example, by filing an annual report on Form 10–K) be required to provide all of the information required under Item 402 instead of the information required under Form 20–F?

3. Business Development Companies

We are proposing to apply the same executive compensation disclosure requirements to business development companies that we are proposing for operating companies.[194] Currently, business development companies are required to provide executive compensation disclosure based, in part, on the requirements that apply to operating companies and, in part, on the requirements that apply to investment companies registered under the Investment Company Act. Moreover, the executive compensation disclosure requirements for business development companies are not uniform in Securities Act registration statements, proxy and information statements, and Form 10–K. Under Form 10–K, business development companies are required to furnish all of the information required by Item 402 of Regulation S–K for all of the persons covered by Item 402.[195] In proxy and information statements, business development companies are required to provide for directors and each of the three highest paid officers that have aggregate compensation from the company for the most recently completed fiscal year in excess of $60,000, certain information required by Item 402 of Regulation S–K and certain other information that registered investment companies are required to provide.[196] In registration statements, business development companies are required to provide the same information required in proxy statements, but with respect to directors, members of the advisory board, and each of the three highest paid officers or any affiliated person of the company that have aggregate compensation from the company for the most recently completed fiscal year in excess of $60,000.[197]

We are proposing to apply to business development companies the same executive compensation rules that apply to operating companies because the proposed disclosure requirements are intended to provide investors with a clearer and more complete picture of executive compensation, and we are concerned that this purpose would not be achieved through piecemeal application of some of the requirements. Our proposal would also eliminate the current inconsistency between Form 10–K, on the one hand, which requires business development companies to furnish all of the information required by Item 402 of Regulation S–K, and the proxy rules and Form N–2, on the other, which require business development companies to provide some of the information from Item 402 and other information that applies to registered investment companies. Finally, we believe that, similar to operating companies, business development companies should furnish compensation disclosure on proxies relating to the compensation arrangements and other matters enumerated in Items 8(b) through (d) of Schedule 14A and not just in the case of director elections as currently required by Item 22(b)(13).

Under the proposals, the registration statements of business development companies would be required to include all of the disclosures required by Item 402 of Regulation S–K for all of the persons covered by Item 402.[198] This disclosure would also be required in the proxy and information statements of business development companies if action is to be taken with respect to the election of directors or with respect to the compensation arrangements and other matters enumerated in Items 8(b) through (d) of Schedule 14A.[199] Business development companies would also be required to make these disclosures in their annual reports on Form 10–K.[200]

As a result of these proposed amendments, the persons covered by the compensation disclosure requirements would be changed. The compensation disclosure in the proxy and information statements and registration statements of business development companies would be required to cover the same officers as for operating companies, including the principal executive officer and principal financial officer, as well as the three most highly compensated executive officers that have total compensation exceeding $100,000,[201] instead of each of the three highest paid officers of the company that have aggregate compensation from the company for the most recently completed fiscal year in excess of $60,000. In addition, the registration statements of business development companies would no longer be required to disclose compensation of members of the advisory board or certain affiliated persons of the company.

Finally, under the proposals, the proxy and information statements and registration statements of business development companies would not be required to include compensation from the ''fund complex.'' Currently, this information is required in some circumstances.[202]

Request for Comment

• Should business development companies be required to comply with the same compensation disclosure requirements as operating companies or registered investment companies, a combination of the compensation disclosure requirements for operating companies and registered investment companies, or some other set of compensation disclosure requirements? Should the same compensation disclosure requirements apply to business development companies in registration statements, proxy and information statements, and Form 10–K? In addressing the appropriate compensation disclosure requirements for business development companies, commenters are requested to address

[194] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act [15 U.S.C. 80a–2(a)(48)].

[195] Item 11 of Form 10–K.

[196] Items 8 and 22(b)(13) of Schedule 14A. These items require business development companies to provide certain information required by Item 402(b)(2)(iv) and (c) of Regulation S–K, as well as a compensation table and a brief description of the material provisions of certain pension, retirement and other plans.

[197] Item 18.14 of Form N–2.

[198] Proposed Item 18.15 of Form N–2. Under the proposals, business development companies would no longer be required to respond to Item 18.14 of Form N–2, and Item 18.14(c) of Form N–2 would be deleted. Current Items 18.15 and 18.16 of Form N–2 would be redesignated as Items 18.16 and 18.17, respectively. As a result of the redesignation of current Item 18.16 of Form N–2, a change to the cross reference to this Item in Instruction 8(a) of Item 24 of the form is also proposed.

[199] Proposed amendment to Item 8 of Schedule 14A. Under the proposals, business development companies would no longer be required to respond to Item 22(b)(13) of Schedule 14A, and Item 22(b)(13)(iii) of Schedule 14A would be deleted. Proposed amendments to Item 22(b)(13) of Schedule 14A.

[200] Item 11 of Form 10–K.

[201] See Section II.B.6., above.

[202] See Instructions 4 and 6 to Item 22(b)(13)(i) of Schedule 14A; Instructions 4 and 6 to Item 18.14(a) of Form N–2 (requiring certain entries in the compensation table in the proxy and information statements and registration statements of business development companies to include compensation from the fund complex).

separately the persons covered by the disclosure requirements and the disclosures required with respect to those persons. Commenters are also requested to address separately disclosures for executive officers and directors.

- Should all business development companies be subject to the same executive compensation disclosure or should we distinguish between smaller and larger business development companies? Should business development companies be subject to the executive compensation disclosure requirements of Regulation S–B filers?
- Should we require disclosure of compensation paid to affiliated persons of a business development company and members of the advisory board of the company?
- Should we require disclosure of certain compensation paid by the fund complex that includes a business development company?

D. Conforming Amendments

The Item 402 proposals necessitate conforming amendments to the Items of Regulations S–K and S–B and the proxy rules that cross reference amended paragraphs of Item 402. On this basis, the rule proposals would amend:

- The Item 201(d) of Regulations S–K and S–B and proxy rule references to the Item 402 definition of ''plan;'' [203]
- The Item 601(b)(10) of Regulation S–K reference to the Item 402 treatment of foreign private issuers; [204] and
- The proxy rule references to Item 402 retirement plan disclosure.[205]

E. General Comment Requests on the Item 402 Proposals

We request comment on any aspect of these proposals. In particular:

- Would the proposals effectively provide clearer, more complete disclosure of executive and director compensation? If not, what changes are needed to accomplish this result?
- Are the proposals sufficiently broad-based to continue to operate effectively as new forms of compensation are developed in the future? If not, what changes are necessary to achieve this flexibility?
- To clarify what other filed documents provide information about executive compensation, should a company be required to list in its annual proxy statement for the election of directors all other documents filed since the last proxy statement (such as Forms 8–K and exhibits filed with Forms 10–K and 10–Q) that contain this information? Instead, should such a list be provided solely as an EDGAR-filed annex to the proxy statement?
- Would the presentation and content of the executive and director compensation disclosure be improved by making the information available in the form of interactive data? For example, could an understanding of the information reported in the proposed tables be enhanced by the ability to access more detailed information regarding discrete amounts or items reported in the tables? If the presentation of interactive data would be desirable, what would be the best means for introducing interactive data capabilities into the proposed Item 402 disclosure requirements? For example, should we develop a data format that could be used to submit the information that has interactive capability while at the same time having the information readable on its face? Should we consider having the information provided using Extensible Business Reporting Language, also known as XBRL? Could the information be provided in a form that permits interactive capability in proxy and information statements that are made available on the Internet or otherwise electronically?

III. Proposed Revisions to Form 8–K and the Periodic Report Exhibit Requirements

In March 2004, the Commission adopted amendments to Form 8–K that significantly expanded the number of events that are reportable on Form 8–K and reduced the reporting deadline for most Form 8–K disclosure items to four business days after the triggering event.[206] These amendments became effective on August 23, 2004. As part of our broader effort to revise our executive and director compensation disclosure requirements, we are proposing revisions to Item 1.01 of Form 8–K, which currently requires this real-time disclosure about an Exchange Act reporting company's entry into a material definitive agreement outside of the ordinary course of the company's business, as well as any material amendment to such an agreement. Our staff's experience over the last year suggests that this item has elicited executive compensation disclosure regarding types of matters that do not appear always to be unquestionably or presumptively material, which is the standard we set for the expanded Form 8–K disclosure events.[207] We therefore propose to revise Items 1.01 and 5.02 to require real-time disclosure of employee compensation events that more clearly satisfy this standard.

In addition to the proposed amendments to Items 1.01 and 5.02 of Form 8–K, we propose to revise General Instruction D of Form 8–K to permit companies in most cases to omit the Item 1.01 heading if multiple items including Item 1.01 are applicable, so long as all of the substantive disclosure required by Item 1.01 is included.

A. Proposed Revisions to Items 1.01 and 5.02 of Form 8–K

Item 1.01 of Form 8–K requires an Exchange Act reporting company to disclose, within four business days, the company's entry into a material definitive agreement outside of its ordinary course of business, or any amendment of such agreement that is material to the company. When we initially proposed this item, several commenters stated that it would be difficult to determine, within the shortened Form 8–K filing period, whether a particular definitive agreement met the materiality threshold of Item 1.01, and whether the agreement was outside of the ordinary course of business.[208] Some of these commenters suggested that we apply to Item 1.01 the standards used in pre-existing Item 601(b)(10) of Regulation S–K governing the filing as exhibits to Commission reports of material contracts entered into outside the ordinary course because these standards had been in place for many years and were familiar to reporting companies.[209]

In response to the concerns raised by these comments, we adopted Item 1.01 of Form 8–K so that it used the

[203] Proposed amendments to: Instruction 2 to paragraph (d) of Item 201 of Regulation S–B; Instruction 2 to paragraph (d) of Item 201 of Regulation S–K; Exchange Act Rules 14a–6(a)(4) and 14c–5(a)(4); and Instruction 1 to Item 10(c) of Schedule 14A.

[204] Proposed amendment to Item 601(b)(10)(iii)(C)(*5*).

[205] Proposed amendments to Item 10(b)(1)(ii) and the Instruction following Item 10(c) of Schedule 14A.

[206] *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date,* Release No. 33–8400 (Mar. 16, 2004) [69 FR 15593] (the ''Form 8–K Adopting Release'').

[207] We stated in Section I of the Form 8–K Adopting Release: ''The revisions that we adopt today will benefit markets by increasing the number of unquestionably or presumptively material events that must be disclosed currently.''

[208] See, *e.g.,* comment letters on *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date,* Release No. 33–8106 (June 17, 2002) [67 FR 42913] in File No. S7–22–02 from the Committee on Federal Regulation of Securities, Section of Business Law of the American Bar Association; Cleary, Gottlieb, Steen & Hamilton; Intel Corporation; Professor Joseph A. Grundfest, *et al.;* Perkins Coie LLP; Sherman & Sterling; and Sullivan & Cromwell.

[209] See *e.g.,* comment letter in File No. S7–22–02 from the Section of Business Law of the American Bar Association.

standards of Item 601(b)(10) to determine the types of agreements that are material to a company and not in the ordinary course of business. Item 601(b)(10) of Regulation S–K requires a company to file, as an exhibit to Securities Act and Exchange Act filings, material contracts that are not made in the ordinary course of business and are to be performed in whole or part at or after the filing of the registration statement or report, or were entered into not more than two years before the filing. The item refers specifically to employment compensation arrangements and establishes a company's obligation to file the following as exhibits:

- Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any named executive officer (as defined by Item 402(a)(3) of Regulation S–K) participates;
- Any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates, unless immaterial in amount or significance; and
- Any compensation plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights in which any employee (whether or not an executive officer of the company) participates unless immaterial in amount or significance.[210]

Therefore, entry into these types of contracts triggers the filing of a Form 8–K within four business days. Importantly, the requirement for directors and named executive officers does not include an exception for those that are ''immaterial in amount or significance.''

The incorporation of the Item 601(b)(10) standards into Item 1.01 of Form 8–K has therefore significantly affected executive compensation disclosure practices. Prior to the Form 8–K amendments, it was customary for a company's annual proxy statement to be the primary vehicle for disclosure of executive and director compensation information. However, Item 1.01 of amended Form 8–K has resulted in executive compensation disclosures that are much more frequent and accelerated than those included in a company's proxy statement. In addition, particularly because of the terms of Item 601(b)(10), Item 1.01 of Form 8–K has triggered compensation disclosure of the types of matters that, in some cases, appear to fall short of the ''unquestionably or presumptively material'' standard associated with the expanded Form 8–K disclosure items. Companies and their counsel have raised concerns that the new Form 8–K requirements have resulted in real-time disclosure of compensation events that should be disclosed, if at all, in a company's proxy statement for its annual meeting or as an exhibit to the company's next periodic report, such as the Form 10–Q or Form 10–K.[211]

We believe that much of the disclosure regarding employment compensation matters required in real-time under the new Form 8–K requirements is viewed by investors as material.[212] However, we also believe that it would be appropriate to restore a more balanced approach to this aspect of Form 8–K that is designed to elicit unquestionably or presumptively material information on a real-time basis, but seeks to limit Form 8–K disclosure of information below that threshold. Accordingly, we propose to amend Item 1.01 of Form 8–K to eliminate employment compensation arrangements and to cover such arrangements under a modified broader Item 5.02.[213]

Item 5.02 of Form 8–K currently generally requires disclosure within four business days of the appointment or departure of directors and specified officers. In particular, Item 5.02 requires disclosure if a company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, retires, resigns or is terminated from that position[214] or if a company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions.[215] Item 5.02 also requires disclosure if a director retires, resigns, is removed, or declines to stand for re-election.[216] The required disclosure currently includes a brief description of the material terms of any employment agreement between the registrant and the officer and a description of disagreements, if any.

We propose to modify Item 5.02 to capture generally the currently required information under that item, as well as additional information regarding material employment compensation arrangements involving named executive officers that currently fall under Item 1.01. Our proposal will both modify the overall requirements for disclosure of employment compensation arrangements on Form 8–K and locate all such disclosure under a single item.

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[210] Item 601(b)(10)(iii) of Regulation S-K. We note the provision in Item 601(b)(10)(iii)(A) that carves out any plan, contract or arrangement in which named executive officers and directors do not participate that is ''immaterial in amount or significance.'' In 1980, the Commission adopted amendments to Regulation S–K that consolidated all of the exhibit requirements of various disclosure forms into a single item in Regulation S–K. *Amendments Regarding Exhibit Requirements,* Release No. 33–6230 (Aug. 27, 1980) [45 FR 58822], at Section II.B. This item was a forerunner of the current Item 601. As part of that 1980 adopting release, the definition of material contract contained in the new item was also revised in an effort to reduce the number of remunerative plans or arrangements that must be filed. Not long after, though, the staff discovered that rather than reduce the number of exhibits filed, the provision actually had the opposite effect. The staff found that the revised definition of material contract ''has resulted in registrants filing a large volume of varied remunerative contracts involving directors and executive officers, contracts which are not material and which would not have been filed under the previously existing 'material in amount or significance' standard.'' *Technical Amendment Regarding Exhibit Requirement,* Release No. 33–6287 (Feb. 6, 1981) 46 FR 11952], at Section I. Therefore, in February 1981, the Commission added ''unless immaterial in amount or significance'' to the definition of ''material contracts'' as applied to remunerative plans, contracts or arrangements participated in by executives that are not named executive officers. *Id.* We reiterate that this phrase was intended to indicate that whether plans, contracts or arrangements which executive officers other than named executive officers participate are to be included in the requirements of 601(b)(10) must be determined on the basis of materiality.

[211] See, *e.g.,* Melissa Klein Aguilar, *This Side of Caution: New Regs. Prompt 8–K Increases,* Compliance Week, Aug. 23, 2005; Scott S. Cohen, *Editorial: Debating the Materiality of ''Material Definitive Agreements,''* Compliance Week, Feb. 8, 2005; and Patrick McGeehan, *Now, an Advance Look at Those Big Paychecks,* N.Y. Times, Sept. 26, 2004, at 36.

[212] See, *e.g.,* Jerry Knight, *Tiny SEC Filing Gave a Big Hint to Vastera's Plans,* Wash. Post, Jan. 24, 2005, at E1; and Alex Berenson, *Merck Offering Top Executives Rich Way Out,* N.Y. Times, Nov. 30, 2004, at A1.

[213] We propose deleting the last sentence of current Instruction 1 to Item 1.01 of Form 8–K, which references the portions of Item 601(b)(10) that specifically relate to management compensation and compensatory plans. In place of the deleted sentence, we propose to add a sentence specifying that agreements involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) of Regulation S–K need not be disclosed under Item 1.01 of Form 8–K. This change also will apply to disclosure of terminations of material definitive agreements under Item 1.02 of Form 8–K, which references the definition of ''material definitive agreement'' in Item 1.01 of Form 8–K. Instead of being required to be disclosed based on the general requirements with regard to material definitive agreements in Item 1.01 and Item 1.02, employment compensation arrangements would be covered under Item 5.02 of Form 8–K.

[214] Item 5.02(b) of Form 8–K.

[215] Item 5.02(c) of Form 8–K.

[216] Item 5.02(a) of Form 8–K.

We propose to accomplish this by taking the following steps:

- Expanding the information regarding retirement, resignation or termination to include all persons falling within the definition of named executive officers for the company's previous fiscal year, whether or not included in the list currently specified in Item 5.02; [217]
- Expanding the disclosure items covered under Item 5.02 beyond employment agreements to require a brief description of any material plan, contract or arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02, or any grant or award to any such covered person, or modification thereto, under any such plan, contract or arrangement in connection with any such event; [218]
- In respect of the principal executive officer, the principal financial officer, or persons falling within the definition of named executive officer for the company's previous fiscal year, expanding the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award thereunder (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award thereunder), whether or not such occurrence is in connection with a triggering event specified in Item 5.02. Grants or awards or modifications thereto will not be required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements and they are disclosed the next time the company is required to provide new disclosure under Item 402 of Regulation S–K; and
- Adding a requirement for disclosure of salary and bonus for the most recent fiscal year that was not available at the latest practicable date in connection with disclosure under Item 402 of Regulation S–K.[219]

In the case of each of these disclosure items proposed for Item 5.02, we emphasize that we are proposing that a brief description of the specified matter be included. We have observed that in response to the current requirement under Item 1.01, some companies have included disclosure that resembles an updating of the disclosure required under current Item 402 of Regulation S–K. In the context of current disclosure under Form 8–K, we are seeking a disclosure that informs investors of specified material events and developments. However, the information we are seeking does not perforce extend to the information necessary to comply with Item 402.

Request for Comment

- Is there a particular benefit to receiving information regarding employment compensation on a current basis rather than annually or quarterly? What information is material in that regard?
- Is disclosure of material information about executive and director compensation and related person transactions avoided if comprehensive disclosure of compensation and related party transactions only occurs annually? Should we also require quarterly disclosure of material changes to information required by Items 402 and 404 in each company's Form 10–Q?
- Would a quarterly update of material changes to Item 402 and Item 404 disclosure provide meaningful disclosure to investors that they cannot get through other sources? If not, why?
- Would quarterly updates eliminate the need for most of the current disclosure about executive and director compensation transactions provided under Item 1.01 of Form 8–K? Should the information we propose to require under Item 5.02(e) of Form 8–K only be required quarterly?
- Are the proposed revisions to Items 1.01 and 5.02 of Form 8–K the most effective means to achieve an appropriate balance regarding real-time director and executive compensation disclosure? Please describe any suggested alternatives in detail.
- Should we require disclosure of all amendments to the plans, contracts and arrangements encompassed by our proposed disclosure requirements under Item 5.02(e) of Form 8–K? Only material amendments?

B. Proposed Extension of Limited Safe Harbor Under Section 10(b) and Rule 10b–5 to Item 5.02(e) of Form 8–K and Exclusion of That Item From Form S–3 Eligibility Requirements

We propose to extend the safe harbors regarding Section 10(b) and Rule 10b–5 and Form S–3 eligibility in the event that a company fails to timely file reports required by Item 5.02(e) of Form 8–K. In the final rules for the new Form 8–K requirements, we adopted a limited safe harbor from liability under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder for failure to timely file reports required by Form 8–K Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06 and 4.02(a). The safe harbor applies until the filing due date of the company's quarterly or annual report for the period in question. As we stated at the time, we believe that these items may require management to make rapid materiality and similar judgments within the timeframe required for filing of a Form 8–K. Under those circumstances we concluded that the risk of liability under these provisions was sufficiently disproportionate to justify the limited safe harbor of fixed duration. For the same reasons, we believe that the safe harbor should also extend to proposed Item 5.02(e) of Form 8–K. We therefore propose to amend Exchange Act Rules 13a–11(c) and 15d–11(c) accordingly.

In addition, under our current rules, a company forfeits its eligibility to use Form S–3 if it fails to timely file all reports required under Exchange Act Sections 13(a) or 15(d) during the 12 months prior to filing of the registration statement.[220] For the same reasons, when adopting the new Form 8–K rules, we revised the Form S–3 eligibility requirements so that a company would not lose its eligibility to use Form S–3 registration statements if it failed to timely file reports required by the Form 8–K items to which the Section 10(b) and Rule 10b–5 safe harbor applies.[221] In particular, the burden resulting from a company's sudden loss of eligibility to use Form S–3 could be a disproportionately large negative consequence of an untimely Form 8–K filing under one of the specified items.[222] We believe that this safe harbor should be extended to proposed Item 5.02(e) of Form 8–K. Therefore, we propose to amend General Instruction I.4 of Form S–3, which pertains to the eligibility requirements for use of Form S–3 to reflect this position.[223]

Request for Comment

- Should we extend the Section 10(b) and Rule 10b–5 safe harbor and the Form S–3 safe harbor to all of Item 5.02 or just the provision proposed?

[217] The Item would continue to cover the officers specified therein, whether or not named executive officers for the previous or current years, and all directors.

[218] Plans, contracts or arrangements (but not material amendments or grants or awards or modifications thereto) may be denoted by reference to the description in the company's most recent annual report on Form 10–K or proxy statement.

[219] See Section II.B.1.b. above for a discussion of the reporting delay that exists under the current disclosure rules when bonus and salary are not determinable at the most recent practicable date.

[220] General Instruction I.A.3 to Form S–3.

[221] Form 8–K Adopting Release, at Section II.E.

[222] *Id.*

[223] Because Form S–2 was eliminated effective December 1, 2005, a similar proposed change to the eligibility rules of Form S–2 is unnecessary. *Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44721], at Section V.B.3.c.

C. General Instruction D to Form 8–K

Frequently an event may trigger a Form 8–K filing under multiple items, particularly under both Item 1.01 and another item. General Instruction D to Form 8–K currently permits a company to file a single Form 8–K to satisfy one or more disclosure items, provided that the company identifies by item number and caption all applicable items being satisfied and provides all of the substantive disclosure required by each of the items. In order to promote prompt filings on Form 8–K and avoid potential non-compliance with Form 8–K due to inadvertent exclusions of captions, we propose a revision to General Instruction D to permit companies to omit the Item 1.01 heading in a Form 8–K also disclosing any other Item, so long as the substantive disclosure required by Item 1.01 is included in the Form 8–K. This would not extend to allowing a company to omit any other caption if the Item 1.01 caption is included.

Request for Comment

- Is it appropriate to allow a company to omit the Item 1.01 heading in a Form 8–K disclosing any other item?

D. Foreign Private Issuers

We propose revising the exhibit instructions to Form 20–F under which foreign private issuers would be required to file any employment or compensatory plan with management or directors (or portion of such plan) only when the foreign private issuer either is required to publicly file the plan (or portion of it) in its home country or if the foreign private issuer had otherwise publicly disclosed the plan.[224]

Under Item 6.B.1 of Form 20–F, a foreign private issuer must disclose the compensation of directors and management on an aggregate basis and, additionally, on an individual basis, unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the foreign private issuer. Under the exhibit instructions to Form 20–F, management contracts or compensatory plans in which directors or members of management participate generally must be filed as exhibits, unless the foreign private issuer provides compensation information on an aggregate basis and not on an individual basis. Under these rules, an issuer that provides any individualized compensation disclosure is required to file as an exhibit to Form 20–F management employment agreements that potentially relate to matters that have not otherwise been disclosed.

The proposed revision to the exhibit instructions to Form 20–F [225] is intended to be consistent with the existing disclosure requirements under Form 20–F relating to executive compensation matters for foreign private issuers. In the same way that executive compensation disclosure under Form 20–F largely mirrors the disclosure that a foreign private issuer makes under home country requirements or voluntarily, so too the public filing of management employment agreements as an exhibit to Form 20–F would under our proposal mirror the public availability of such agreements under home country requirements or otherwise. In addition, we believe that the proposed amendments may encourage foreign private issuers to provide more compensation disclosure in their SEC filings by eliminating privacy concerns associated with filing an individual's employment agreement when such agreement is not required to be made public by a home country exchange or securities regulator. As foreign disclosure related to executive remuneration varies in different countries but continues to improve,[226] the proposed revisions would recognize that trend and provide for greater harmonization of international disclosure standards with respect to executive compensation in a manner consistent with other requirements of Form 20–F.

Request for Comment

- Should we require the filing of employment agreements by foreign private issuers when individualized compensation information is disclosed? Should we instead require the filing of those portions of management employment agreements and plans that relate to the information that is disclosed on an individualized basis regardless of whether those portions are required to be made public in the issuer's home country or otherwise?

IV. Beneficial Ownership Disclosure

We propose to amend Item 403(b) [227] by adding a requirement for footnote disclosure of the number of shares pledged as security by named executive officers, directors and director nominees. To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral, these shares may be subject to material risk or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions.[228] As a result, we believe that the existence of these securities pledges could be material to shareholders.[229] Because significant shareholders who are not members of management are in a different relationship with other shareholders and have different obligations to them, the proposals would not require disclosure of their pledges pursuant to Item 403(a), other than pledges that may result in a change of control currently required to be disclosed.[230] The proposals also would specifically require disclosure of beneficial ownership of directors' qualifying shares, which is currently not required, because the beneficial ownership disclosure should include a complete tally of the securities beneficially owned by directors.

Request for Comment

- Should any specific categories of loans, such as margin loans, be treated differently under the proposal to disclose management pledges of beneficially owned securities? If so, please explain why.
- Should directors' qualifying shares continue to be excluded? If so, explain why that information is not material.

V. Certain Relationships and Related Transactions Disclosure

We believe that, in addition to disclosure regarding executive compensation, a materially complete

[224] We are also proposing a similar revision to Item 601(b)(10)(iii)(C)(*5*) of Regulation S–K.

[225] Proposed Instruction 4(c) to Exhibits to Form 20–F.

[226] Many jurisdictions now require or encourage disclosure of executive compensation information. For example, enhanced disclosure of executive remuneration is included as part of he European Commission's 2003 Company Law Action Plan. See Guido Ferrarini and Niamh Moloney, *Executive Remuneration in the EU: The Context for Reform,* European Corporate Governance Institute, Law Working Paper N. 32/2005 (April 2005).

[227] Item 403(b) of Regulation S–K and Item 403(b) of Regulation S–B are proposed to be revised in the same manner.

[228] See, *e.g.*, Marianne M. Jennings, *The Disconnect Between and Among Legal Ethics, Business Ethics, Law, and Virtue: Learning Not to Make Ethics So Complex,* 1 U. St. Thomas L.J. 995, 1010 (Spring 2004) (arguing that the extension of loans to the CEO of WorldCom, which were collateralized by WorldCom shares owned by the CEO, contributed to WorldCom's financial demise).

[229] This proposal is similar to a proposal the Commission made in 2002. See *Form 8–K Disclosure of Certain Management Transactions,* Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914].

[230] Current Item 403(c) of Regulation S–K. See also Items 6 and 7(3) of Schedule 13D [17 CFR 240.13d–101].

picture of financial relationships with a company involves disclosure regarding related party transactions. Therefore, we are also proposing significant revisions to Item 404 of Regulation S–K ''Certain Relationships and Related Transactions.'' In 1982, various provisions that had been adopted in a piecemeal fashion and had been subject to frequent amendment were consolidated into Item 404 of Regulation S–K.[231] Today we propose to amend Item 404 of Regulation S–K and S–B to streamline and modernize this disclosure requirement, while making it more principles-based. Although the proposals would significantly modify this disclosure requirement, its purpose—to elicit disclosure regarding transactions and relationships, including indebtedness, involving the company and related persons and the independence of directors and nominees for director and the interests of management—would remain unchanged.

As discussed in greater detail below, the proposal has four parts: [232]

- Item 404(a) would contain a general disclosure requirement for related person transactions, including those involving indebtedness.[233]
- Item 404(b) would require disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions.
- Item 404(c) would require disclosure regarding promoters of a company.[234]
- New Item 407 would consolidate current corporate governance disclosure requirements.[235] Proposed Item 407(a) would require disclosure regarding the independence of directors, including whether each director and nominee for director of the registrant is independent, as well as a description of any relationships not disclosed under paragraph (a) of Item 404 that were considered when determining whether each director and nominee for director is independent.

A. Transactions With Related Persons

We are proposing revisions to Item 404 to make the certain relationships and related transactions disclosure requirements clearer and easier to follow. The proposals would retain the principles for disclosure of related person transactions that are specified in current Item 404(a), but would no longer include all of the instructions that serve to delineate what transactions are reportable or excludable from disclosure based on bright lines that can depart from a more appropriate materiality analysis. Instead, proposed Item 404(a) would consist of a general statement of the principle for disclosure, followed by specific disclosure requirements and instructions. The instructions would explain the related persons covered by the Item, the scope of transactions covered by the Item, the method for computation of the amounts involved in the relationship or transaction, the interaction with Item 402, special requirements for indebtedness with banks, and the materiality of certain ownership interests.

The proposed Item would extend to disclosure of indebtedness. Currently, Item 404(a) requires disclosure regarding transactions involving the company and certain related persons,[236] and Item 404(c) requires disclosure regarding indebtedness.[237] We propose to consolidate these two provisions in order to eliminate confusion regarding the circumstances in which each item applies and streamline duplicative portions of current paragraphs (a) and (c) of Item 404.

1. Broad Principle for Disclosure

Proposed Item 404(a) would articulate a broad principle for disclosure; it would state that a company must provide disclosure regarding:

- Any transaction since the beginning of the company's last fiscal year, or any currently proposed transaction.
- In which the company was or is to be a participant;
- In which the amount involved exceeds $120,000; and
- In which any related person had, or will have, a direct or indirect material interest.

We propose to eliminate current Instruction 1 to Item 404(a), which is repetitive of the general materiality standard applicable to the item. By proposing to delete this instruction we do not intend to change the materiality standard applicable to Item 404(a). The ''materiality'' standard for disclosure currently embodied in Item 404(a) would be retained; a company would disclose based on whether the related person had, or will have, a direct or indirect material interest in the transaction. The materiality of any interest would continue to be determined on the basis of the significance of the information to investors in light of all the circumstances and the significance of the interest to the person having the interest.[238] The relationship of the related persons to the transaction, and with each other, and the amount involved in the transaction would be among the factors to be considered in determining the materiality of the information to investors.

We propose to eliminate current Instruction 7 to Item 404(a), which establishes certain presumptions regarding materiality and may operate to exclude some transactions from disclosure that might otherwise require disclosure under the principles enunciated by the Item. We also propose to eliminate current Instruction 9 to Item 404(a), which indicates that the $60,000 threshold is not a bright line materiality standard. We propose to eliminate current Instruction 9 to Item 404(a) because it is repetitive of the general materiality standard applicable to the Item.[239] We believe that application of the materiality principles under the Item would be more consistent with a principles-based approach and would lead to more

[231] See the 1982 Release. For a discussion of these provisions, see also *Disclosure of Certain Relationships and Transactions Involving Management,* Release No. 33–6416 (July 9, 1982) [47 FR 31394], at Section II.

[232] The discussion that follows focuses on changes to Regulation S–K, with Section V.E.1. explaining the modifications proposed for Regulation S–B. References throughout the following discussion are to current or proposed Items of Regulation S–K, unless otherwise indicated.

[233] As previously noted, related party transactions are currently disclosed under Item 404(a). Indebtedness is currently disclosed under Item 404(c).

[234] Disclosure requiring promoters is currently required under Item 404(d).

[235] These matters are currently required pursuant to various provisions, including Item 7 of Schedule 14A and Items 306, 401(h), (i) and (j), 402(j) and 404(b).

[236] The related persons specified in current Item 404(a) are: (1) Any director or executive officer of the company; (2) any nominee for election as a director; (3) any security holder who is known to the company to own of record or beneficially more than five percent of any class of the company's voting securities; and (4) any member of the immediate family of any of the foregoing persons.

[237] The related persons specified in current Item 404(c) are: (1) Any director or executive officer of the company; (2) any nominee for election as a director; (3) any member of the immediate family of any of the persons specified in (1) or (2) above; (4) any corporation or organization (other than the company or a majority-owned subsidiary of the company) of which any of the persons in (1) or (2) above is an executive officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities; and (5) any trust or other estate in which any of the persons in (1) or (2) above has a substantial beneficial interest or as to which such person serves as a trustee or in a similar capacity.

[238] See *Basic* v. *Levinson* and *TSC Industries* v. *Northway.*

[239] It is possible that some registrants have been operating under a misconception. The current $60,000 threshold is not, and the proposed $120,000 threshold would not be, a bright line materiality standard. The rule calls for, and would continue to call for, a materiality analysis of transactions above the threshold in order to determine if the related person has a direct or indirect material interest.

appropriate disclosure outcomes than application of the instructions that we propose to eliminate.

In addition, the proposals would:

- Call for disclosure if a company is a ''participant'' in a transaction, rather than if it is ''a party'' to the transaction, as ''participant'' more accurately connotes the company's involvement;
- Modify the $60,000 threshold for disclosure to $120,000 to adjust for inflation;
- Include a defined term for ''transaction'' to provide that it includes a series of similar transactions and to make clear its broad scope; and
- Include a single defined term for ''related persons.''[240]

As is currently the case, disclosure would be required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act.[241]

Finally, the rule proposals would include a technical modification. Currently, Item 404(a) states that disclosure must be provided regarding situations involving ''the registrant or any of its subsidiaries.'' Because companies must include subsidiaries in making materiality determinations in all circumstances, the reference to ''subsidiaries'' is superfluous, and we propose to eliminate it. This proposal would not change the scope of disclosure required under the Item.[242]

Request for Comment

- Should we recast Item 404(a) as a more principles-based disclosure requirement as proposed? Why or why not?
- In recasting Item 404(a) as a more principles-based disclosure requirement, should we eliminate all of the current instructions, not only the ones we propose eliminating? Are there any concepts in the instructions to Item 404(a) that we propose to eliminate that should be retained? As a result of eliminating the instructions to Item 404(a), would there be any categories of transactions which would have an unclear disclosure status? Although the analysis required for any particular transaction would be fact-specific, should we provide further guidance or examples regarding the disclosure status of particular types of direct or indirect interests?
- Is it appropriate to adjust the threshold for disclosure to $120,000? Should there be no threshold? Should the threshold also operate on a sliding scale (for example, the lower of $120,000 or 1% of the average of total assets for the last three completed fiscal years[243] or the lower of $120,000 or a percentage of annual corporate expenses) to capture smaller transactions for smaller companies? Explain whether a higher or lower threshold, or no threshold, would result in more effective disclosure.
- In Item 404(a), should we require a company to be ''involved'' rather than to be ''a participant'' in transactions subject to disclosure?

a. Indebtedness

Section 402 of the Sarbanes-Oxley Act prohibits most personal loans by an issuer to its officers and directors.[244] This development raises the issue of whether disclosure of indebtedness of the sort required under our current rules should be maintained. We believe that the approach to disclosure of indebtedness involving related persons that we propose today would be appropriate because of the scope of the direct and indirect interests covered by our disclosure requirements, because related persons include persons not covered by the prohibitions, and because there are certain exceptions to the prohibitions. We propose, however, to eliminate the current distinction between indebtedness and other types of related person transactions.

As a result of integrating paragraph (c) of Item 404 into paragraph (a) of Item 404, the proposals would change some situations in which indebtedness disclosure is required. First, disclosure of indebtedness transactions would be required with regard to all related persons covered by the related person transaction disclosure requirement, including significant shareholders.[245] Second, the rule proposals would require disclosure of all material indirect interests in indebtedness transactions of related persons, including significant shareholders and immediate family members.[246] Disclosure of material indirect interests of these related persons in transactions involving the company currently is, and would continue to be, required by Item 404(a). Currently, Item 404(c) requires disclosure of specific indirect interests of directors, nominees for director, and executive officers of the registrant in indebtedness through corporations, organizations, trusts, and estates.[247] We believe that disclosure requirements for indebtedness and for other related person transactions should be congruent. In particular, we believe that loans by companies other than financial institutions should be treated like any other related person transactions, and, as discussed below, we propose to address certain ordinary course loans by financial institutions in an instruction to Item 404(a).

Request for Comment

- Is our proposal appropriate in light of the prohibition on personal loans to officers and directors in the Sarbanes-Oxley Act?
- Should we combine the related person and indebtedness disclosure requirements in paragraphs (a) and (c) of Item 404? As a result of combining these disclosure requirements, would there be categories of indebtedness transactions for which disclosure would be required that should not be required or for which disclosure would not be required that should be disclosed?
- Should the disclosure requirements for indebtedness be extended to significant shareholders?

b. Definitions

We propose to define the terms ''transaction,'' ''related person'' and ''amount involved'' to streamline Item 404(a) and clarify the broad scope of financial transactions and relationships covered by the rule.

[240] The ''related persons'' covered by the rules proposal are discussed below in Section V.A.1.b.

[241] However, if the disclosure were being incorporated by reference into a registration statement on Form S–4, the additional two years of disclosure would not be required. Proposed Instruction 1 to Item 404.

[242] For the same reason, we are eliminating the references to ''subsidiaries'' in the ''compensation committee interlocks and insider participation in compensation decisions'' disclosure requirement in current Item 402(j). This proposal would not change the scope of disclosure required under the rule. See proposed Item 407(e)(4).

[243] This is the standard proposed for Item 404 of Regulation S–B, which is discussed in Section V.E.1. below.

[244] Codified in Section 13(k) of the Exchange Act [15 U.S.C. 78m(k)].

[245] The related person transaction disclosure requirement in current Item 404(a) covers significant shareholders, while the indebtedness disclosure requirement in current Item 404(c) does not. The significant shareholders covered would continue to be any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of the registrant's voting securities. Proposed Instruction 1.b. to Item 404(a).

[246] As a result of integrating pragraph (c) of Item 404 into paragraph (a) of Item 404, the rule proposals would set a $120,000 threshold and require disclosure only if there is a direct or indirect material interest in such an indebtedness transaction, while Item 404(c) currently generally requires disclosure of all indebtedness exceeding $60,000.

[247] Disclosure of these interests currently is reuqired by subparagraphs (c)(4) and (c)(5) of Item 404. Under the rule proposals, these subparagraphs would be eliminated. See note 237 for a full description fo the related parties specified in these subparagraphs.

The term ''transaction'' would have a broad scope in proposed Item 404(a).[248] As proposed, this term is not to be interpreted narrowly, but rather would broadly include, but not be limited to, any financial transaction, arrangement or relationship or any series of similar transactions, arrangements or relationships. The proposals also would specifically note that the term ''transactions'' is defined to include indebtedness and guarantees of indebtedness.

The proposed definition of ''related person'' would identify the persons covered, and clarify the time periods during which they would be covered. As proposed, the term ''related person'' [249] would mean any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of Item 404 would be required:

- Any director or executive officer of the registrant and his immediate family members; and
- If disclosure were provided in a proxy or information statement involving the election of directors, any nominee for director and the immediate family members of any nominee for director.

In addition, a security holder known to the registrant to own of record or beneficially more than five percent of any class of the company's voting securities or any immediate family member of any such person, when a transaction in which such security holder or family member had a direct or indirect material interest occurred or existed would also be a related person.

This is the same list of persons covered by current Item 404(a). This proposed definition of ''related person'' would result in requiring disclosure for all transactions involving the company and a person (other than a significant shareholder or family member of such shareholder) that occurred during the last fiscal year, if the person was a ''related person'' during any part of that year.[250] A person who had such a position or relationship giving rise to the person being a ''related person'' during only part of the last fiscal year may have had a material interest in a transaction with the registrant during that year. Although current Item 404(a) does not specifically indicate whether disclosure is required for the transaction in this situation, the history of Item 404 suggests that disclosure would be required if the requisite relationship existed at the time of the transaction, even if the person was no longer a related person at the end of the year.[251] We believe that, because of the potential for abuse and the close proximity in time between the transaction and the person's status as a ''related person,'' it is appropriate to require disclosure for transactions in which the person had a material interest occurring at any time during the fiscal year. For example, it is possible that a material interest of a person in a transaction during this proximity in time could influence the person's performance of his or her duties.

We believe that transactions with persons who have been or who will become significant shareholders (or their family members), but are not at the time of the transaction, raise different considerations and are harder to track, and thus we propose to exclude them. Disclosure would be required, however, regarding a transaction that begins before a significant shareholder becomes a significant shareholder, and continues (for example, through the on-going receipt of payments) on or after the person becomes a significant shareholder.

Under the rule proposals, the term ''immediate family member'' of a related person would mean any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the registrant.[252] The proposed definition would differ from the current definition in that it includes stepchildren, stepparents, and any person (other than a tenant or employee) sharing the household of a related person.

The proposed definition of ''amount involved'' would incorporate two concepts included in current Item 404 regarding how to determine the ''amount involved'' in transactions, and to clarify that the amounts reported must be in dollars even if the amount was set or expensed in a different currency.[253] Under the proposals, the term ''amount involved'' would mean the dollar value of the transaction, or series of similar transactions, and would include:

- In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the company's last fiscal year, including any required or optional payments due during or at the conclusion of the lease; [254] and
- In the case of indebtedness, the largest aggregate principal amount of all indebtedness outstanding at any time since the beginning of the company's last fiscal year and all amounts of interest payable on it during the last fiscal year.[255]

Request for Comment

- Does the definition of ''transaction'' make clear its broad scope? Are there any additional categories that it should specifically identify? Alternatively, is it overly inclusive? If so, explain how.
- Should the same categories of people be covered by the disclosure requirements currently in paragraphs (a) and (c) of Item 404? Specifically, are there any persons who would be defined as ''related persons'' for whom indebtedness disclosure should not be required or are there any additional persons who should be covered?
- The proposed changes to Item 404 would require disclosure of indirect interests in indebtedness of related persons. Should they?
- Should disclosure be required regarding portions of a period during which a person did not have the relationship giving rise to the disclosure requirement? Is it appropriate, as we propose, to exclude significant shareholders and their immediate family members from this approach?
- Should we expand the definition of ''immediate family member'' as proposed? Specifically, are there any

[248] The definition of ''transaction'' is in proposed Instruction 2 to Item 404(a).

[249] The definition of ''related person'' is in proposed Instruction 1 to Item 404(a).

[250] The principle for disclosure would only apply to nominees for director if disclosure were being provided in a proxy or information statement involving the election of directors. Also, ongoing disclosure would not be required regarding nominees for director who were not elected (unless a nominee was nominated again for director).

[251] This position, which had been included in the proxy rule provisions that were the precursor to Item 404, was deleted from those provisions in 1967 as duplicative of a note that applied to all of the disclosure required in Schedule 14A (including the related party disclosure requirement in Schedule 14A). *Adoption of Amendments to Proxy Rules and Information Rules*, Release No. 34–8206 (Dec. 14, 1967) [32 FR 20960], at ''Schedule 14A—Item 7(f).'' Note C to Schedule 14A currently provides that ''information need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.'' The rule proposals would amend Note C to Schedule 14A so that it would no longer apply to disclosure of related person transactions.

[252] These definitions would replace current instructions to paragraphs (a) and (c) of Item 404.

[253] The definition of ''amount involved'' is in proposed Instruction 3 to Item 404(a).

[254] This proposal is based on current Instruction 3 to Item 404(a).

[255] This proposal is based on and clarifies current Item 404(c).

categories of people that should be added to, or removed from, the proposed definition?

• In 2002 we issued a release regarding MD&A disclosure. At that time, we noted the possible need for related party disclosure in circumstances additional to those specified in Item 404.[256] Are there any circumstances that fall within the MD&A requirements that should also be covered by Item 404 where disclosure currently is not required, or would not be required under the rule proposals?

• Is there any reason to change the current meaning of amount involved in transactions involving leases, which we propose to retain?

2. Disclosure Requirements

Proposed subparagraphs of Item 404(a) would provide the disclosure requirements for related person transactions. The company would be required to describe the transaction, including:

• The person's relationship to the company;

• The person's interest in the transaction with the company, including the related person's position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to or has an interest in the transaction; and

• The dollar value of the amount involved in the transaction and of the related person's interest in the transaction.[257]

Registrants would also be required to disclose any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Consistent with the principles-based approach that we propose to apply to related person transaction disclosure, we have, as noted above, eliminated many of the instructions that provide bright line tests that may be inconsistent with general materiality standards. Similarly, we propose to eliminate a current instruction that, in the case of a related person transaction involving a purchase of assets by the company or sale of assets to the company, calls for specific disclosure of the cost of the assets if acquired within two years of the transaction. We would note, however, that if such information was material under the proposed standards of Item 404(a), because, for example, the recent purchase price to the related person was materially less than the sale price to the company, or the sale price to the related person was materially more than the recent purchase price to the company, disclosure of such prior purchase price could be required.[258]

Currently, disclosure must be provided regarding amounts possibly owed to the company under Section 16(b) of the Exchange Act.[259] The purpose of related person transaction disclosure differs from the purpose of Section 16(b). Accordingly, the rule proposals eliminate this Section 16(b)-related disclosure requirement.

Request for Comment

• Should Item 404 require specific disclosure of the person determining the registrant's purchase or sale price for registrant purchases or sales of assets not in the ordinary course of business?

• Should Item 404 require disclosure of Section 16(b)-related indebtedness? Why or why not?

• Consistent with our principles-based approach, should we specify any other elements of the transaction for disclosure?

3. Exceptions

The proposed rules would include categories of transactions that do not fall within the principle and therefore are subject to disclosure exceptions that we believe are consistent with our principles-based approach.[260] The first category of transactions involves compensation. Disclosure of compensation to an executive officer would not be required if:

• The compensation is reported pursuant to Item 402 of Regulation S–K; or

• The executive officer is not an immediate family member of a related person and such compensation would have been reported under Item 402 as compensation earned for services to the company if the executive officer was a named executive officer, and such compensation had been approved as such by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the company.

Disclosure of compensation to a director (or nominee for director) would not be required if:

• The compensation is reported pursuant to proposed Item 402(l).[261]

Since the disclosure either would be reported under Item 402, or would not be required under Item 402, we do not believe the transactions fall within our proposed principle or will have already been disclosed. We believe the transactions involving compensation that do not fall within these exceptions would be within the scope of the proposed Item 404(a) principle for disclosure. These exceptions would clarify the limited situations in which disclosure of compensation to related persons is not required under Item 404.[262]

The second category of transactions involves three types of situations we believe do not raise the potential issues underlying our principle for disclosure. First, in the case of transactions involving indebtedness, the following items of indebtedness would be excluded from the calculation of the amount of indebtedness and need not be disclosed because they do not have the potential to impact the parties as the transactions for which disclosure is required: amounts due from the related person for purchases of goods and services subject to usual trade terms, for

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[256] The release stated that:

Registrants should * * * consider the need for [MD&A] disclosure about parties that fall outside the definition of ''related parties,'' but with whom the registrant or its related parties have a relationship that enables the parties to negotiate terms of material transactions that may not be available from other, more clearly independent, parties on an arm's-length basis. For example, an entity may be established and operated by individuals that were former senior management of, or have some other current or former relationship with, a registrant. The purpose of the entity may be to own assets used by the registrant or provide financing or services to the registrant. Although former management or persons with other relationships may not meet the definition of a related party pursuant to FAS 57, the former management positions may result in negotiation of terms that are more or less favorable than those available on an arm's-length basis from clearly independent third parties that are material to the registrant's financial position or results of operations. In some cases, investors may be unable to understand the registrant's reported results of operations without a clear explanation of these arrangements and relationships.

Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746], at Section II.C.

[257] As is the case today, the dollar value would be computed without regard to the amount of the profit or loss involved in the transaction. Because of the manner in which the value of the amount involved is calculated for indebtedness, as discussed above, disclosure with respect to indebtedness would include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, as well as the amount of principal and interest paid during the period for which disclosure is provided, the aggregate amount of principal outstanding as of the latest practicable date, and the rate or amount of interest payable on the indebtedness.

[258] Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], Rules 10b–5 [17 CFR 249,19b–5] and 12b-20 [17 CFR 240.12b–20] under the Exchange Act and Section 17 of the Securities Act [15 U.S.C. 77q].

[259] Current Instruction 4 to Item 404(c).

[260] Proposed Instructions 4, 5, 6, 7 and 8 to Item 404(a).

[261] Proposed Instructions 5 and 6 to Item 404(a), which would replace current Instruction 1 to Item 404.

[262] In particular, current Instruction 1 to Item 404 covers the scope of Items 402 and 404. We propose to eliminate this instruction.

ordinary business travel and expense payments and for other transactions in the ordinary course of business.[263]

Second, also in the case of a transaction involving indebtedness, if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T [264] and the loans are not disclosed as nonaccrual, past due, restructured or potential problems [265] disclosure under proposed paragraph (a) of Item 404 may consist of a statement, if correct, that the loans to such persons satisfied the following conditions:

- They were made in the ordinary course of business;
- They were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the bank; and
- They did not involve more than the normal risk of collectibility or present other unfavorable features.[266]

This proposed exception is based on a current instruction to Item 404(c),[267] and is modified to be more consistent with the prohibition of the Sarbanes-Oxley Act on personal loans to officers and directors.[268]

Finally, we propose an instruction that indicates that a person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the company shall not be deemed to have an indirect ''material'' interest within the meaning of paragraph (a) of Item 404 if:

- The interest arises only: (i) From the person's position as a director of another corporation or organization which is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other related persons, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership; or
- The interest arises only from the person's position as a limited partner in a partnership in which the person and all other related persons, have an interest of less than ten percent, and the person is not a general partner of and does not have another position in the partnership.[269]

Request for Comment

- Does proposed Item 404(a) simplify and clarify the requirements currently contained in paragraphs (a) and (c) of Item 404?
- Would the proposed rule clarify the situations in which compensation would be reportable under Item 404? Are there any categories of compensation for which it would be unclear whether disclosure would be required under proposed Item 404?
- We propose to exclude from the ''amount involved'' disclosure requirements indebtedness due for purchases subject to usual trade terms, ordinary business travel and expense payments, and ordinary course business transactions as is currently the case. Is this exclusion appropriate? Why or why not?
- Do the current instructions that we propose to modify or eliminate provide necessary guidance for determining if disclosure is necessary? Should any of these current instructions be retained? Should other instructions be added to make the application of the principle for disclosure clearer?
- Does proposed Instruction 8 to Item 404(a), which indicates that a person having the specified positions or relationships with a person that engages in a transaction with the company shall not be deemed to have an indirect material interest in the transaction, provide sufficient guidance for determining whether disclosure is necessary in the circumstances identified in the instruction? Should the potential exclusions contemplated in the current instructions to Item 404(a), including current Instruction 6 (excluding remuneration transactions for services when the person's interest arises solely from a ten percent equity ownership interest) and current Instruction 8.C. (excluding transactions where the interest arises from an equity or creditor interest in another person and the transaction is not material to the other person) be retained or expanded?

B. Procedures for Approval of Related Person Transactions

We propose adopting a new requirement for disclosure of the policies and procedures established by the company and its board of directors regarding related person transactions. State corporate law and increasingly robust corporate governance practices support or provide for such procedures in connection with transactions involving conflicts of interest.[270] We believe that this type of information is material to investors, and our rule proposals would therefore require disclosure of policies and procedures regarding related person transactions under new paragraph (b) of Item 404.

Specifically, the proposal would require a description of the company's policies and procedures for the review, approval or ratification of transactions with related persons that would be reportable under paragraph (a) of Item 404. The description would include the material features of these policies and procedures that are necessary to understand them. While the material features of such policies and procedures would vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

- The types of transactions that are covered by such policies and procedures, and the standards to be applied pursuant to such policies and procedures;
- The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and
- Whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

The proposal would also require identification of any transactions required to be reported under paragraph (a) of Item 404 where the company's policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

Request for Comment

- Should we require disclosure regarding the review, approval or ratification of related person transactions? Should the rule include the proposed requirements? Are there other types of information that are

[263] This proposal is based on current Instruction 2 to Item 404(c).

[264] 12 CFR Part 220.

[265] See Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies [17 CFR 229.802(c)].

[266] Proposed Instruction 7 to Item 404(a).

[267] Current Instruction 3 to Item 404(c), which would be eliminated.

[268] Specifically, the language of current Instruction 3 to paragraph (c) of Item 404 would be modified to replace the reference ''comparable transactions with other persons'' with the phase ''comparable loans with persons not related to the lender.''

[269] Proposed Instruction 8 to Item 404(a). This proposal is based on parts A and B of current Instruction 8 to Item 404(a). This proposal would omit the portion of the current instruction (Instruction 8.C.) regarding interests arising solely from holding an equity or a creditor interest in a person other than the company that is a party to the transaction, when the transaction is not material to the other person. This portion of the current instruction may result in inappropriate non-disclosure of transactions without regard to whether they are material to the company. In addition, we propose to eliminate current Instruction 6 to Item 404(a) that covers a subset of transactions covered by this proposed instruction, and therefore is duplicative.

[270] Del. Code Ann. tit. 8, § 144 (2004). See also NYSE, Inc. Listed Company Manual Section 307.00 and NASD Manual, Marketplace Rules 4350(h) and 4360(i).

material that should be included in the description of the approval process?

• Should we require disclosure of transactions required to be reported under Item 404(a) where a company's policies and procedures did not require review or were not followed?

C. Promoters

The proposals would require a company to provide disclosure regarding the identity of promoters and its transactions with those promoters if the company had a promoter at any time during the last five fiscal years. The proposed disclosure would be required in Securities Act registration statements on Form S–1 (generally, the registration statement form for initial public offerings, offerings by unseasoned issuers or those with less than $75 million public float and offerings by issuers otherwise ineligible to use Form S–3 or S–4) or on Form SB–2 (a registration statement form that small business issuers may use) and Exchange Act Form 10 (used to register securities initially under the Exchange Act) or Form 10–SB (a registration form that small business issuers may use). The proposed disclosure would include:

• The names of the promoters;

• The nature and amount of anything of value received by each promoter from the company and the nature and amount of any consideration received by the company; and

• Additional information regarding any assets acquired by the company from a promoter.

The proposed disclosure requirements are consistent with those currently required regarding promoters. However, this disclosure is not currently required if the company has been organized more than five years ago, even if the company otherwise had a promoter within the last five years. Our staff's experience in reviewing registration statements, especially of smaller companies, suggests that the more appropriate five-year test would relate to the period of time during which the company had a promoter for which the disclosure should be provided, as our proposal provides, rather than the date of organization of the company.[271] We also are proposing to require the same disclosure that is required for promoters for any person who acquired control, or is part of a group that acquired control, of an issuer that is a shell company.[272]

Request for Comment

• Does the proposed requirement cover the circumstances where promoter disclosure would be material to investors? If not, what other circumstances should be covered?

• Does the proposed requirement cover circumstances where the required disclosure would not be material to investors? If so, in what circumstance?

D. Corporate Governance Disclosure

We propose to consolidate our disclosure requirements regarding director independence and related corporate governance disclosure requirements under a single disclosure item and to update such disclosure requirements regarding director independence to reflect our current requirements and current listing standards.[273]

Our current requirements provide for disclosure of business relationships between a director or nominee for director and the company that may bear on the ability of directors and nominees for director to exercise independent judgment in the performance of their duties.[274] In addition, as directed by the Sarbanes-Oxley Act of 2002, we adopted a rule requiring national securities exchanges to adopt listing standards requiring independent audit committees meeting the standards of our rule.[275] Further, in 2003 and 2004, we approved amendments to additional listing standards, including those of the New York Stock Exchange and Nasdaq,[276] that imposed specific additional independence standards for boards of directors, and the compensation and nominating committees or persons performing similar functions. Currently, each listed company determines whether its directors and committee members are independent based on definitions that it adopts which, at a minimum, are required to comply with the listing standards applicable to the company.

The proposals would include a disclosure requirement identifying the

[271] The proposed rules would similarly revise the disclosure requirement referencing promoters in Item 401(g)(1) of Regulation S–K. In addition, our proposal would add Form SB–2 to the list of registration statement forms in Item 404 for which promoter disclosure would be required. While this revision would update the registration statement forms listed in Item 404, it would not change the promoter disclosure requirement of Form SB–2.

[272] Proposed Item 404(c)(2). The term ''group'' would have the same meaning as in Exchange Act Rule 13d–5(b)(1) [17 CFR 240.13d–5(b)(1)], that is, any two or more persons that agree to act together for the purpose of acquiring, holding, voting, or disposing of equity securities of an issuer.

[273] Proposed Item 407 of Regulations S–K and S–B. As proposed, Item 407 would consolidate corporate governance disclosure requirements located in several places under our rules and the principal markets' listing standards, including in particular our requirements under current Items 306, 401(h), (i) and (j), 402(j) and 404(b) of Regulation S–K and Item 7 of Schedule 14A under the Exchange Act. We are not proposing any changes to the substance of Item 306, Item 401(h), (i) or (j), or Item 402(j) as part of this consolidation. However, the proposed rules would reorder some provisions in Item 306 and reflect the relevant Public Company Accounting Oversight Board rules. See *PCAOB Rulemaking: Public Company Accounting Oversight Board; Order Approving Proposed Technical Amendments to Interim Standards Rules, Release* No. 34–49624 (Apr. 28, 2004) [69 FR 24199]; and Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002, Release No. 33–8223 (Apr. 25, 2003) [68 FR 2336].

[274] Current Item 404(b).

[275] Section 10A(m) of the Exchange Act [15 U.S.C. 78j–1(m)], as added by Section 301of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*); Exchange Act Rule 10A–3 [17 CFR 240.10A–3]; and *Standards Relating to Listed Company Audit Committees,* Release No. 33–8220 (Apr. 9, 2003) [68 FR 18788].

[276] NASD and NYSE Listing Standards Release. The other exchanges have also adopted corporate governance listing standards. See *Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to Enhanced Corporate Governance Requirements Applicable to Listed Companies,* Release No. 34–48863 (Dec. 1, 2003) [68 FR 68432]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Corporate Governance,* Release No. 34–49881 (June 17, 2004) [69 FR 35408]; *Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the Exchange,* Release No. 34–49911 (June 24, 2004) [69 FR 39989]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Amend Chapter XXVII, Section 10 of the Rules of the Board of Governors by Adding Requirements Concerning Corporate Governance Standards of Exchange-Listed Companies,* Release No. 34–49955 (July 1, 2004) [69 FR 41555]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated, Relating to Enhanced Corporate Governance Requirements for Listed Companies,* Release No. 34–49995 (July 9, 2004) [69 FR 42476]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by National Stock Exchange Relating to Corporate Governance,* Release No. 34–49998 (July 9, 2004) [69 FR 42788]; and *Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend the Corporate Governance Requirements for PCX Listed Companies,* Release No. 34–50677 (Nov. 16, 2004) [69 FR 68205].

The Commission has previously received a rulemaking petition submitted by the AFL/CIO, which requested the Commission to amend Items 401 and 404 of Regulation S–K to require disclosure about transactions with non-profit organizations (letter dated Dec. 12, 2001 from Richard Trumka, Secretary-Treasurer, AFL/CIO, File No. 4–499, available at www.sec.gov/rules/petitions/petn4–499.pdf) and a rulemaking petition submitted by the Council of Institutional Investors, which requested amendments to Item 401 of Regulation S–K to require disclosure of certain transactions between directors, executive officers and nominees (letter dated Oct. 1, 1997, as amended Oct. 19, 1998, from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, File No. 4–404). We believe these requests have in large part been addressed by revised listing standards instituted by the exchanges, so that we are not now proposing additional action under these petitions.

independent directors of the company (and, in the case of disclosure in proxy or information statements, nominees for director) under the definition for determining board independence applicable to it. The proposals would also require disclosure of any members of the compensation, nominating and audit committee that the company had not identified as independent under the definition of independence for that board committee applicable to it.

More specifically, if the company is an issuer [277] with securities listed, or for which it has applied for listing, on a national securities exchange [278] or in an automated inter-dealer quotation system of a national securities association [279] which has requirements that a majority of the board of directors be independent, the proposal would require disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent), using a definition for independence for directors (and for committee members) that is in compliance with the applicable listing standards. If the company is not a listed issuer, the proposals would require disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent) using the definition for independence for directors (and for committee members) of a national securities exchange or a national securities association, specified by the company. The company would be required to apply the same definition consistently to all directors and also to use the independence standards of the same national securities exchange or national securities association for purposes of determining the independence of members of the compensation, nominating and audit committees.[280]

The proposals would require an issuer that has adopted definitions of independence for directors and committee members to disclose whether those definitions are posted on the company's Web site, or include the definitions as an appendix to the company's proxy materials at least once every three years or if the policies have been materially amended since the beginning of the company's last fiscal year.[281] Further, if the policies are not on the company's Web site, or included as an appendix to the company's proxy statement, the company would have to disclose in which of the prior fiscal years the policies were included in the company's proxy statement.

In addition, the proposals would require, for each director or director nominee identified as independent, a description of any transactions, relationships or arrangements not disclosed pursuant to paragraph (a) of Item 404 that were considered by the board of directors of the company in determining that the applicable independence standards were met.

This independence disclosure would be required for any person who served as a director of the company during any part of the year for which disclosure must be provided,[282] even if the person no longer serves as director at the time of filing the registration statement or report or, if the information is in a proxy statement, if the director's term of office as a director will not continue after the meeting. In this regard, we believe that the independence status of a director is material while the person is serving as director, and not just as a matter of reelection.[283]

The proposals also would revise the current disclosure required regarding the audit committee and nominating committee [284] to eliminate duplicative committee member independence disclosure and to update the required audit committee charter disclosure requirement for consistency with the more recently adopted nominating committee charter disclosure requirements.[285] As a result, the audit committee charter would no longer be required to be delivered to security holders if it is posted on the company's Web site.[286] We also propose moving the disclosure required by Section 407 of the Sarbanes-Oxley Act regarding audit committee financial experts to Item 407, although we are not proposing any substantive changes to that requirement.

In addition to the disclosures currently required regarding audit and nominating committees of the board of directors, we propose requiring similar disclosure regarding compensation committees.[287] The company would also be required to describe its processes and procedures for the consideration and determination of executive and director compensation including:

- The scope of authority of the compensation committee (or persons performing the equivalent functions);
- The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority to other persons, specifying what authority may be so delegated and to whom;
- Whether the compensation committee's authority is set forth in a charter or other document, and if so, the company's Web site address at which a current copy is available if it is so posted, and if not so posted, attaching the charter to the proxy statement once every three years;
- Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
- Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement and identifying any executive officer within the company the consultants contacted in carrying out their assignment.

[277] Under the rule proposals, ''listed issuer'' would have the same meaning as in Exchange Act Rule 10A–3.

[278] Under the rule proposals ''national securities exchange'' means a national securities exchange registered pursuant to Section 6(a) of Exchange Act [15 U.S.C. 78f(a)].

[279] Under the rule proposals ''automated inter-dealer quotation system of a national securities association'' means an automated inter-dealer quotation system of a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o–3(a)].

[280] Similar disclosure is currently required pursuant to Item 7(d)(2)(ii)(C) and Item 7(d)(3)(iv) of Schedule 14A. As part of our consolidation of these provisions into proposed Item 407, we propose to revise these provisions to reflect the general approach discussed above with regard to disclosure of director independence for board and committee purposes.

[281] Proposed Item 407(a)(2).

[282] However, disclosure would not be required for persons no longer serving as a director in registration statements under the Securities Act or the Exchange Act filed at a time when the company is not subject to the reporting requirements of Exchange Act Sections 13(a) or 15(d). Disclosure would not be required of anyone who was a director only during the time period before the company made its initial public offering if he was no longer a director at the time of the offering. Proposed Instruction to Item 407(a).

[283] For this reason, we do not propose to incorporate the concept in current Instruction 4 to Item 404(b) into proposed Item 407(a).

[284] Current Item 7 of Schedule 14A.

[285] However, we are not proposing to revise the provision that the audit committee report is furnished and not filed.

[286] Proposed Item 407(d)(1) and Instruction 2 to Item 407.

[287] Current Item 7(d) of Schedule 14A. These new proposed requirements also would be in proposed Item 407(e).

In addition, as noted above, disclosure would be required regarding each member of the compensation committee that the registrant has identified as not independent.

Further, the rule proposals would consolidate into this compensation committee disclosure requirement the disclosure currently required in Item 402 regarding compensation committee interlocks and insider participation in compensation decisions.[288]

Finally, for registrants other than registered investment companies, the rule proposals would eliminate an existing proxy disclosure requirement regarding directors that have resigned or declined to stand for re-election [289] which is no longer necessary since it has been superseded by a disclosure requirement in Form 8–K.[290] For registered investment companies, which do not file Form 8–K, the requirement would be moved to Item 22(b) of Schedule 14A.[291] Also, the rule proposals would combine various proxy disclosure requirements regarding board meetings and committees into one location.[292] In addition, we propose two instructions to Item 407 to combine repetitive provisions, one relating to independence disclosure, and the other relating to board committee charters.[293]

Request for Comment

- Should the disclosure requirements proposed to be consolidated in Item 407 continue to remain separate? If so, why? Is the proposed location of this consolidated disclosure appropriate, including the proposed options for disclosing adopted independence definitions?
- Are there independence standards that would be preferable to the ones referenced in proposed new Item 407?
- Should companies that are not listed on a national securities exchange or on an inter-dealer quotation system of a national securities association be able to reference their own standards of independence that they have adopted, or should those companies be required to refer to established listing standards as proposed?
- Should we require as proposed a description of transactions considered (other than those that would be reported under proposed Item 404(a)) when determining if the independence standards were met?
- Is there any reason why we should not eliminate the requirement that companies provide disclosure in their proxy statements regarding directors who have resigned or declined to stand for re-election? [294]
- Are there circumstances in which disclosure should not be required under proposed Item 407(a)? Should disclosure not be required for a director who is no longer a director at the time of filing any registration statement or report? Should disclosure not be required if information is being presented in a proxy or information statement for a director whose term of officer as a director will not continue after the meeting to which the statement relates?
- Given that registered investment companies do not file Form 8–K, should we continue to require registered investment companies to make proxy statement disclosures pursuant to current Item 7(g) of Schedule 14A regarding directors who have resigned or declined to stand for re-election?
- Should we also move the disclosure required by Rule 10A–3(d) (under which companies must disclose whether they have relied on an exemption from the audit committee independence requirements of Rule 10A–3) to proposed Item 407?
- Should the audit committee charter disclosure requirement be changed to be consistent with the nominating committee charter disclosure requirements? Should the compensation committee charter disclosure requirement be the same? Should there be any changes to the proposed compensation committee disclosure requirements?
- Are there any disclosure requirements regarding compensation consultants that we should add to or delete or change from the proposal?

E. Treatment of Specific Types of Issuers

1. Small Business Issuers

Proposed Item 404 of Regulation S–B is substantially similar to proposed Item 404 of Regulation S–K, except for the following two matters:

- Paragraph (b) relating to policies and procedures for reviewing related party transactions is proposed not to be included in Regulation S–B, and
- Regulation S–B would provide for a disclosure threshold of the lesser of $120,000 or one percent of the average of the small business issuer's total assets for the last three completed fiscal years, to require disclosure for small business issuers that may have material related person transactions even though smaller than the absolute dollar amount of $120,000.

Both proposed items would consist of disclosure requirements regarding related person transactions and promoters. These provisions of Item 404 of Regulation S–B would be substantially identical to those of Item 404 of Regulation S–K, except for certain changes conforming proposed Item 404 of Regulation S–B to current Item 404 of Regulation S–B. These changes consist of the following:

- Throughout proposed Item 404 of Regulation S–B using the two year time period for disclosure in current Item 404 of Regulation S–B;
- Retaining in proposed Item 404 of Regulation S–B an instruction in current Item 404 of Regulation S–B regarding underwriting discounts and commissions; [295] and
- Not including an instruction in proposed Item 404 of Regulation S–B regarding the treatment of foreign private issuers that is included in proposed Item 404 of Regulation S–K.[296]

In addition, proposed Item 404 of Regulation S–B would retain a paragraph from current Item 404 of Regulation S–B requiring disclosure of a list of all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

One conforming change that we are not making, however, concerns the calculation of a related person's interest in a given transaction. Current Item 404(a) of Regulation S–B differs from current Item 404(a) of S–K with respect to, among other things, the calculation of the dollar value of a person's interest in a related transaction. Current Instruction 4 to Item 404(a) of Regulation S–K specifically provides that the amount of such interest shall be computed without regard to the amount of profit or loss involved in the transaction. In contrast, current Item 404(a) of Regulation S–B contains no such instruction. We propose that the method of calculation of a related person's interest in a transaction will be the same for both Regulation S–B and Regulation S–K. We believe that differences, if any, between the types of

[288] Current Item 402(j).

[289] Item 7(g) of Schedule 14A.

[290] Item 5.02(a) of Form 8–K.

[291] Proposed Item 22(b)(17) of Schedule 14A.

[292] Current paragraphs (d)(1), (f), and (h)(3) of Item 7 of Schedule 14A would be included in proposed Item 407(b).

[293] Proposed Instructions 1 and 2 to Item 407. Proposed Instruction 2 also includes a requirement that the charter be provided if it is materially amended.

[294] Item 7(g) of Schedule 14A.

[295] This instruction, which is current Instruction 2 to Item 404 of Regulation S–B, is proposed Instruction 9 to Item 404 of Regulation S–B.

[296] This instruction, which is current Instruction 3 to Item 404 of Regulation S–K, is not included in current Item 404 of Regulation S–B.

transactions that small business issuers may engage in with related persons as compared to transactions of larger issuers would not warrant a different approach for calculating a related person's interest in a transaction.

Proposed Item 407 of Regulation S–K is substantially identical to proposed Item 407 of Regulation S–B,[297] except that it would it would not require disclosure regarding compensation committee interlocks and insider participation in compensation decisions, since Regulation S–B currently does not require disclosure of this information.[298]

Request for Comment

- Should small business issuers be categorically exempted from any additional aspect of the proposed Item 404 or Item 407 disclosure requirements? If so, which requirements and why? Should any of the proposed exclusions not be excluded? If so, why?
- Currently Item 404(a) of Regulation S–K states that companies are not to consider the amount of profit or loss when computing the amount involved in a transaction, but Item 404 of Regulation S–B does not include this statement. We propose to provide the same instruction in both Regulation S–K and Regulation S–B. Should Item 404(a) of Regulation S–B continue to omit this instruction? Why or why not?
- Currently Item 404(a) of Regulation S–K specifically provides for using the value of the aggregate amount of all periodic payments or installments when computing the amount involved in a transaction, but Item 404 of Regulation S–B does not. Should Item 404(a) of Regulation S–B, as does proposed Instruction 3 to Item 404(a) of Regulation S–B, provide for this?
- Is the definition of ''related person'' in Item 404 of Regulation S–B sufficiently broad? Should this definition be expanded to include consultants and advisors?
- Should we use a different alternative threshold for disclosure in proposed Item 404(a) of Regulation S–B? For example the lesser of $120,000 or a percentage of annual corporate expenses?

2. Foreign Private Issuers

Currently a foreign private issuer will be deemed to comply with Item 404 of Regulation S–K if it provides the information required by Item 7.B. of Form 20–F. The proposals would retain this approach, but would require that if more detailed information is required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded, that same information must also be disclosed pursuant to Item 404.

Request for Comment

- Is there any reason to discontinue this treatment of foreign private issuers? Should a foreign private issuer that is required to comply with Item 404 (for example, by filing an annual report on Form 10–K) be required to provide all of the information required under Item 404 instead of the information required under Form 20–F?

3. Registered Investment Companies

We propose to revise Items 7 and 22(b) of Schedule 14A to reflect the reorganization that we have proposed with respect to operating companies. Under the proposals, information that is currently required to be provided by registered investment companies under Item 7 would instead be required by Item 22(b).[299] The requirements of Item 7 that are currently applicable to registered investment companies regarding the nominating and audit committees, board meetings, the nominating process, and shareholder communications generally would be included in Item 22(b) by cross-references to the appropriate paragraphs of proposed Item 407 of Regulation S–K.[300] The substance of these requirements would not be altered. In addition, the proposed revisions to Item 22(b) would directly incorporate disclosures relating to the independence of members of nominating and audit committees that are similar to those contained in proposed Item 407(a) of Regulation S–K and currently contained in Item 7.[301]

We are also proposing to raise from $60,000 to $120,000 the threshold for disclosure of certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an ''interested person'' of an investment company within the meaning of Section 2(a)(19) of the Investment Company Act.[302] This disclosure is required in investment company proxy and information statements and registration statements. The increase in the disclosure threshold would correspond to the proposal to increase the disclosure threshold for Item 404 from $60,000 to $120,000.

Request for Comment

- Should we reorganize in the manner proposed the disclosures that registered investment companies are currently required to make under Item 7 of Schedule 14A? If not, how should these disclosures be organized? Should any substantive changes be made to the proposed disclosures?
- Is it appropriate to adjust to $120,000 the threshold for disclosure of certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an ''interested person'' of an investment company? Should there be no threshold? Should the threshold also operate on a sliding scale (for example, the lower of $120,000 or 1% of total or net assets for the last three completed fiscal years or the lower of $120,000 or a percentage of annual expenses) to capture smaller transactions for smaller companies? Explain whether a higher or lower threshold, or no threshold, would result in more effective disclosure.

F. Conforming Amendments

The changes we propose to Item 404 necessitate conforming amendments to

[297] Current paragraphs (e), (f), and (g) of Item 401 of Regulation S–B would become paragraphs (d)(5), (d)(4) and (c)(3), respectively, of Item 407 of Regulation S–B.

[298] This disclosure is currently required under Item 402(j) of Regulation S–K.

[299] Proposed amendments to Item 7(e) of Schedule 14A. Business development companies would furnish the information required by Item 7 of Schedule 14A, in addition to the information required by Items 8 and 22(b) of Schedule 14A. See proposed amendments to Items 7, 8, and 22(b) of Schedule 14A.

[300] Proposed Items 22(b)(15)(i) and (ii)(A) and 22(b)(16)(i) of Schedule 14A. Proposed Item 22(b)(15)(i) would require the information required by Items 407(b)(1) and (2) and (f), corresponding to the information that registered investment companies are required to provide pursuant to current Items 7(f) and 7(h). Proposed Item 22(b)(15)(ii)(A) would require the information required by proposed Items 407(c)(1) and (2), corresponding to the information that registered investment companies are required to provide pursuant to current Items 7(d)(2)(i) and 7(d)(2)(ii) (other than the nominating committee independence disclosures required by current Item 7(d)(2)(ii)(C)). Proposed Item 22(b)(16)(i) would require closed-end investment companies to provide the information required by proposed Items 407(d)(1) through (3), corresponding to the information that closed-end investment companies are required to provide pursuant to current Item 7(d)(3) (other than the audit committee independence disclosures required by Items 7(d)(3)(iv)(A)(1) and (B)).

[301] Proposed Items 22(b)(15)(ii)(B) and (16)(ii) of Schedule 14A. Proposed Item 22(b)(15)(ii)(B) requires disclosure about the independence of nominating committee members that is similar to those required by current Item 7(d)(2)(ii)(C) and proposed Item 22(b)(16)(ii) requires disclosure about the independence of audit committee members that is similar to those required by current Items 7(d)(3)(iv)(A)(1) and (B).

[302] Proposed amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A; proposed amendments to Items 12(b)(6), 12(b)(7), and 12(b)(8) of Form N–1A; proposed amendments to Items 18.9, 18.10, and 18.11 of Form N–2; proposed amendments to Items 20(h), 20(i), and 20(j) of Form N–3.

other rules that refer specifically to Item 404.

1. Regulation Blackout Trading Restriction

We are proposing conforming changes to Regulation Blackout Trading Restriction,[303] also known as Regulation BTR, which we adopted to clarify the scope and operation of Section 306(a) [304] of the Sarbanes-Oxley Act of 2002 and to prevent evasion of the statutory trading restriction.[305] Rule 100 of Regulation BTR defines terms used in Section 306(a) and Regulation BTR, including the term ''acquired in connection with service or employment as a director or executive officer.'' [306] Under this definition, one of the specified methods by which a director or executive officer directly or indirectly acquires equity securities in connection with such service is an acquisition ''at a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S–K.'' [307] To conform this provision of Regulation BTR to the proposed Item 404 amendments, we propose to amend Rule 100(a)(2) so that it references only transactions described in paragraph (a) of Item 404.

2. Rule 16b–3 Non-Employee Director Definition

We also are proposing conforming amendments to the definition of Non-Employee Director in Exchange Act Rule 16b–3. Section 16(b) provides an issuer (or shareholders suing on its behalf) the right to recover from an officer, director, or ten percent shareholder profits realized from a purchase and sale of issuer equity securities within a period of less than six months. However, Rule 16b–3 exempts transactions between issuers of securities and their officers and directors if specified conditions are met. In particular, acquisitions from and dispositions to the issuer are exempt if the transaction is approved in advance by the issuer's board of directors, or board committee composed solely of two or more Non-Employee Directors.[308]

The definition of ''Non-Employee Director,'' among other things, limits these directors to those who:

- Do not directly or indirectly receive compensation from the issuer, its parent or subsidiary for consulting or other non-director services, except for an amount that does not exceed the Item 404(a) dollar disclosure threshold;
- Do not possess an interest in any other transaction for which Item 404(a) disclosure would be required; and
- Are not engaged in a business relationship required to be disclosed under Item 404(b).

As described above, the Item 404 proposals would substantially revise or rescind the Item 404 provisions on which the Non-Employee Director definition is based. To minimize potential disruptions and because no problems have been brought to our attention regarding any aspect of the current definition, the proposed conforming amendment would continue to permit consulting and similar arrangements subject to limits measured by reference to the proposed Item 404(a) disclosure requirements.[309] The amendment would delete the provision referring to business relationships subject to disclosure under Item 404(b), without otherwise revising the text of the rule.[310] Because the disclosure threshold of Item 404(a) would be raised from $60,000 to $120,000, however, the effect in some cases may be to permit previously ineligible directors to be Non-Employee Directors.[311] In other cases, where proposed Item 404(a) may require disclosure of business relationships not subject to disclosure under current Item 404(b), some current Non-Employee Directors may become ineligible.

Request for Comment

- Should the Rule 16b–3 Non-Employee Director definition continue to permit consulting or similar arrangements with the issuer, as proposed?
- Is the proposed Item 404(a) disclosure threshold an appropriate limit for permitting consulting or similar arrangements? Instead, should the dollar limit be lower, such as the current $60,000 threshold? Explain the basis for recommending a different dollar limit.
- For business relationships for which disclosure is not required by current Item 404(b), but would be under proposed Item 404(a), should there be a different test? Are there any particular transactions or relationships that would become disclosable under proposed Item 404(a) that should not render a director ineligible to be a Non-Employee Director? If so, explain why.
- Would continued use of Item 404 as a measure for defining Non-Employee Directors place an undue burden on companies in forming their Non-Employee Director committees? Would reference to another disclosure requirement or standard be better?

3. Other Conforming Amendments

The changes we propose to Item 404, along with the consolidation of provisions into Item 407, necessitate conforming amendments to various forms and schedules under the Securities Act and the Exchange Act. The rule proposals would amend:

- Forms that require disclosure of the information required by Item 404 to instead require disclosure of the information required by proposed Items 404 and 407(a); [312]
- Some forms that require disclosure of the information required by Item 404(a) or by Items 404(a) and (c), to instead require disclosure of the information required by proposed Items 404(a) and (b), or proposed Item 404(a), as appropriate; [313]

[303] 17 CFR 245.100–104.

[304] 15 U.S.C. 7244(a), entitled ''Prohibition of Insider Trading During Pension Fund Blackout Periods.''

[305] *Insider Trades During Pension Fund Blackout Periods,* Release No. 34–47225 (Jan. 22, 2003) [68 FR 4337]. Section 306(a) makes it unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any pension plan blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. This provision equalizes the treatment of corporate executives and rank-and-file employees with respect to their ability to engage in transactions involving issuer equity securities during a pension plan blackout period if the securities were acquired in connection with their service to, or employment with, the issuer.

[306] This term is defined in Rule 100(a) of Regulation BTR.

[307] Rule 100(a)(2) of Regulation BTR.

[308] Exchange Act Rules 16b–3(d)(1) and 16b–3(e).

[309] Because it appears appropriate that the standards for an exemption from Section 16(b) liability be readily determinable by reference to the exemptive rule, and not variable depending upon where the issuer's securities are listed, we do not propose to base the amended definition on the listing standards for director independence applicable to the issuer.

[310] Exchange Act Rule 16b–3(b)(3)(ii), which defines a Non-Employee Director of a closed-end investment company as ''a director who is not an ''interested person'' of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940,'' would not be revised.

[311] As under the current rule, each test referring to Item 404 will be measured by reference to the Regulation S–K Item, even if the disclosure requirements applicable to the company are governed by Regulation S–B.

[312] See proposed amendments to Item 15 of Form SB–2, Item 11(n) of Form S–1, Item 18(a)(7)(iii) and Item 19(a)(7)(iii) of Form S–4, Item 23 of Form S–11, Item 7 of Form 10, Item 13 of Form 10–K, Item 7 of Form 10–SB, and Item 12 of Form 10–KSB. The proposed amendments to Forms SB–2, 10–SB and 10–KSB would require disclosure of the information required by proposed Items 404 and 407(a) of Regulation S–B.

[313] See proposed amendments to Item 7(b) of Schedule 14A, which refers to proposed Items 404(a) and (b), and Item 22(b)(11) and the Instruction to Item 22(b)(11) of Schedule 14A, and

Continued

• A form that cross-references an instruction in Item 404 which we propose to eliminate to instead include the text of this instruction; [314]

• Item 7 of Schedule 14A to require disclosure of the information required by proposed Item 407(a) rather than current Item 404(b), and to eliminate current paragraphs (d)–(h) which are duplicative of proposed Item 407 and replace them with a requirement to disclose information specified by corresponding paragraphs of Item 407;

• Forms that require disclosure of the information required by Item 402 to instead require disclosure of the information required by proposed Item 402 and Item 407(e)(4); [315]

• Some forms that require disclosure of the information required by Item 401 to instead require disclosure of the information required by Item 401 and paragraphs (c)(3), (d)(4) and/or (d)(5) of proposed Item 407, as appropriate; [316]

• Forms that require disclosure of the information required by Item 401(j), to instead require disclosure of the information required by proposed Item 407(c)(3); [317] and

• Item 10 of Form N–CSR to include a cross reference to proposed Item 407(c)(2)(iv) of Regulation S–K and proposed Item 22(b)(15) of Schedule 14A, in lieu of the current reference to Item 7(d)(2)(ii)(G) of Schedule 14A.

In addition, conforming amendments would be made to a provision in Regulation AB, which currently requires disclosure of the information required by Items 401, 402 and 404, so that instead it would require disclosure of the information required by proposed Items 401, 402, 404 and paragraphs (a), (c)(3), (d)(4), (d)(5) and (e)(4) of Item 407. [318]

VI. Plain English Disclosure

We are proposing that most of the disclosure required by proposed Items 402, 403, 404 and 407 be provided in plain English. We propose that this plain English requirement apply when information responding to these items is included (whether directly or through incorporation by reference) in reports required to be filed under Exchange Act Sections 13(a) or 15(d).

In 1998, we adopted rule changes requiring issuers to write the cover page, summary and risk factors section of prospectuses in plain English and apply plain English principles to other portions of the prospectus. [319] These rules transformed the landscape of public offering disclosure and made prospectuses more accessible to investors. We believe that plain English principles should apply to the disclosure requirements that we propose to revise, so disclosure provided in response to those requirements is easier to read and understand. Clearer, more concise presentation of executive and director compensation, related person transactions, beneficial ownership and corporate governance matters can facilitate more informed investing and voting decisions in the face of complex information about these important areas.

We propose to add Exchange Act Rules 13a–20 and 15d–20 to require that companies prepare their executive and director compensation, related person transactions, beneficial ownership and corporate governance disclosures included in Exchange Act reports using plain English principles, including the following standards:

• Present information in clear, concise sections, paragraphs and sentences;

• Use short sentences;

• Use definite, concrete, everyday words;

• Use the active voice;

• Avoid multiple negatives;

• Use descriptive headings and subheadings;

• Use a tabular presentation or bullet lists for complex material, wherever possible;

• Avoid legal jargon and highly technical business and other terminology;

• Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information, defining terms in the glossary or other section of the document only if the meaning is unclear from the context and using a glossary only if it facilitates understanding of the disclosure; and

• In designing the presentation of the information, include pictures, logos, charts, graphs, schedules, tables or other design elements so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements and any other included information, drawn to scale and not misleading.

The proposed rule would also provide additional guidance on drafting the disclosure that would comply with plain English principles, including guidance as to the following practices that registrants should avoid:

• Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

• Vague ''boilerplate'' explanations that are imprecise and readily subject to different interpretations;

• Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

• Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

Under the proposed rules, if the executive compensation, beneficial ownership, related person transaction or corporate governance matters disclosure were incorporated by reference into an Exchange Act report from a company's proxy or information statement, the disclosure would be required to be in plain English in the proxy or information statement. [320] The plain English rules are proposed as part of the disclosure rules applicable to filings required under Sections 13(a) and 15(d) of the Exchange Act. We believe that these plain English requirements are

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Item 5.02(c)(2) of Form 8–K, which refer to proposed Item 404(a). The proposed amendments to Form 8–K that reference paragraphs (a) and (b) of Item 404 of Regulation S–B would require disclosure of the information required by proposed Item 404(a) of Regulation S–B.

[314] See proposed amendments to Item 23 of Form S–11.

[315] See proposed amendments to Item 8 of Schedule 14A, Item 11(l) of Form S–1, General Instruction I.B.4.(c) to Form S–3, Items 18(a)(7)(ii) and 19(a)(7)(ii) of Form S–4, Item 22 of Form S–11, Item 6 of Form 10 and Item 11 of Form 10–K.

[316] See proposed amendments to General Instruction I.B.4.(c) of Form S–3, and Item 10 of Form 10–K, which refer to Item 401 and paragraphs (c)(3), (d)(4) and (d)(5) of proposed Item 407, and Item 7(b) of Schedule 14A, which refers to Item 401 and paragraphs (d)(4) and (d)(5) of proposed Item 407.

The proposed amendments to Forms SB–2, 10–SB and 10–KSB would require disclosure of the information required by proposed Items 401 and 407(c)(3), (d)(4) and (d)(5) of Regulation S–B. We are not proposing any changes to the reference to Item 401 in Note G to Form 10–K, however, because the portion of Item 401 applicable in Note G (certain disclosure regarding executive officers) does not include the part of Item 401 that we propose to combine into proposed Item 407.

[317] See proposed amendments to Item 5 in Part II of Form 10–Q, and Item 5 in Part II of Form 10–QSB. The proposed amendments to Item 5 in Part II of Form 10–QSB would require disclosure of the information required by proposed Item 407(c)(3) of Regulation S–B.

[318] See proposed amendments to Item 1107(e) of Regulation AB.

[319] *Plain English Disclosure,* Release No. 33–7497 (Jan. 28, 1998) [63 FR 6369] (adopting revisions to Securities Act Rule 421 [17 CFR 230.421]). We have also required that risk factor disclosure included in annual reports and Summary Term Sheets in business combination filings be in plain English. See General Instruction 1A. to Form 10–K and Item 1001 of Regulation M–A 17 CFR 229.1001], respectively.

[320] See, *e.g.*, General Instruction G(3) to Form 10–K and General Instruction E.3. to Form 10–KSB (specifying information that may be incorporated by reference from a proxy or information statement in an annual report on Form 10–K or 10–KSB).

best administered by the Commission under these rules.

Request for Comment

- Will the plain English requirements discussed above be sufficient to discourage boilerplate and promote clear, more user-friendly Exchange Act reports and proxy or information statements? If not, how should we revise the requirements?
- Are there differences between proxy statements and Exchange Act reports which would require different requirements in order to accomplish the objectives of plain English? If so, what are the different requirements and how should the different requirements be addressed?
- In addition to the proposal, should we require that information provided under proposed Items 402, 403, 404 and 407 in other filings, such as Form S–1, be written in plain English?
- Since only portions of the disclosure under proposed Item 407 would be required to be included in Exchange Act reports, should we specifically require that all Item 407 disclosure be in plain English? If so, how should we impose this requirement?
- Should we require that all or portions of proxy or information statements be in plain English? If so, should a plain English requirement apply to disclosure provided by anyone who solicits a proxy with a proxy statement, or should it be limited to just companies making a solicitation of their shareholders? Should shareholder proposals under Exchange Act Rule 14a–8 [321] or financial statements and related disclosures under Item 13 of Schedule 14A be excluded from any plain English requirements applicable to proxy statements? Would a plain English requirement under the proxy rules have the potential to increase disputes, including possible litigation, that could inappropriately delay or frustrate the conduct of solicitations and shareholder meetings or otherwise interfere with the proper operation of the proxy rules?

VII. Transition

We propose that, following their adoption, the proposed new rules and amendments would become effective following publication of the adopting release in the **Federal Register** as follows:

- For Forms 10–K and 10–KSB, for fiscal years ending 60 days or more after publication;
- For Forms 8–K, for triggering events that occur 60 days or more after publication;
- For Securities Act and Investment Company Act registration statements (including post-effective amendments) and Exchange Act registration statements that become effective 120 days or more after publication; and
- For proxy statements that are filed 90 days or more after publication.[322]

We do not propose to require companies to ''restate'' compensation or related person transaction disclosure for fiscal years for which they previously were required to apply the current rules. Instead, the proposed Summary Compensation Table and disclosure required by proposed Item 404(a) would be required only for the most recent fiscal year.[323] This would result in phased-in implementation of the proposed Summary Compensation Table amendments and proposed Item 404(a) disclosure over a three-year period for Regulation S–K companies, and a two-year period for Regulation S–B companies.

Request for Comment

- Is the proposed effectiveness schedule workable?
- Is the proposed phased-in transition provision for the amended Summary Compensation Table and proposed related person transaction disclosure necessary? Could companies revise the previous years' required disclosure to conform to the amended requirements without incurring undue costs or burdens?
- Are any special transition provisions necessary for any other aspects of the proposed amendments? If so, explain what would be needed and why.

General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals and any other matters that might have an impact on the amendments. We request comment from companies and all users of the executive compensation, related party and corporate governance information required by Commission rules that may be affected by the proposals. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

VIII. Paperwork Reduction Act

A. Background

The proposed rules and amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[324] We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.[325] The titles for this information are: [326]

(1) ''Regulation S–B'' (OMB Control No. 3235–0417);
(2) ''Regulation S–K'' (OMB Control No. 3235–0071);
(3) ''Form SB–2'' (OMB Control No. 3235–0418);
(4) ''Form S–1'' (OMB Control No. 3235–0065);
(5) ''Form S–4'' (OMB Control Number 3235–0324);
(6) ''Form S–11'' (OMB Control Number 3235–0067);
(7) ''Regulation 14A and Schedule 14A'' (OMB Control Number 3235–0059);
(8) ''Regulation 14C and Schedule 14C'' (OMB Control Number 3235–0057);
(9) ''Form 10'' (OMB Control No. 3235–0064);
(10) ''Form 10–SB'' (OMB Control No. 3235–0419);
(11) ''Form 10–K'' (OMB Control No. 3235–0063);
(12) ''Form 10–KSB'' (OMB Control No. 3235–0420);
(13) ''Form 8–K'' (OMB Control No. 3235–0060); and
(14) ''Form N–2'' (OMB Control No. 3235–0026).

We adopted all of the existing regulations and forms pursuant to the

[321] 17 CFR 240.14a–8.

[322] The proposed amendments to the cross-references in Item 10 of Form N–CSR would appear in the Form concurrent with the effective date of the amendments to our proxy rules, and would be effective for a particular registrant's Forms N–CSR that are filed after the filing of any proxy statement that includes a response to proposed Item 407(c)(2)(iv) of Regulation S–K (as required by proposed Item 22(b)(15) of Schedule 14A). The substance of the information required by the Item would not be changed.

[323] The other proposed executive and director compensation disclosure requirements which relate to the last completed fiscal year would not be affected by this proposed transition approach. The Summary Compensation Table would be treated differently because, as proposed, it would require disclosure of compensation to the named executive officers for the last three fiscal years.

[324] 44 U.S.C. 3501 *et seq.*

[325] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[326] The paperwork burden from Regulations S–K and S–B is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by each of Regulations S–K and S–B to be a total of one hour.

Securities Act and the Exchange Act. In addition, we adopted Form N–2 pursuant to the Investment Company Act. These regulations and forms set forth the disclosure requirements for annual [327] and current reports, registration statements, proxy statements and information statements that are prepared by issuers to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions, as well as informed voting decisions in the case of proxy statements.

Our proposed amendments to existing forms and regulations are intended to:

- Provide investors with a clearer and more complete picture of compensation awarded to, earned by or paid to principal executive officers, principal financial officers, the highest paid executive officers other than the principal executive officer and principal financial officer and directors;
- Provide investors with better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members;
- Include more complete information about independence regarding members of the board of directors and board committees;
- Reorganize and modify the type of executive and director compensation information that must be disclosed in current reports; and
- Require most of the disclosure required under these proposals to be provided in plain English.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to annual and current reports, registration statements, proxy statements and information statements would be mandatory. However, the information collection requirements relating exclusively to proxy and information statements would only apply to issuers subject to the proxy rules. There would be no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

The proposals would increase existing disclosure burdens for annual reports on Form 10–K [328] and registration statements on Forms 10, S–1, S–4 and S–11 by requiring:

- An expanded and reorganized Summary Compensation Table, which would require expanded disclosure of a ''total compensation'' amount, and information necessary for computing the total amount of compensation, such as the grant date fair value of stock-based and option-based awards computed in accordance with FAS 123R, and the aggregate increase in actuarial value of defined benefit and actuarial pension plans;
- Disclosure at lower thresholds of information regarding perquisites and other personal benefits;
- A more focused presentation of compensation plan awards in a Grants of Performance-Based Awards Table and a Grants of All Other Equity Awards Table, which would build upon existing tabular disclosures regarding long term incentive plans and awards of option and stock appreciation rights to supplement the information proposed to be included in the Summary Compensation Table;
- Expanded disclosure regarding holdings and exercises by named executive officers of outstanding previously awarded stock, options and similar instruments which would include the grant date of the award, the vesting date of restricted stock and similar instruments and amounts (both number of shares and value) realized upon vesting and the previously reported grant date fair value of awards exercised or vested;
- Improved narrative disclosure accompanying data presented in the executive compensation tables and a new Compensation Discussion and Analysis section to explain material elements of compensation of named executive officers;
- Disclosure regarding up to three employees who were not executive officers and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers;
- New tables and narrative disclosure regarding retirement plans and nonqualified defined contribution and other deferred compensation plans;
- Expanded disclosure regarding post-employment payments other than pursuant to retirement and deferred compensation plans;
- A new table and improved narrative disclosure for director compensation to replace current disclosure requirements;
- Disclosure regarding additional related persons under the proposed related person transaction disclosure requirement;
- New disclosure regarding a company's policies and procedures for the review, approval or ratification of transactions with related persons;
- New and reorganized disclosure regarding corporate governance matters such as the independence of directors and members of the nominating, compensation and audit committees of the board of directors; and
- Additional disclosure regarding pledges of securities by officers and directors and directors' qualifying shares.

At the same time, the proposals would decrease existing disclosure burdens for annual reports on Form 10–K and registration statements on Form 10, S–1, S–4 and S–11 by:

- Eliminating requirements to provide a Compensation Committee Report and Performance Graph in proxy materials and information statements, which would substantially offset the increased burdens regarding Compensation Discussion and Analysis that would be required to be included or incorporated by reference in annual reports or registration statements;
- Eliminating tabular presentation regarding projected stock option values under alternative stock appreciation scenarios, which would substantially offset the increased burdens regarding equity holdings and exercises;
- Eliminating a generalized tabular presentation regarding defined benefit plans, which would offset in part the increased burdens regarding defined benefit plan disclosure;
- Increasing the dollar value threshold for determining if related person transaction disclosure is required from $60,000 to $120,000; and
- Eliminating a current disclosure requirement regarding specific director

[327] The pertinent annual reports are those on Form 10–K or 10–KSB.

[328] The proposed disclosure requirements regarding executive and director compensation, beneficial ownership, related person transactions and parts of the proposed corporate governance disclosure requirements are in Form 10–K, Schedule 14A and Schedule 14C. Form 10–K permits the incorporation by reference of information in Schedules 14A or 14C to satisfy the disclosure requirements of Form 10–K. The analysis that follows assumes that companies would either provide the proposed disclosure in a Form 10–K only, if the company is not subject to the proxy rules, or would incorporate the required disclosure into the Form 10–K by reference to the proxy or information statement if the company is subject to the proxy rules. This approach takes into account the burden from the proposed disclosure requirements that are included in both the Form 10–K and in Schedule 14A or 14C.

relationships that could affect independence.

In addition, the proposals may increase or decrease existing disclosure burdens, or not affect them at all, for annual reports on Form 10–K and registration statements on Form 10, S–1, S–4 and S–11, depending on a company's particular circumstances, by:

- Eliminating the requirement to include in proxy or information statements a compensation committee report on the repricing of options and stock appreciation rights and a table reporting on the repricing of options and stock appreciation rights over the past ten years, in favor of a narrative discussion of repricings, if any occurred in the last fiscal year, which would be required to be included or incorporated by reference in annual reports and registration statements; and
- Eliminating or reducing the scope of instructions that provide bright line tests for determining whether transactions with related persons are required to be disclosed in particular circumstances.

Specifically with respect to proxy and information statements, the proposals would impose a new disclosure requirement regarding the company's processes and procedures for the consideration and determination of executive and director compensation, and disclosure regarding the availability of the compensation committee's charter (if it has one), either as an appendix to the proxy or information statement at least once every three fiscal years or on the company's Web site. These proposals would not require a compensation committee to establish or maintain a charter. The proposed disclosure that would be required regarding compensation committees is similar to what is currently required for audit committees and nominating committees. The proposals would decrease existing disclosure requirements for proxy and information statements by eliminating a current disclosure requirement regarding the resignation of directors, as well as eliminating current requirements to provide a Compensation Committee Report, Performance Graph and a compensation committee report on the repricing of options and stock appreciation rights. However, the extent to which eliminating current requirements to provide a Compensation Committee Report, Performance Graph and a compensation committee report on the repricing of options and stock appreciation rights reduces burdens for proxy and information statements would be offset to a substantial extent, as discussed above, by the proposed Compensation Discussion and Analysis and narrative disclosure requirement regarding repricings and other modifications, both of which would be required to be included or incorporated by reference in annual reports and registration statements. We estimate that, on balance, the proposed changes that are specific to proxy or information statements would not result in incremental burdens on proxy or information statement collections of information.

The proposals would increase existing disclosure burdens for annual reports on Form 10–KSB [329] and registration statements on Forms 10–SB and SB–2 filed by small business issuers by requiring:

- An expanded and reorganized Summary Compensation Table, which would require expanded disclosure of a ''total compensation'' amount, and information necessary for computing the total amount of compensation, such as the grant date fair value of stock-based and option-based awards computed in accordance with FAS 123R and the aggregate increase in actuarial value of defined benefit and actuarial pension plans;
- Disclosure at lower dollar thresholds for information regarding perquisites and other personal benefits;
- Expanded disclosure regarding holdings of previously awarded stock, options and similar instruments, which would include the value of stock and other similar incentive plan awards that had not vested;
- A new table for director compensation, to replace current narrative disclosure requirements;
- A narrative description of retirement plans;
- Disclosure regarding additional related persons under the proposed related person transaction disclosure requirement;
- New and reorganized disclosure regarding corporate governance matters such as the independence of directors and members of the nominating, compensation and audit committees of the board of directors; and
- Additional disclosure regarding pledges of securities by officers and directors, and director qualifying shares.

At the same time, the proposals would decrease existing disclosure burdens for annual reports on Form 10–KSB and registration statements on Form 10–SB and SB–2 filed by small business issuers by:

- Reducing by two the number of named executive officers for the purposes of executive compensation disclosure, to include only the principal executive officer and the two most highly compensated executive officers other than the principal executive officer;
- Reducing the required information in the Summary Compensation Table from three years to two years of data;
- Eliminating tabular disclosure of grants of options and stock appreciation rights in the last fiscal year;
- Eliminating tabular disclosure regarding exercises of options and stock appreciation rights;
- Eliminating tabular disclosure regarding long term incentive plan awards in the last fiscal year; and
- Eliminating a current disclosure requirement regarding specific director relationships that could affect independence.

In addition, the proposals may increase or decrease, or not affect, existing disclosure burdens for annual reports on Form 10–KSB or registration statements on Form 10–SB and SB–2 filed by small business issuers depending on the small business issuer's particular circumstances, by:

- Eliminating the requirement to include a compensation committee report on the repricing of options and stock appreciation rights, in favor of a narrative discussion of repricings, if any occurred in the last fiscal year;
- Changing the dollar value threshold used for determining if related person transaction disclosure is required from $60,000 to the lesser of $120,000 or one percent of the average of the small business issuer's total assets for the last three completed fiscal years; and
- Eliminating or reducing the scope of instructions that provide bright line tests for determining whether transactions with related persons are required to be disclosed in particular circumstances.

The proposals would decrease existing disclosure burdens for Forms N–1A, N–2, and N–3 by increasing to $120,000 the current $60,000 threshold in such forms for disclosure of certain interests, transactions, and relationships of disinterested directors, although as discussed below we do not believe the increase in the disclosure threshold will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items. The proposals would increase the existing disclosure burdens for Form N–2 by requiring business development companies to provide additional disclosure regarding compensation. However, the proposals

[329] The same analysis as discussed above with regard to the relationship of Form 10–K to the disclosure required in proxy or information statements is also applied to Form 10–KSB.

would decrease the existing disclosure burden by no longer requiring compensation disclosure with respect to certain affiliated persons and the advisory board of business development companies and by no longer requiring business development companies to disclose certain compensation from the fund complex.

The proposals would decrease the Form 8–K disclosure burdens, by limiting both the existing requirement to disclose a company's entry into a material definitive agreement outside of the ordinary course of business or any material amendment to such an agreement and the requirement to collect information regarding directors, executive officers other than named executive officers and officers covered by Item 5.02 of Form 8–K. By focusing the Form 8–K disclosure requirement on more presumptively material employment agreements, plans or arrangements of a narrower group of executive officers, the number of Form 8–Ks filed each year relating to executive and director compensation matters should be reduced.

We do not believe that our proposals regarding exhibit filing requirements for Form 20–F and our proposed treatment for foreign private issuers under the revised rules would impose any incremental increase or decrease in the disclosure burden for these issuers.

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we estimate the annual incremental increase in the paperwork burden for companies to comply with our proposed collection of information requirements to be approximately 537,792 hours of in-house company personnel time and to be approximately $69,794,000 for the services of outside professionals.[330] These estimates include the time and the cost of preparing and reviewing disclosure, filing documents and retaining records. Our methodologies for deriving the above estimates are discussed below.

Our estimates represent the average burden for all issuers, both large and small. As described below, we expect that the burdens and costs could be greater for larger issuers and lower for smaller issuers. For Exchange Act annual reports on Form 10–K or 10–KSB,[331] or current reports on Form 8–K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $300 per hour.[332] For Securities Act registration statements on Forms SB–2, S–1, S–4, S–11, or N–2 and Exchange Act registration statements on Form 10 or 10–SB, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $300 per hour.[333] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

1. Securities Act Registration Statements, Exchange Act Registration Statements and Exchange Act Annual Reports

For the purposes of the Paperwork Reduction Act, we estimate that, over a three year period,[334] the annual incremental disclosure burden imposed by the proposed revisions would average 67 hours per Form 10–K; 35 hours per Form 10–KSB; 60 hours per Form 10; 30 hours per Forms 10–SB and SB–2; 60 hours per Forms S–1, S–4 and S–11; and 1.675 hours per Form N–2. To the extent that companies incorporate information proposed to be required by reference to proxy or information statements, the proposed plain English requirements would apply to disclosure in those statements, however the incremental burden of preparing plain English disclosure is factored into the burden estimates for Forms 10–K and 10–KSB. We estimate that the proposed amendments to Item 22(b) of Schedule 14A and the proposal to increase to $120,000 the current $60,000 threshold in Forms N–1A, N–2, and N–3 for disclosure of certain interests, transactions, and relationships of disinterested directors will not impose an annual incremental disclosure burden.

These estimates were based on the following assumptions:

- On an ongoing basis, the hours of company personnel time and outside professional time required to prepare the disclosure under proposed Item 402 of Regulation S–K (executive and director compensation) would increase in light of the expansion and reorganization of the proposed disclosure requirements relative to the current disclosure requirements on these topics, in particular the requirements regarding Compensation Discussion and Analysis.
- Companies filing annual reports on Form 10–K that would be required to include Item 402 of Regulation S–K, as we propose to amend it, and proposed Item 407(e)(4) of Regulation S–K (regarding compensation committee interlocks and insider participation), would experience higher costs in responding to these disclosure requirements in the first year of compliance with them, and, to a lesser extent, in the second year, as systems are implemented to obtain the relevant data and compliance efforts with respect to new or expanded disclosure requirements, with lower incremental costs expected in subsequent years.[335]
- On an ongoing basis, the hours of company personnel time and outside professional time required to prepare the disclosure under proposed Item 404 (related person transactions), 407(a) (director independence) and paragraphs (e)(1) through (e)(3) of Item 407 (compensation committee functions) of both Regulation S–K and Regulation S–B would be approximately the same as for compliance with the current related party transaction disclosure and disclosure about the board of directors required by existing Item 404 of Regulations S–K and S–B and Item 7 of Schedule 14A.[336] Other revisions proposed to be made by moving

[330] For administative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest thousand.

[331] We apply the same allocation of burden with regard to proxy or information statements.

[332] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings.

[333] As mentioned above, we do not believe that the proposal to increase to $120,000 the current $60,000 threshold in Forms N–1A, N–2, and N–3 for disclosure of certain interests, transactions, and relationships of disinterested directors will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items.

[334] We calculated an annual average over a three year period because OMB approval of Paperwork Reduction Act submissions covers a three year period.

[335] For Form 10–K, we estimate that it would take issuers 120 additional hours to prepare the proposed disclosure in year one, and 55 hours in year two and 25 hours in year three and thereafter, which results in an average of 67 hours over the three year period. This estimate takes into account that the burden would be incurred by either including the proposed disclosure in the report directly or incorporating by reference from a proxy or information statement.

[336] Similarly, on an ongoing basis, the hours of company personnel time and outside professional time required to prepare the disclosure required by the proposed conforming revisions to Item 22(b) relating to the independence of members of nominating and audit committees of investment companies would be approximately the same as for compliance with the current requirements regarding disclosure of the independence of nominating and audit committee members of investment companies required by existing Item 7 of Schedule 14A.

disclosure requirements relating to corporate governance to Item 407 of Regulations S–K and S–B would not change the substance of existing disclosure and would therefore not increase burdens, particularly for proxy or information statements where much of the disclosure is currently required.

• Companies filing registration statements on Forms 10, S–1, S–4 and S–11 that are not already filing periodic reports pursuant to Exchange Act Sections 13(a) or 15(d) would in many cases not have been required to comply with the proposed disclosure requirements prior to filing such registration statements, and would therefore take an estimated 60 hours to comply with the proposed changes in the disclosure requirements. The additional time required by these registrants to obtain the relevant data and to compile the required information is offset to some extent by the fact that only one year of compensation information would generally be required for presentation in the Summary Compensation Table, as compared to three years for issuers already subject to Exchange Act reporting requirements.[337]

• Small business issuers filing annual reports on Form 10–KSB would be subject to lower incremental costs than other issuers as a result of the proposals, given the reduced disclosure required by Item 402 of Regulation S–B relative to Item 402 of Regulation S–K, as described above. As with companies filing annual reports on Form 10–K, we expect that small business issuers would experience higher costs in responding to the proposed disclosure requirements in the first year of compliance with them, as systems are implemented to obtain the relevant data and compliance efforts with respect to new or expanded disclosure requirements are implemented, with lower incremental costs in subsequent years.[338]

• Small business issuers filing registration statements on Forms 10–SB and SB–2 that are not already filing periodic reports pursuant to Exchange Act Sections 13(a) or 15(d) would not have been required to comply with the proposed disclosure requirements prior to filing such registration statements, and would therefore take an estimated 30 additional hours to comply with the proposed changes in the disclosure requirements. The additional time required by these registrants to obtain the relevant data and to compile the required information is offset to some extent by the fact that only one year of compensation information would generally be required for presentation in the Summary Compensation Table, as compared to two years for small business issuers already subject to Exchange Act reporting requirements.

• Based on our experience with the requirement we adopted in 1998 for companies to write certain sections of prospectuses in plain English, drafting documents in plain English would result in an initial increase in time and cost burdens in the first year of implementation, and to a lesser extent, the second year, with those time or cost burdens decreasing in the year following implementation of the new rules. The plain English rule proposals would not affect the substance of the required disclosure, and companies that have filed registration statements under the Securities Act are already familiar with the requirements.

• We estimate that the proposals to increase to $120,000 the current $60,000 threshold for disclosure of certain interests, transactions, and relationships of disinterested directors in Forms N–1A, N–2, and N–3 and in proxy and information statements would neither increase nor decrease the annual paperwork burden, because these forms are already required to disclose these interests, transactions, and relationships in amounts exceeding $60,000, and we do not believe the increase in the disclosure threshold will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items.

• Business development companies filing Form N–2 would be required to include Item 402 of Regulation S–K, as we propose to amend it, and would experience higher costs in responding to these disclosure requirements in the first year of complying with them, and, to a lesser extent, in the second year, as systems are implemented to obtain the relevant data and compliance efforts with respect to new or expanded disclosure requirements are implemented, with lower incremental costs expected in subsequent years.[339]

Tables 1 and 2 below illustrate the incremental annual compliance burden in the collection of information in hours and cost for Exchange Act periodic reports for companies other than registered investment companies, Securities Act registration statements and Exchange Act registration statements.

[337] Our estimates of the number of annual responses to the collections of information are based on the number of filings made in the period from October 1, 2004 through September 30, 2005. In order to factor in disclosure that may be incorporated by reference from other filings, we have estimated that 496 out of 619 registration statements on Form S–4 would include the required information contemplated by these rule proposals through incorporation by reference to a Form 10–K or Form 10–KSB.

[338] For Form 10–KSB, we estimate that it would take issuers 70 additional hours to prepare the proposed disclosure in year one, and 25 additional hours in year two and 10 additional hours in year three and thereafter, which results in an average of 35 additional hours over the three year period. This estimate assumes that the burden would be incurred by either including the proposed disclosure in the report directly or incorporating by reference from a proxy or information statement.

[339] For Form N–2, we estimate that it would take business development companies 100 additional hours to prepare the proposed disclosure in year one, 50 hours in year two and 25 hours in year three and thereafter, which results in an average of 58 hours for each business development company to comply with the proposed compensation disclosures that would be required on Form N–2. We estimate an average annual incremental disclosure burden of 1.675 hours per Form N–2, based on 58 hours per Form N–2 filing by business development companies times 27 filings on Form N–2 by business development companies (representing all Form N–2 and N–2/A filings by business development companies during the year ended December 31, 2005) (58 hours times 27 Form N–2 filings (including amendments) = 1,566 hours), divided by 935 total annual filings on Form N–2 (representing all Form N–2 and N–2/A filings during the year ended December 31, 2005) (1,566 hours divided by 935 filings on Form N–2 (including amendments) = 1.675 hours per Form N–2 (including amendments)).

TABLE 1.—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR EXCHANGE ACT PERIODIC REPORTS

Form	Annual responses (A)	Incremental hours/form (B)	Incremental burden (C) = (A)*(B)	75% Issuer (D) = (C)*0.75	25% Professional (E) = (C)*0.25	$300 Professional cost (F) = (E)*$300
10–K [340]	8,602	67	576,334	432,250.5	144,083.5	$43,225,050
10–KSB	3,504	35	122,640	91,980.0	30,660.0	9,198,000
Total			698,974	524,230.5		52,423,050

TABLE 2.—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR SECURITIES ACT REGISTRATION STATEMENTS AND EXCHANGE ACT REGISTRATION STATEMENTS

Form	Annual responses (A)	Incremental hours/form (B)	Incremental burden (C) = (A)*(B)	75% Issuer (D) = (C)*0.25	75% Professional (E) = (C)*0.75	$300 Professional cost (F) = (E)*$300
10	72	60	4,320	1,080.0	3,240.0	$972,000
10–SB	166	30	4,980	1,245.0	3,735.0	1,120,500
SB–2	885	30	26,550	6,637.5	19,912.5	5,973,750
S–1	528	60	31,680	7,920.0	23,760.0	7,128,000
S–4	123	60	7,380	1,845.0	5,535.0	1,660,500
S–11	60	60	3,600	900.0	2,700.0	810,000
N–2	935	1.675	1,566	391.5	1,174.5	352,350
Total			80,076	20,019.0		18,017,100

2. Exchange Act Current Reports

For purposes of the Paperwork Reduction Act, we estimate that the proposals affecting the collection of information requirements related to current reports on Form 8–K would reduce the annual paperwork burden by approximately 6,458 hours of company personnel time and by a cost of approximately $645,750 for the services of outside professionals. This estimate reflects the reduction in the number of filings that could result from our proposals. These estimates were based on the following assumptions:

- The number of annual responses for Form 8–K is estimated to be 110,416.[341] Based on a study of current reports on Form 8–K filed in September 2005, we estimate that approximately 22,083 current reports filed on Forms 8–K would be filed pursuant to Item 1.01 of Form 8–K.
- Based on a review of Item 1.01 Form 8–K filings made in September 2005, we estimate that 6,625 of the 22,083 current reports on Form 8–K filed under Item 1.01 would relate to executive or director compensation matters.
- Based on a review of Item 1.01 Form 8–K filings made in September 2005, we estimate that 1,722 fewer Form 8–Ks would be filed because of more focused current reporting of executive officer and director compensation transactions under proposed Item 5.02(e) of Form 8–K.[342]

D. Request for Comment

We request comment in order to: (a) Evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[343]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–03–06. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–03–06, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services, Branch of Records Management, 6432 General Green Way, Alexandria, VA 22312. Because the OMB is required to make a decision concerning the collections of

[340] The burden estimates for Form 10–K and 10–KSB assume that the proposed requirements are satisfied by either including information directly in the annual reports or incorporating the information by reference from the proxy statement or information statement in Schedule 14A or Schedule 14C, respectively. As described above, we estimate that the proposed changes to executive compensation disclosure and corporate governance matters that would be included only in proxy or information statements (and thus not in Securities Act registration statements or Exchange Act reports or registration statement) would not, on balance, impose an incremental burden.

[341] This is based on the number of responses made in the period from October 1, 2004 through September 30, 2005.

[342] For Form 8–K, the current burden estimate is 5 hours per filing. We estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $300 per hour. The computation of the reduction in burden is thus based on 1,722 fewer Form 8–Ks filed with a per filing burden of 3.75 hours carried by the company and 1.25 hours at a cost of $300 per hour (or $375 per filing).

[343] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IX. Cost-Benefit Analysis

A. Background

We are proposing revisions to our rules governing disclosure of executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. The proposed revisions to the executive and director compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the highest paid executive officers and directors. We also propose to revise our rules relating to current reports on Form 8–K to require real-time disclosure of only executive and director compensation events that are unquestionably or presumptively material, thereby reducing the number of filings for events relating to executive officers other than named executive officers and those officers specified in Item 5.02. We also propose to revise our closely related rules requiring disclosure regarding the extent to which executive officers, directors, significant shareholders and other related persons participate in financial transactions and relationships with the issuer. We are proposing to amend our beneficial ownership disclosure requirement to require disclosure regarding pledges of securities by management and directors' qualifying shares. Finally, we are proposing that most of the disclosure that would be required under the proposed amendments be provided in plain English, so that investors can more easily understand this information when it is required to be included in Exchange Act reports or it is incorporated by reference from proxy or information statements.

B. Summary of Proposals

In light of the complexity of, and variations in, compensation programs, the sometimes inflexible and highly formatted nature of current Item 402 of Regulation S–K and S–B has resulted, in some cases, in disclosure that does not clearly inform investors as to all elements of compensation. The proposed changes to Item 402 would apply a broader approach that would eliminate some tables, simplify or refocus other tables, reflect total current compensation in the Summary Compensation Table, and reorganize the compensation table to group together compensation elements that have similar functions so that the quantitative disclosure is both more informative and more easily understood. This improved quantitative disclosure would be complemented by enhanced narrative disclosure clearly and comprehensively describing the context in which compensation is paid and received. In particular, the narrative disclosure requirements would provide transparency regarding company compensation policies and procedures, and be sufficiently flexible to operate effectively as new forms of compensation continue to evolve.

Under the proposals, the scope and presentation of information in Item 402 of Regulation S–B would differ in a number of significant ways from Item 402 of Regulation S–K. Item 402 of Regulation S–B would:

- Limit the named executive officers for whom disclosure would be required to a smaller group, consisting of the principal executive officer and the two other highest paid executive officers; [344]
- Require a revised Summary Compensation Table to disclose compensation information for the small business issuer's two most recent fiscal years, and to require that narrative disclosure accompany the Summary Compensation Table; [345]
- Provide a higher threshold for separate identification of categories of ''All Other Compensation'' in the Summary Compensation Table;
- Require a new Outstanding Equity Awards at Fiscal Year-End Table that would include expanded disclosure regarding holdings of previously awarded stock, options and similar instruments, which would include the value of stock and other similar incentive plan awards that had not vested;
- Require additional narrative disclosure addressing the material terms of defined benefit and defined contribution plans and other post-termination compensation arrangements; and
- Require a new Director Compensation Table.

Item 402 of Regulation S–B would not include the following disclosures that would be required by proposed Item 402 of Regulation S–K:

- Compensation Discussion and Analysis;
- A third fiscal year of Summary Compensation Table disclosure; and
- The supplementary Grants of Performance-Based Awards Table and Grants of All Other Equity Awards Table, the Option Exercises and Stock Vested Table, the Retirement Plan Potential Annual Payments and Benefits Table, and the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table and the separate Potential Payments Upon Termination or Change-in-Control narrative section, while providing a general requirement to discuss the material terms of retirement plans and the material terms of contracts providing for payment upon a termination or change in control.

The application of Item 1.01 of Form 8–K to compensatory arrangements has raised concerns that real-time disclosure may be required for executive compensation events that are not unquestionably or presumptively material, and that are more appropriately disclosed, if at all, in the company's proxy statement for its annual meeting of shareholders. The proposed amendments to Items 1.01 and 5.02 of Form 8–K would focus real-time disclosure on compensation arrangements with executives and directors that we believe are unquestionably or presumptively material, and eliminate the obligation to file Form 8–K with respect to other compensatory arrangements.

Current Item 404 of Regulation S–K was adopted to consolidate various provisions previously adopted in a piecemeal fashion. The proposals would revise Item 404 of Regulation S–K to streamline and modernize it, while making it more principles-based. Indebtedness of related persons is limited by the Sarbanes-Oxley Act, and the disclosure requirement regarding indebtedness of related persons would be combined into the requirement regarding other transactions with related persons. This consolidated disclosure requirement would apply to an expanded group of related persons. While the current principles for disclosure would be retained, the proposal would increase the $60,000 threshold for disclosure currently in paragraphs (a) and (c) of Item 404 to $120,000 and eliminate or reduce the scope of certain instructions delineating

[344] Current Item 402(a)(2) of Regulation S–B requires compensation disclosure for all individuals serving as the small business issuer's chief executive officer and the small business issuer's four other highest paid officers other than the chief executive officer.

[345] Current Item 402(b)(1) of Regulation S–B requires disclosure of compensation of the named executive officers for each of the last three fiscal years, and narrative disclosure is not currently required to accompany the Summary Compensation Table, however the proposed narrative disclosure would address some elements of compensation currently required in tables in current Item 402 of Regulation S–B.

what transactions are reportable or excludable. Existing disclosure requirements in Item 404 regarding transactions with promoters would slightly expanded to apply when a company had a promoter over the past five years, as well as to require analogous disclosure regarding transactions with control persons of a shell company. With respect to registered investment companies and business development companies, proposed amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 would similarly increase to $120,000 the current $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an ''interested person'' of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). In addition, Form N–2 would require business development companies to include the compensation disclosure required by Item 402 of Regulation S–K, as we propose to amend it.

The proposals also would replace the disclosure requirement for certain business relationships currently in Item 404(b) of Regulation S–K, which focuses on relationships relevant to director independence, with requirements for director independence disclosure discussed below. Under the proposals, the disclosure currently required by the certain business relationship disclosure requirement may be required by the consolidated disclosure requirement regarding transactions and relationships with related persons in Item 404(a) of Regulation S–K. Proposed Item 404(b) of Regulation S–K would require disclosure regarding the company's policies for the review, approval or ratification of transactions with related persons.

We propose similar amendments to Item 404 of Regulation S–B, which would result in a more detailed related person transaction disclosure requirement than currently exists in Item 404 of Regulation S–B. However, unlike Item 404 of Regulation S–K, Item 404 of Regulation S–B would not require disclosure regarding the company's policies for the review, approval or ratification of transactions with related persons. We propose to retain the requirement that transactions occurring within the last two years must be disclosed under Item 404 of Regulation S–B, whereas Item 404 of Regulation S–K requires disclosure for the last fiscal year, unless the information is included in a Securities Act or Exchange Act registration statement, where information as to the last three fiscal years is required.

We propose to adopt a new disclosure requirement in Item 407 of Regulations S–K and S–B that would consolidate disclosures required in several places throughout our rules addressing director independence, board committee functions and other related corporate governance matters. This proposed Item, which would require new disclosure regarding independence of members of the board of directors and board committees, is intended to enhance disclosures regarding independence required by corporate governance listing standards of the national securities exchanges and the inter-dealer quotation systems of a national securities association.[346]

To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral for loans, these shares are subject to risks or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions. As a result, we believe that the existence of these securities pledges could be material to shareholders and should be disclosed. We therefore propose to amend Item 403 of Regulation S–K and Regulation S–B to require this disclosure as well as disclosure regarding directors' beneficial ownership of qualifying shares.

We propose to require that most of the information that is required by these amendments be provided in plain English in Exchange Act reports or in proxy or information statements incorporated by reference into those reports. The plain English requirements would make these documents easier to understand.

The proposed changes to Item 402 of Regulation S–K, Items 402 and 404 of Regulation S–B, and Form 8–K would affect all companies reporting under Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies. The proposed changes to Item 404 of Regulation S–K would affect all companies reporting under Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies, and all companies, including registered investment companies, filing proxy or information statements with respect to the election of directors. The proposed changes to Items 402 and 404 of Regulation S–K and Regulation S–B would also affect additional companies filing Securities Act and Exchange Act registration statements. The proposed changes to Item 22(b) of Schedule 14A will affect business development companies and registered investment companies filing proxy statements with respect to the election of directors. The proposed changes to Form N–1A will affect open-end investment companies registering with the Commission on Form N–1A. The proposed changes to Form N–2 will affect closed-end investment companies (including business development companies) registering with the Commission on Form N–2. The proposed changes to Form N–3 will affect separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3.

C. Benefits

As discussed, the overall goal of the executive and director compensation proposals would be to provide investors with clearer, better organized and more complete disclosure regarding the mix, size and incentive components of executive and director compensation. This goal would be accomplished by eliminating some tables and other disclosures that we believe may no longer be useful to investors, revising other tables so that they are more informative, and requiring new tabular and new quantitative estimate disclosure for retirement plans and similar benefits and director compensation. The proposals would require enhanced narrative disclosure, in the form of a Compensation Discussion and Analysis section and narrative disclosure accompanying the tables, to explain the significant factors underlying the compensation decisions reflected in the tabular data. The proposals also would require companies to report the total amount of compensation for named executive officers and directors, and provide important context to the disclosure of total compensation.

Improved disclosure under the proposals of certain forms of compensation, such as stock-, option- and incentive plan-based compensation, as well as retirement and other post-employment compensation, combined with the ability of investors to track the elements of executive and director compensation and the relative weights of those elements over time (and the reasons why companies allocate

[346] We also propose conforming revisions to Item 22(b) relating to the independence of members of nominating and audit committees of investment companies.

compensation in the manner that they do), would enable investors to make comparisons both within and across companies. A presentation facilitating the comparability and different elements of compensation in different companies should make it easier for investors to analyze both the manner of compensation across companies and the quality of disclosure of compensation across companies. Disclosure of total compensation would benefit investors by reducing the need to make individual computations in order to assess the size of current compensation. Further, improved executive and director compensation disclosure would enhance investors' understanding of this use of corporate resources and the actions of boards of directors and compensation committees in making decisions in this area.[347] Particularly with respect to the proxy statement for the annual meeting at which directors are elected, this improved disclosure would provide better information to shareholders for purposes of evaluating the actions of the board of directors in fulfilling its responsibilities to the company and its shareholders.

We believe that the extent to which increased transparency and completeness in executive and director compensation disclosure would result in broader benefits depends at least in part on the extent to which current executive and director compensation practices are aligned with the interests of investors as reflected in their investment and voting decisions. Any changes to a company that might occur, including changes in corporate governance, changes in control, changes in the employment of particular executives or other changes could depend to some extent on the degree to which improved transparency in executive and director compensation would affect investors' decision-making with respect to that company.

Improved transparency in executive and director compensation under these proposals could have other benefits in terms of the allocative efficiency of affected corporations with regard to the use of resources for executive compensation relative to other corporate needs, as well as improvements in efficiency of managerial labor markets. Benefits such as these depend on the extent to which the proposals, including requirements to disclose a total amount of compensation and more detail regarding compensation policies, could alter existing policies or practices in these areas. We emphasize that we are not seeking to foster any given directional or other impacts. Our objective is to increase transparency to enable decision-makers to make more informed decisions, which could result in different policies or practices or increase investor confidence in existing policies or practices.

The proposed amendments to Form 8–K would facilitate shareholder and investor access to real-time disclosure of public companies significant personnel and compensation decisions by focusing this disclosure only on what we believe are the most important compensatory arrangements with executive officers and directors. This information would be filed pursuant to Item 5.02(e) of Form 8–K. To find this information, shareholders and investors no longer would need to examine multiple Item 1.01 disclosures relating to other actions. Companies would also be relieved of obligations to quickly report arguably less important compensation information on Form 8–K.

The proposed amendments to Item 404 would provide investors with more complete disclosure of related person transactions and director independence, and new disclosure regarding a company's policies and procedures for the review, approval or ratification of relationships with related persons. These proposals would enhance investors understanding of how corporate resources are used in related person transactions, and provide improved information to shareholders for purposes of better evaluating the actions of the board of directors and executive officers in fulfilling their responsibilities to the company and its shareholders.

In addition, by combining similar provisions of current Item 404 into a single combined disclosure requirement, the proposals would reduce confusion regarding the disclosure required when more than one of the item's current provisions applies to a relationship. Improved corporate governance disclosure in proposed Item 407 would provide investors with better organized and more complete information regarding the independence of members of the board of directors. In addition, companies would benefit from having one disclosure item to satisfy in making required corporate governance disclosures. The proposed amendments to Item 403 of Regulation S–K and Regulation S–B would provide investors with disclosure of pledges of the securities beneficially owned by management and directors and full disclosure of beneficial ownership by directors, including directors' qualifying shares.

Proposed changes to Items 22(b)(7), 22(b)(8) and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 would decrease the disclosure burden imposed on registered investment companies by increasing the threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an ''interested person'' of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members).

Finally, presentation in plain English would facilitate investor understanding of most of the matters contemplated by our proposals.

The benefits of clearer, more useful disclosure are difficult to quantify.

D. Costs

In our view, the proposed revisions to the executive officer and director compensation disclosure requirements would increase the costs of complying with the Commission's rules. The proposed revisions to the related person transaction, director independence and corporate governance disclosure requirements would generally not increase costs. We further believe that the costs related to preparing required disclosure in plain English would be short-term costs arising mainly in the first two years of implementation.[348] Increased costs under the proposals would largely impact companies required to comply with the proposals; any net increase in costs would ultimately be borne by shareholders of those companies. If our assumptions regarding these costs and current practices are not correct or complete, then costs may prove to be higher.

We believe that compliance with these proposals would, on balance, be more costly for companies than compliance with the existing disclosure requirements, with the highest incremental annual costs occurring principally in the first two years as companies and their advisors would determine how best to compile and report information in response to new or expanded disclosure requirements.

The improved quantitative and textual disclosure regarding executive and director compensation that we are proposing would incrementally increase

[347] For a discussion of the debate concerning board of directors and managerial decision-making in the area of executive compensation, see, *e.g.*, Steven M. Bainbridge, *Executive Compensation: Who Decides?*, 83 Tex. L. Rev. 1615 (2005).

[348] The proposed plain English requirements would require both the rewriting of existing disclosures in plain English, as well as drafting new disclosures in plain English, such as Compensation Discussion and Analysis.

costs for companies in several ways as a result of the new or expanded requirements. First, we propose that companies provide a Compensation Discussion and Analysis involving a discussion and analysis of material factors underlying compensation decisions reflected in the tabular presentations.[349] Second, we propose to require narrative disclosure to accompany tabular presentations so that the data included in the tables may be understood in context. Third, we propose to expand disclosure regarding compensation-related equity-based and other plan-based holdings, as well as retirement and similar plans. Finally, we propose a director compensation table that would require more detailed information regarding director compensation than is specified in the current narrative disclosure requirement.[350] Each of these proposed revisions would seek to elicit more complete and clearer information than is currently required under existing rules.

While the Summary Compensation Table as proposed to be revised would require reporting of the grant date fair value of stock-based and option-based awards under the proposals, we do not believe that this change would increase costs for companies, because the computation of the grant date fair values of stock, options and similar instruments already is required for financial statement purposes as a result of the implementation of FAS 123R. Companies may incur additional costs, however, in determining incremental changes in the actuarial value of retirement benefits for the purposes of reporting such compensation in the Summary Compensation Table. Costs may also arise from the reporting of other compensation in the All Other Compensation Column of the Summary Compensation Table. We do not believe that the addition of a ''Total'' column to the Summary Compensation Table in and of itself would increase costs, because existing disclosure requirements already mandate the disclosure of all compensation, and the mechanical process of adding up disclosure amounts would not be significant. Additional costs may be incurred in preparing and presenting required disclosures regarding up to three highly paid non-executive employees, retirement benefits, deferred compensation and post-termination or change in control payments to the extent that information regarding these matters is not currently collected in a way that would facilitate disclosure under the proposals. In addition, because named executive officers would be based on total compensation rather than salary and bonus, some companies may need to track more employees to determine which are the most highly compensated.

Under the proposals regarding Form 8–K, disclosure regarding executive and director arrangements and other plans that would no longer be required to be reported within four days under Item 1.01 of Form 8–K would be required to be disclosed by way of the exhibit filing requirements on at least a quarterly basis. To the extent that a reduction in timeliness of this information would reduce its value to investors, the proposals may impose costs on investors.

We believe that there would not be a significant increase in the cost of complying with the related person transaction disclosure requirement. The proposals may increase the cost of complying with this disclosure requirement by eliminating or reducing the scope of certain instructions and by expanding the group of related persons covered to include additional ''immediate family members'' and also, in the case of indebtedness transactions, significant shareholders.[351] Similarly, with respect to registered investment companies and business development companies, proposed amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 would increase to $120,000 the current $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an ''interested person'' of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). Since these forms already require such disclosure using the $60,000 threshold, we do not believe the proposals would impose additional costs.

Proposed Item 404(b) of Regulation S–K would introduce new costs by imposing new disclosure requirements on companies regarding their policies for review, approval or ratification of related person transactions. In order to comply with their policies for the review, approval or ratification of related person transactions or the determination of executive and director compensation we understand that companies would incur costs of collecting the type of information that would be required to be disclosed. These costs would be higher to the extent companies do not already collect this information either pursuant to their corporate governance policies or through directors and officers' questionnaires. The proposed rules would not require companies to create new policies for review, approval or ratification of relationships with related persons or the determination of executive and director compensation; however, to the extent that companies do create new policies that require the collection of different or additional information, they may incur incremental costs.

The proposed disclosures regarding director independence are similar to existing disclosure requirements under the proxy rules regarding the independence of directors who are members of the company's audit and nominating committees. Thus, for companies that are subject to the proxy rules, the task of complying with the proposed disclosure requirement regarding director independence could be performed by the same person or group of persons responsible for compliance under the current rules. Because the current rules already require companies subject to the proxy rules to collect and disclose information about the independence of directors who serve on the audit and nominating committees, this proposed disclosure

[349] The Compensation Discussion and Analysis, unlike the current Compensation Committee Report and the Performance Graph, but like all of the rest of the current compensation disclosure, would be considered filed and as such would be part of the documents for which certifications apply. The release adopting our certification requirements discussed the costs and benefits of the requirements as follows:

The new certification requirement may lead to some additional costs for issuers. The new rules require an issuer's principal executive and financial officers to review the issuer's periodic reports and to make the required certification. To the extent that corporate officers would need to spend additional time thinking critically about the overall context of their company's disclosure, issuers would incur costs (although investors would benefit from improved disclosure). The certification requirement creates a new legal obligation for an issuer's principal executive and financial officers, but does not change the standard of legal liability * * * [T]he new rules are likely to provide significant benefits by ensuring that information about an issuer's business and financial condition is adequately reviewed by the issuer's principal executive and financial officers * * * Conversely, the new rule are likely to provide significant benefits by ensuring that information about an issuer's business and financial condition is adequately reviewed by the issuer's principal executive and financial officers.

Certification Release, at Section VII.

[350] See current Item 402(f) of Regulation S–B and Item 402(g) of Regulation S–K.

[351] Significant shareholders are those identified under proposed Instruction 1.b.(i) to Item 404 of Regulation S–K, that is, any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of the registrant's voting securities.

should not impose significant new costs for the collection of information by companies that are subject to the proxy rules. The new disclosure requirement regarding director and committee member independence may require disclosure of additional relationships with related persons. Additional costs may be incurred in seeking this information. However, such costs are limited by the extent to which companies already identify and track the relationships that may be required to be disclosed for the purposes of complying with existing disclosure requirements or corporate governance listing standards.

We believe that, overall, the costs noted above that are associated with the proposed disclosure requirements for related person transactions and director independence will be offset by cost decreases associated with narrowing the scope of other disclosure requirements under the proposal. In this regard, we believe that companies will generally be required to provide an amount of information that is comparable to what is currently required by our rules, but under the proposals the information regarding these matters would be presented in a manner that recognizes recent changes such as the imposition of corporate governance listing standards at the major markets.

Our plain English proposal would require that companies use a clear writing style to present the information about executive and director compensation, related person transactions, beneficial ownership and some corporate governance matters that would be required to be disclosed in Exchange Act reports such as annual reports on Forms 10–K or 10–KSB. We believe the proposed rules, if adopted, would result in a short-term increase in costs for companies as they rewrite the information required to be included in annual reports or incorporated by reference from proxy or information statements, but few additional costs after the first year or two of implementation, as companies become familiar with the organizational, language, and document structure changes necessary to comply with these proposals. Additional costs, if any, should be one-time or otherwise short-term.

We believe that there would be little, if any, increase in the cost of complying with the beneficial ownership rule proposals. A company would be required to disclose named executive officer, director and director nominee pledges of securities, and directors'' full beneficial ownership of equity securities, including directors qualifying shares. The company could inquire as to this information in questionnaires it already circulates to the company's officers and directors.

For purposes of the Paperwork Reduction Act, we have estimated the annual incremental increase in the paperwork burden for companies to comply with our proposed collection of information requirements to be approximately 537,792 hours of in-house company personnel time and to be approximately $69,794,000 for the services of outside professionals. These costs are based on our estimates that the annual incremental disclosure burden imposed by the revisions that we propose today would average 67 hours per Form 10–K; 35 hours per Form 10–KSB; 60 hours per Form 10; 30 hours per Forms 10–SB and SB–2; 60 hours per Forms S–1, S–4 and S–11; and 1.675 hours per Form N–2. We estimate that the proposed amendments to Item 22(b) of Schedule 14A and the proposal to increase to $120,000 the current $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director in Forms N–1A, N–2, and N–3 will not impose an annual incremental disclosure burden. These estimated costs include an estimated reduction in costs attributable to current reports on Form 8–K of approximately 6,458 hours of company personnel time and by a cost of approximately $645,750 for the services of outside professionals, based on an estimate that 1,722 fewer Form 8–Ks would be filed because of more focused current reporting of compensation transactions. Based on these estimates for the purposes of the Paperwork Reduction Act and assuming that the cost of in-house company personnel time is $175, the total estimated incremental costs of the proposals would be approximately $163,908,000. We have not quantified other costs which might arise as a result of implementation of the rules, especially to the extent that such costs could arise as a result of changes in policies, practices or other behavior attributable to the proposed disclosure requirements. These costs could be more than those estimated for the purposes of the Paperwork Reduction Act.

E. Request for Comment

- We solicit quantitative data to assist our assessment of the benefits and costs of increased disclosure resulting from: (1) Requiring narrative disclosure regarding executive and director compensation in the form of Compensation Discussion and Analysis and narrative disclosures accompanying the tabular presentations, and eliminating the Compensation Committee Report and Performance Graph; (2) expanding disclosure, in a tabular format, of director compensation; and (3) requiring the more focused and in some cases expanded tabular presentation of executive compensation. We also solicit such data regarding the benefits and costs of any other aspects of the executive compensation disclosure proposals.
- We solicit quantitative data to assist our assessment of the benefits and costs of revising the requirements for current reporting of executive and director compensation arrangements on Form 8–K to focus on those arrangements which are unquestionably material.
- We solicit quantitative data to assist our assessment of the benefits and costs of increased disclosure resulting from: (1) Expanding the group of related persons covered by current Item 404(a) to include additional ''immediate family members''; (2) expanding the required relationship disclosure to include significant shareholders as related persons who may have reportable indebtedness relationships; and (3) requiring disclosure of a registrant's policies for approval of relationships involving related persons and the independence of directors. We also solicit such data regarding the benefits and costs of any other aspects of the related person transactions disclosure requirements.
- Do companies currently have policies and procedures regarding the review, approval, authorization or ratification of relationships with related persons? If not, what cost would a company incur to institute such policies?
- Are there any public companies that currently provide information to the public regarding their policies and procedures related to the review, approval, authorization or ratification of relationships with related persons? If so, is there any information available as to whether investors find this information to be useful?
- We solicit quantitative data to assist our assessment of the benefits and costs associated with increased disclosure and the proposed application of plain English principles to the disclosure resulting from most of the proposed requirements.
- What are the direct and indirect costs associated with the proposals?
- What are the costs in the first year of compliance versus subsequent years?
- We solicit comments on the degree to which companies already collect the information that the proposed rules would require to be disclosed.

X. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2) [352] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Securities Act Section 2(b),[353] Exchange Act Section 3(f) [354] and Investment Company Act Section 2(c) [355] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments to Regulations S–K and S–B, to Items 8 and 22(b) of Schedule 14A, and to Forms N–1A, N–2, and N–3 are intended to improve the completeness and clarity of executive compensation and related person transaction disclosure available to investors and the financial markets. These proposals would enhance investors' understanding of how corporate resources are used, and enable shareholders to better evaluate the actions of the board of directors and executive officers in fulfilling their responsibilities.

The proposed amendments to Form 8–K are intended to facilitate the ability of investors and shareholders to access real-time disclosure of public companies' employee compensation events that are unquestionably or presumptively material by requiring this disclosure only for the compensatory agreements with specified executive officers. To find this information, shareholders and investors no longer would need to examine multiple Form 8–K disclosures relating to other executive officers or other material non-ordinary course definitive agreements.

The proposals to expand and consolidate into one item the director independence and related corporate governance disclosure requirements in proposed Item 407 of Regulation S–K would improve shareholders' and investors' understanding of the composition and functions of the board of directors and board committees. Proposed amendments to beneficial ownership reporting requiring disclosure of pledged securities and director qualifying shares are intended to improve the disclosure regarding security holdings of directors and executive officers.

The proposal to require most of the information required in these proposals to be written in plain English is intended to make Exchange Act reports and proxy or information statements incorporated by reference in those reports easier to understand.

Thus, the proposed rules would enhance existing reporting requirements by providing more effective material disclosure to investors in a timely manner. We anticipate that these proposals would improve investors'' ability to make informed investment and voting decisions and, therefore lead to increased efficiency and competitiveness of the U.S. capital markets.

Because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act, and companies filing registration statements under the Securities Act, would be required to make the proposed disclosures required by Items 402, 404 and 407, competitors not in those categories could gain an informational advantage. However, with respect to executive compensation, as under current Item 402, registrants would not be required to disclose target levels with respect to specific quantitative or qualitative performance-related factors, or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the company. Notwithstanding this exception for competitively sensitive information, competitors could potentially gain additional insight into the executive compensation policies of companies through disclosure required in Compensation Discussion and Analysis and in other portions of the required disclosure. Further, the availability of more broad-based compensation disclosure may provide additional information to be used by competitors in recruiting executive talent.

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

XI. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms under the Securities Act and Exchange Act that seek to improve the clarity and completeness of companies' disclosure of the compensation earned by the principal executive officer, principal financial officer,[356] other highly paid executive officers and all members of the board of directors, and of related person transactions. These proposed revisions include revising the executive and director compensation disclosure requirements, modifying our rules so that only elements of compensation that are unquestionably or presumptively material to investors must be disclosed in current reports of Form 8–K, streamlining and modernizing disclosure requirements regarding related person transactions, adding disclosure regarding pledges of securities beneficially owned by executive officers and directors and regarding directors' qualifying shares, consolidating corporate governance disclosure requirements and expanding disclosure regarding the independence of the board of directors, as well as requiring that all disclosure required by the proposed items to be provided in plain English.

A. Reasons for the Proposed Action

Since the enactment of the Securities Act and the Exchange Act, the Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful material information about executive and director compensation and relationships with the issuer. With regard to compensation, at different times, the Commission has adopted rules mandating narrative, tabular, and combinations of narrative and tabular disclosure as the best method for presenting compensation disclosure in a manner that is concise and useful to investors. From time to time, the Commission has reconsidered executive and director compensation information requirements in light of changing trends in executive compensation, or due to concerns about the usefulness of disclosure elicited under then applicable rules. Most recently, in 1992, the Commission proposed and adopted amendments to the disclosure rules that moved away from the mostly narrative disclosure approach adopted in 1983 to

[352] 15 U.S.C. 78w(a)(2).

[353] 15 U.S.C. 77b(b).

[354] 15 U.S.C. 78c(f).

[355] 15 U.S.C. 80a–2(c).

[356] The principal financial officer is not specified as a named executive officer in Item 402 of Regulation S–B.

formatted tables which sought to capture the various elements of compensation and promote comparability from year to year and from company to company.

While this tabular approach remains a sound basis for disclosure, its sometimes inflexible and formatted nature has, especially in light of the complexity of and variations in compensation programs, resulted in some cases in disclosure that does not clearly inform investors as to all elements of compensation, notwithstanding the express requirement to do so in the rules. Accordingly, the proposals under current consideration seek a broader-based approach to eliciting executive compensation disclosure while retaining comparability.

Form 8–K requires disclosure of the entry into, amendment of and termination of material definitive agreements entered into outside the ordinary course of business. Under our current definitions in Regulation S–K, many agreements regarding executive compensation are deemed to be material agreements entered into outside the ordinary course, and when for purposes of consistency we adopted those definitions for use in the expanded Form 8–K requirements, we incorporated all of these executive compensation agreements into the current Form 8–K disclosure requirements. Therefore, many agreements regarding executive compensation are required to be disclosed within four business days of the applicable triggering event. Because it was not our intent in adopting the expanded Form 8–K requirements to make all elements of compensation for all executive officers potential items of real-time disclosure, but only to capture in this area, as in others, events that are unquestionably or presumptively material to investors, we believe it is appropriate to modify our rules so that only those events must be disclosed on Form 8–K.

We believe that disclosure of executive and director compensation is closely related to disclosure regarding financial transactions and relationships involving companies and their directors, executive officers, significant shareholders and respective immediate family members. These disclosure requirements have historically been interconnected, given that relationships among these persons and the company can include transactions that involve compensation or analogous features. Such disclosure also represents material information in evaluating the overall relationship with a company's executive officers and directors. Further, this disclosure provides material information regarding the independence of directors. The current related party transaction disclosure requirements were adopted piecemeal over the years and were combined in one disclosure requirement beginning in 1982. In light of the many developments, including the increasing focus on corporate governance and director independence, we believe it is necessary to revise the rule. We propose to replace the current requirement for disclosure about relationships that can affect director independence with a narrative explanation of the independence status of directors under a company's independence policies for the majority of the board and for the nominating, audit and compensation committees. We also propose to consolidate this and other requirements regarding director independence, board committees and other corporate governance matters in a new disclosure Item. In addition, we are also proposing corresponding changes to items in our registration forms and proxy and information statements filed by registered investment companies and business development companies that impose requirements to disclose certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an ''interested person'' of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members).

To the extent that shares beneficially owned by named executive officers, directors and director nominees are pledged, these shares are subject to risks and contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions, and for this reason, it appears that the existence of these securities pledges could be material to shareholders and should be disclosed under proposed revisions to Item 403 of Regulations S–K and S–B. An exclusion from the beneficial ownership disclosure requirement for directors'' qualifying shares is also proposed to be removed.

In order for most of these amended requirements to result in disclosure that is clear, concise and understandable for investors when responsive disclosure is included in Exchange Act reports or incorporated by reference from proxy or information statements, we propose to add Exchange Act rules to require that the disclosure regarding executive and director compensation, beneficial ownership, related person transactions and most corporate governance matters be provided in plain English.

B. Objectives

The overall goal of the rule proposals is to provide investors with a clearer and more complete picture of executive and director compensation, related person transactions and corporate governance matters. We believe that the proposals would:

- Confirm our current requirement that all elements of compensation must be disclosed;
- Retain the comparability of executive and director compensation while also providing material qualitative information about the context in which compensation is granted, awarded and earned;
- Reorganize and modify the type of compensation information that must be disclosed in current reports;
- Streamline and modernize the related person transaction disclosure requirements, while making them more principles-based;
- Update the disclosure requirements regarding director independence to reflect current listing standards and consolidate all such disclosure under a single disclosure item so that it is easier to locate; and
- Facilitate more informed voting decisions in the face of complex information about directors, executive officers and corporate governance, by requiring that most of the information required by these proposals be written in plain English.

C. Legal Basis

We are proposing the amendments pursuant to Sections 3(b), 6, 7, 10 and 19(a) of the Securities Act; Sections 10(b), 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act; Sections 8, 20(a), 24(a), 30, and 38 of the Investment Company Act; and Section 3(a) of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to the Proposed Amendments

The proposals would affect small entities, the securities of which are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. The proposals also would affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. Securities Act Rule 157 [357] and Exchange Act Rule 0–10(a) [358]

[357] 17 CFR 230.157.

[358] 17 CFR 240.0–10(a).

define an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We believe that the proposals would affect small entities that are operating companies. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. An investment company is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[359] We believe that the proposals would affect small entities that are investment companies. We estimate that there are approximately 240 investment companies that may be considered small entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Item 402 of Regulation S–K would expand some existing disclosure requirements, and consolidate or eliminate others. The proposed amendments to Item 402 of Regulation S–B would require less extensive disclosure for small business issuers than would be required for companies complying with Item 402 of Regulation S–K. Under the proposals, the scope and presentation of information in Item 402 of Regulation S–B would differ in a number of significant ways from Item 402 of Regulation S–K. Item 402 of Regulation S–B would:

- Limit the named executive officers for whom disclosure would be required to a smaller group, consisting of the principal executive officer and the two other highest paid executive officers;
- Require that the Summary Compensation Table disclose the two most recent fiscal years and that narrative disclosure accompany the Summary Compensation Table;
- Provide a higher threshold for separate identification of categories of ''All Other Compensation'' in the Summary Compensation Table;
- Require the Outstanding Equity Awards at Fiscal Year-End Table;
- Require additional narrative disclosure addressing the material terms of defined benefit and defined contribution plans and other post-termination compensation arrangements; and
- Require the Director Compensation Table.

Item 402 of Regulation S–B would not include the following disclosures that would be required by proposed Item 402 of Regulation S–K:

- Compensation Discussion and Analysis;
- Information regarding two additional executives;
- The third fiscal year of Summary Compensation Table disclosure; and
- The supplementary Grants of Performance-Based Awards Table and Grants of All Other Equity Awards Table, the Option Exercises and Stock Vested Table, the Retirement Plan Potential Annual Payments and Benefits Table, and the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table and the separate Potential Payments Upon Termination or Change-in-Control narrative section, while providing a general requirement to discuss the material terms of retirement plans and the material terms of contracts providing for payment upon a termination or change in control.

As a result, the proposed amendments to Item 402 of Regulation S–B would not result in the same level of incremental increase in costs or burdens as would the requirements of proposed amendments to Item 402 of Regulation S–K.

The proposed amendments to Item 404 of Regulation S–K and S–B would decrease the existing related person transaction disclosure requirement that companies, including small entities, must comply with in some respects and expand it in other respects. The proposed amendments to Item 404 of Regulation S–B would potentially decrease the scope of the related person transaction disclosure requirement by changing the $60,000 threshold for disclosure of related person transactions to the lesser of $120,000 or one percent of the average of the small business issuers' total assets for the last three completed fiscal years.[360] At the same time, the proposed amendments to Item 404 of Regulation S–B would increase the scope of the related person transaction disclosure requirement by expanding the group of related persons covered to include additional ''immediate family members,'' and in the case of indebtedness relationships, significant shareholders. In addition, the proposals may decrease or increase the scope of the related person transaction disclosure requirement by eliminating or reducing the scope of instructions that provide bright line tests for whether related person transaction disclosure is required.

Unlike the proposed amendments to Item 404 of Regulation S–K, the proposed amendments to Item 404 of Regulations S–B would not impose an additional disclosure requirement for small business issuers, including small entities, regarding their policies and procedures for the review, approval or ratification of relationships with related persons. The proposed amendments to Item 404 of Regulation S–B and proposed Item 407 of Regulation S–B would require, depending upon the particular circumstances of a company, more or less disclosure by changing the disclosure requirement regarding director independence.[361]

Similar to proposed Item 404(a) of Regulation S–K, proposed amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 would decrease the scope of the requirement imposed on registered investment companies and business development companies to disclose certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an ''interested person'' of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members) by increasing to $120,000 the current $60,000 threshold for disclosure of such interests, transactions, and relationships.

The proposed amendments to Item 403 of Regulation S–K and S–B would require footnote disclosure to the beneficial ownership table of the number of shares pledged by named executive officers, directors and director nominees and disclosure of directors'' qualifying shares. This would impose an additional disclosure requirement on companies, including small entities.

The proposed plain English rules applicable to Exchange Act reports and proxy or information statements incorporated by reference into Exchange Act reports would not affect the substance of disclosures that companies must make. The proposed plain English rules would also not impose any new recordkeeping requirements or require reporting of additional information. Other proposed changes to our rules would decrease the scope of the disclosure requirements for Form 8–K,

[359] 17 CFR 270.0–10(a).

[360] Proposed Item 404(a) of Regulation S–K only includes $120,000 as the threshold.

[361] As is the case currently, proposed Item 407 of Regulation S–B would not require compensation committee interlocks disclosure as would proposed Item 407 of Regulation S–K. This retains a current difference between Item 402 of Regulation S–B and Item 402 of Regulation S–K.

and thereby result in a reduction in the number of current reports on Form 8–K filed each year.

Overall, the proposals are expected to result in increased costs to all subject companies, large or small, as follows:

- Incremental increase in costs is expected with proposed changes to executive and director compensation disclosure requirements;
- No incremental increase in costs is expected from the amendments to the related person transaction rules and corporate governance disclosures; and
- Decreased costs are expected as a result of the proposed revisions to Form 8–K. Because the current proxy rules require a subject registrant to collect and disclose information about the independence of its directors who serve on the audit or nominating committee of its board, the proposed disclosure should not impose on companies subject to the proxy rules significant new costs for the collection of information regarding the independence of directors. Thus, the task of complying with the proposed expanded director independence disclosure in Item 407 of Regulation S–K or S–B could be performed by the same person or group of persons responsible for compliance under the current rules at a minimal incremental cost.

Our plain English proposal would require that companies use a clear writing style to present the information about executive and director compensation, related person transactions, beneficial ownership and some corporate governance matters that would be required to be disclosed in Exchange Act reports such as annual reports on Forms 10–K or 10–KSB. We believe the proposed rules, if adopted, would result in a short-term increase in costs for companies as they rewrite the information required to be included in annual reports or incorporated by reference from proxy or information statements, but few additional costs after the first year or two of implementation, as companies become familiar with the organizational, language, and document structure changes necessary to comply with these proposals. Additional costs, if any, should be one-time or otherwise short-term.

For purposes of the Paperwork Reduction Act, we estimate that with respect to Form 10–KSB, it would take issuers 70 additional hours to prepare the proposed disclosure in year one, 25 additional hours in year two, and 10 additional hours in year three and thereafter, which results in an average of 35 additional hours over the three year period. The same estimates would apply to preparation of information in the proxy or information statement that is then incorporated by reference into the Form 10–KSB. With regard to persons other than small business issuers who would file a Form 10–K, we estimate for purposes of the Paperwork Reduction Act that it would take issuers 120 additional hours to prepare the proposed disclosure in year one, and 55 hours in year two, and 25 hours in year three and thereafter, which results in an average of 67 hours over the three year period. If we assume that a small entity complies with the disclosure provisions of Regulation S–B rather than Regulation S–K and 75% of the burden would be performed by the company internally at a cost of $175 per hour and 25% of the burden would be carried by outside professionals retained by the company at a cost of $300 per hour, the average annual cost to comply with the proposed disclosure requirements in periodic reports and/or proxy or information statements would be approximately $7,219. The extent to which an additional average compliance cost of approximately $7,219 per small entity over a three year period would constitute a significant economic impact for small entities would depend on the relative revenues, costs and allocation of resources toward compliance with the Commission's rules for small entities both individually and as a group.

For purposes of the Paperwork Reduction Act, we estimate that with respect to Form N–2, it would take business development companies 100 additional hours to prepare the proposed disclosure in year one, 50 hours in year two and 25 hours in year three and thereafter, which results in an average of 58 hours for each business development company to comply with the proposed compensation disclosures that would be required on Form N–2. If we assume that 25% of the burden would be borne internally at a cost of $175 per hour and 75% of the burden would be carried by outside professionals retained by the company at a cost of $300 per hour, the average annual cost for business development companies to comply with the proposed disclosure requirements on Form N–2 would be approximately $15,588. The extent to which an additional average compliance cost of approximately $15,588 per small entity over a three year period would constitute a significant economic impact for small entities would depend on the relative assets, income, operating expenses and the allocation of resources toward compliance with the Commission's rules for small entities both individually and as a group.

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no federal rules that conflict with or completely duplicate the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

1. Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;
2. The clarification, consolidation or simplification of disclosure for small entities;
3. Use of performance standards rather than design standards; and
4. Exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

With regard to Alternative 1, we have proposed some different compliance or reporting requirements for small entities and solicited comments on others. We nevertheless believe improving the clarity and completeness of disclosure regarding executive and director compensation and related person transactions requires a high degree of comparability between all issuers. Regarding Alternative 2, the amendments would clarify, consolidate and simplify the requirements for all public companies, and some especially for small entities. Regarding Alternative 3, we believe that design rather than performance standards are appropriate, because design standards for small entities would be necessary to promote the goal of relatively uniform presentation of comparable information for the benefit of investors. Finally, although we propose to exempt some information required of larger issuers, a wholesale exemption for small entities would not be appropriate because the proposals are designed to make uniform the application of the disclosure and other requirements that would be amended.

We note that small business issuers,[362] which is a broader category of issuers than small entities, in certain circumstances may provide the executive compensation and relationships with related persons and promoters disclosure specified, respectively, in Items 402 and 404 of Regulation S–B, rather than the corresponding disclosure specified in Items 402 and 404 of Regulation S–K. We have proposed disclosure amendments that would require clear and straightforward disclosure of executive compensation, and relationships with related persons and promoters, respectively. We have proposed what we believe to be appropriate revisions to the small business issuer reporting requirements under Regulation S–B, given that small business issuer compensation structures are likely to be less complex than those of registrants that are not small business issuers. Separate disclosure requirements for small entities that would differ from the proposed reporting requirements of Regulation S–B would not yield the disclosure we believe to be necessary to achieve our disclosure objectives. In particular, we believe the changes that are reflected in the proposed amendments to Regulation S–B would balance the informational needs of investors in smaller companies with the burdens imposed on such companies by the disclosure requirements.

We have used design rather than performance standards in connection with the proposals for two reasons. First, based on our past experience, we believe the proposed disclosure would be more useful to investors if there were specific informational requirements. The proposed mandated disclosures are intended to result in more focused and comprehensive disclosure. Second, the specific disclosure requirements in the proposals would promote more consistent disclosure among public companies because they would provide greater certainty as to the scope of required disclosure. In addition, specific disclosure requirements would improve the Commission's ability to enforce the proposed rules. Therefore, amending the disclosure requirements of Items 402 and 404 of Regulations S–K and Regulation S–B and Exchange Act Form 8–K, and adopting Item 407 of Regulation S–K and S–B, appears to be the most effective method of eliciting the disclosure.

H. Solicitation of Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed revisions; (ii) the existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments.

XII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[363] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on: (a) the potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

XIII. Statutory Authority and Text of the Proposed Amendments

We are proposing new rules and amendments pursuant to Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 10(b), 12, 13, 14, 15(d) and 23(a) of the Exchange Act, as amended, and Sections 8, 20(a), 24(a), 30 and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 239, 240, 245 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

2. Amend § 228.201 by revising Instruction 2 to paragraph (d) to read as follows:

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

* * * * *

Instructions to paragraph (d). 1. * * *

2. For purposes of this paragraph, an ''individual compensation arrangement'' includes, but is not limited to, the following: A written compensation contract within the meaning of ''employee benefit plan'' under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(5)(ii) of Regulation S–B (§ 228.402(a)(5)(ii)).

* * * * *

§ 228.306 [Removed and Reserved]

3. Remove and reserve § 228.306.

§ 228.401 [Amended]

4. Amend § 228.401 by removing paragraphs (e), (f) and (g).

5. Revise § 228.402 to read as follows:

§ 228.402 (Item 402) Executive compensation.

(a) *General.* (1) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(2) of this Item, and directors covered by paragraph (f) of this Item, by any person for all services

[362] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a registrant that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer.

[363] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

rendered in all capacities to the small business issuer and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the small business issuer and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the ''named executive officers''):

(i) All individuals serving as the small business issuer's principal executive officer or acting in a similar capacity during the last completed fiscal year (''PEO''), regardless of compensation level;

(ii) The small business issuer's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the small business issuer at the end of the last completed fiscal year.

Instructions to Item 402(a)(2). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii) of this Item), *provided, however,* that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation does not exceed $100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a small business issuer to include as named executive officers one or more executive officers of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a small business issuer not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the small business issuer's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the small business issuer (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by, or paid to any of the named executive officers required to be reported in that table or column in any fiscal year covered by that table.

(5) *Definitions.* For purposes of this Item:

(i) The term *stock appreciation rights* (''*SARs*'') refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the small business issuer or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments or any other property may be received. A plan may be applicable to one person. Small business issuers may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the small business issuer and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the small business issuer or an affiliate, the small business issuer's stock price, or any other measure. A *non-stock incentive plan* is an incentive plan or portion of an incentive plan where the relevant performance measure is not based on the price of the small business issuer's equity securities or the award does not permit settlement by issuance of the small business issuer's equity securities. The term *incentive plan award* means an award provided under an incentive plan.

(b) *Summary compensation table.* (1) *General.* Provide the information specified in paragraph (b)(2) of this Item, concerning the compensation of the named executive officers for each of the small business issuer's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Total ($)	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
PEO	—							
	—							
A	—							
	—							
B	—							
	—							

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of total compensation for the covered fiscal year (column (c)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (d) through (i);

(iv) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

(v) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (e));

Instructions to Item 402(b)(2)(iv) and (v). 1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must be disclosed in a filing under Item 5.02(e) of Form 8–K (17 CFR 249.308).

2. Small business issuers need not include in the salary column (column (d)) or bonus column (column (e)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a small business issuer's program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Table corresponding to that fiscal year (*e.g.*, stock awards (column (f)); option awards (column (g)); all other compensation (column (i))); or if made pursuant to a non-stock incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Narrative Disclosure to the Summary Compensation Table (required by paragraph (c) of this Item) where the material terms of the award are reported.

(vi) For awards of stock, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units and other similar instruments that do not have option-like features, the aggregate grant date fair value computed in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (''FAS 123R''), as modified or supplemented, applying the same valuation model and assumptions as the small business issuer applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (f));

(vii) For awards of stock options, with or without tandem SARs, freestanding SARs and other similar instruments with option-like features (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R applying the same valuation model and assumptions as the small business issuer applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(b)(2)(vi) and (vii). 1. For awards reported in columns (f) and (g), include a footnote disclosing all assumptions made in the valuation, by reference to a discussion of those assumptions in the small business issuer's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item 402.

2. If at any time during the last completed fiscal year, the small business issuer has adjusted or amended the exercise price of stock options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (''repriced''), or otherwise has materially modified such awards, the small business issuer shall include, as awards required to be reported in column (g), the total fair value of options or SARs as so repriced or modified, measured as of the repricing or modification date.

3. All earnings on outstanding awards must be identified and quantified in a footnote to column (f) or (g), as applicable, whether the earnings were paid during the fiscal year, payable during the period but deferred, or payable by their terms at a later date.

(viii) The dollar value of all earnings for services performed during the fiscal year pursuant to non-stock based incentive plans as defined in paragraph (a)(5)(iii) of this Item, and all earnings on any outstanding non-stock incentive plan awards (column (h));

Instructions to Item 402(b)(2)(viii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-stock incentive plan compensation must be identified and quantified in a footnote to column (h), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(ix) All other compensation for the covered fiscal year that the small business issuer could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (d)–(h) must be reported in this column. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on non-qualified defined contribution plans;

(C) All ''gross-ups'' or other amounts reimbursed during the fiscal year for the payment of taxes;

(D) For any security of the small business issuer or its subsidiaries purchased from the small business issuer or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the small business issuer, the compensation cost computed in accordance with FAS 123R applying the same valuation model and assumptions as the small business issuer applies for financial statement reporting purposes;

(E) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the small business issuer and its subsidiaries; or

(*2*) A change in control of the small business issuer;

(F) Small business issuer contributions or other allocations to vested and unvested defined contribution plans;

(G) The aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial pension plans (including supplemental plans) accrued during the small business issuer's covered fiscal year; and

(H) The dollar value of any insurance premiums paid by, or on behalf of, the small business issuer during the covered fiscal year with respect to life insurance for the benefit of a named executive officer.

Instructions to Item 402(b)(2)(ix). 1. Incentive plan awards and earnings and earnings on restricted stock, options, SARs and similar awards are required to be reported elsewhere as provided herein. These

amounts and amounts received on exercise of options and SARs are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are reportable as All Other Compensation in column (i) if paid to the named executive officer during the period covered by the Table. Otherwise information concerning these plans is reportable pursuant to paragraph (e)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (b)(2)(ix)(C) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the small business issuer and its subsidiaries.

5. Regarding paragraph (b)(2)(ix)(B) of this Item, if the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Footnote disclosure may be provided disclosing the portion of any earnings that the registrant considers to be paid at an above-market rate, provided that the footnote explains the small business issuer's criteria for determining the portion considered to be above-market.

6. The disclosure required pursuant to paragraph (b)(2)(ix)(G) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental employee retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans.

Instructions to Item 402(b). 1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the small business issuer was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), 78*o*(d)) at any time during that year, except that the small business issuer will be required to provide information for such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (f) of this Item.

4. Amounts deferred at the election of a named executive officer or at the direction of the small business issuer, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned. The amount so deferred must be disclosed in a footnote to the applicable column.

(c) *Narrative disclosure to summary compensation table.* (1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (b) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten.

(ii) If at any time during the last fiscal year, any outstanding option, SAR or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification.

(iii) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (h) to the Summary Compensation Table required by paragraph (b) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition.

(iv) The material terms of each grant, including but not limited to date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered.

(v) The material terms of any non-option and non-SAR award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule.

(vi) The assumptions underlying any determination of an increase in the actuarial value of defined benefit and actuarial plans and the method of calculating earnings on deferred compensation plans including defined contribution plans.

(vii) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category in question set forth in paragraphs (b)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

(2) For up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any named executive officers, disclose each of such employee's total compensation for that year and describe their job positions.

(d) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning the number and value of unexercised options, SARs and similar instruments and nonvested stock (including restricted stock, restricted stock units or other similar instruments) and incentive plan awards for each named executive officer outstanding as of the end of the small business issuer's last completed fiscal year on an aggregated basis in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Number of securities underlying unexercised options (#) exercisable/ unexercisable	In-the-money amount of unexercised option (#) exercisable/ unexercisable	Number of shares or units of stock held that have not vested (#)	Market value of shares or units of stock held that have not vested ($)	Incentive plans: number of nonvested shares, units or other rights held (#)	Incentive plans: market or payout value of nonvested shares, units or other rights held ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
A						
B						

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The total number of securities underlying unexercised options, SARs and similar instruments with option-like features held at the end of the last completed fiscal year, including awards that have been transferred, separately identifying the exercisable and unexercisable options, SARs and similar instruments (column (b));

(iii) The aggregate in-the-money amount of unexercised options, SARs and similar instruments with option-like features held at the end of the fiscal year, including awards that have been transferred, separately identifying the exercisable and unexercisable options, SARs and similar instruments (column (c));

(iv) The total number of nonvested shares of stock (including restricted stock, restricted stock units or similar instruments that do not have option-like features) held at the end of the fiscal year (column (d));

(v) The aggregate market value of nonvested shares of stock (including restricted stock, restricted stock units or similar instruments that do not have option-like features) held at the end of the fiscal year (column (e));

(vi) The total number of nonvested shares, units or other rights awarded under any incentive plan, and, if applicable the number of shares underlying any such unit or right, held at the end of the fiscal year (column (f)); and

(vii) The aggregate market or payout value of nonvested shares, units or other rights awarded under any incentive plan held at the end of the fiscal year (column (g)).

Instructions to Item 402(d)(2). 1. In the title of the table, specify the applicable fiscal year of the small business issuer.

2. Options, SARs or similar instruments are in-the-money if the market price of the underlying securities exceeds the exercise or base price of the option, SAR or similar instrument. Compute the amounts in column (c) by determining the difference between the market price at fiscal year-end of the securities underlying the options, SARs or similar instruments and the exercise or base price of the options, SARs or similar instruments.

3. The expiration dates of options, SARs and similar instruments held at fiscal year-end, separately identifying the exercisable and unexercisable options, SARs and similar instruments must be disclosed by footnote to column (b). If the expiration date of an option, SAR or similar instrument held at fiscal year-end subsequently has occurred, state whether it was exercised or expired unexercised. The vesting dates of restricted stock shares and similar instruments and incentive plan awards held at fiscal-year end must be disclosed by footnotes to columns (d) and (f), respectively.

4. Compute the market values of stock (including restricted stock, restricted stock units or similar instruments) holdings reported in column (e) and equity-based incentive plan awards reported in column (g) by multiplying the closing market price of the small business issuer's stock at the end of the last completed fiscal year by the number of restricted stock or incentive plan award holdings, respectively.

(e) *Additional narrative disclosure.* Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental employee retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the small business issuer or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(f) *Compensation of directors.* (1) Provide the information specified in paragraph (f)(2) of this Item, concerning the compensation of the directors for the small business issuer's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name	Total ($)	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
A						
B						
C						

DIRECTOR COMPENSATION—Continued

Name	Total ($)	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
D						
E						

(2) The Table shall include:

(i) The name of each director, unless such director is also a named executive officer under Item 402(a) and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to Item 402(b) and otherwise as required pursuant to Items 402(c) and (e) (column (a));

(ii) The dollar value of total compensation for the covered fiscal year (column (b)). With respect to each director, disclose the sum of all amounts reported in columns (c) through (g);

(iii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (c));

(iv) For awards of stock, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar instruments that do not have option-like features, the aggregate grant date fair value computed in accordance with FAS 123R, applying the same valuation model and assumptions as the small business issuer applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (d));

(v) For awards of stock options, with or without tandem SARs, freestanding SARs and other similar instruments with option-like features (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R applying the same valuation model and assumptions as the small business issuer applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (e));

Instruction to Item 402(f)(2)(iv) and (v). Disclose, for each director, by footnote to the appropriate column, the outstanding equity awards at fiscal year end as would be required if the tabular presentation for named executive officers specified in paragraph (d) of this Item were required for directors.

(vi) The dollar value of all earnings for services performed during the fiscal year pursuant to non-stock-based incentive plans as defined in paragraph (a)(5)(iii) of this Item, and all earnings on any outstanding awards (column (f)); and

(vii) All other compensation for the covered fiscal year that the small business issuer could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item for the last completed fiscal year that is not properly reportable in columns (c)–(f) must be reported in this column and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (c)(6) of this Item. Such compensation must include, but is not limited to:

(A) All perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All earnings on compensation that is deferred on a basis that is not tax-qualified;

(C) All amounts reimbursed during the fiscal year for the payment of taxes;

(D) For any security of the small business issuer or its subsidiaries purchased from the small business issuer or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the small business issuer, the compensation cost computed in accordance with FAS 123R applying the same valuation model and assumptions as the small business issuer applies for financial statement reporting purposes;

(E) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the small business issuer;

(F) The aggregate increase in actuarial value to the director of all defined benefit and actuarial pension plans (including supplemental plans) accrued during the small business issuer's covered fiscal year;

(G) Small business issuer contributions or other allocations to vested and unvested defined contribution plans;

(H) Consulting fees earned from, or paid or payable by the small business issuer and/or its subsidiaries (including joint ventures);

(I) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs; and

(J) The dollar value of any insurance premiums paid by, or on behalf of, the small business issuer during the covered fiscal year with respect to life insurance for the benefit of a director.

Instruction to Item 402(f)(2)(vii). Programs in which small business issuers agree to make donations to one or more charitable institutions in a director's name, payable by the small business issuer currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (f)(2)(vii)(I) of this Item. Provide footnote disclosure of the total dollar amount and other material terms of each such program for which tabular disclosure is provided.

Instruction to Item 402(f)(2). Two or more directors may be grouped in a single row in the table if all of their elements of compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the table.

(3) *Narrative to director compensation table.* Provide a narrative description of any factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(f). In addition to the Instruction to paragraph (f)(2)(vii) of this Item, the following apply equally to paragraph (f) of this Item: Instructions 2 and 3 to paragraph (b) of this Item; the Instructions to paragraphs (b)(2)(iv) and (v) of this Item; the Instructions to paragraphs (b)(2)(vi) and (vii) of this Item; the Instructions to paragraph (b)(2)(viii) of this Item; the Instructions to paragraph (b)(2)(ix) of this Item; and paragraph (c)(6) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (f) of this Item that correspond to analogous disclosures provided for in paragraph (b) of this Item to which they refer.

6. Amend § 228.403 by revising paragraph (b) to read as follows:

§ 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.

* * * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the small business issuer or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(2) (§ 228.402(a)(2)), and directors and executive officers of the small business issuer as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d–3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount of shares and nature of beneficial ownership	(4) Percent of class

* * * * *

7. Revise § 228.404 to read as follows:

§ 228.404 (Item 404) Transactions with related persons and promoters.

(a) *Transactions with related persons.* Describe any transaction during the last two years, or any currently proposed transaction, in which the small business issuer was, or is to be, a participant and the amount involved exceeds the lesser of $120,000 or one percent of the average of the small business issuer's total assets for the last three completed fiscal years and in which any related person had, or will have, a direct or indirect material interest. Disclose the following information regarding the transaction:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the small business issuer, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in each transaction and of the amount of the related person's interest in each transaction each of which shall be computed without regard to the amount of profit or loss.

(4) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the last two years, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(5) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a). 1. For the purposes of paragraph (a) of this Item, the term *related person* means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the small business issuer;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of a related person identified in paragraph 1.a.i. or 1.a.ii. of this instruction; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§ 228.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, of such security holder and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a *transaction* includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the small business issuer's last fiscal year, including any required or optional payments due during or at the conclusion of the lease.

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the small business issuer's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of transactions involving indebtedness, the following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business.

5. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

a. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§ 228.402); or

b. The executive officer is not an immediate family member of a related person (as specified in Instruction 1. to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§ 228.402) as compensation earned for services to the small business issuer if the

executive officer was a named executive officer as that term is defined in Item 402(a)(2) (§ 228.402(a)(2)), and such compensation had been approved as such by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the small business issuer.

6. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reportable pursuant to Item 402(f) (§ 228.402(f)).

7. In the case of a transaction involving indebtedness, if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

a. Were made in the ordinary course of business;

b. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

c. Did not involve more than the normal risk of collectibility or present other unfavorable features.

8. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the small business issuer shall not be deemed to have an indirect ''material'' interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization which is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

9. Include information for any material underwriting discounts and commissions upon the sale of securities by the small business issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

(b) *Parents.* List all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

(c) *Promoters.* (1) Small business issuers that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the small business issuer and the nature and amount of any assets, services or other consideration therefor received or to be received by the small business issuer; and

(ii) As to any assets acquired or to be acquired by the small business issuer from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the small business issuer or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the small business issuer, also state the cost thereof to the promoter.

(2) Small business issuers shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a small business issuer that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a small business issuer, that acquired control of a small business issuer that is a shell company.

8. Add § 228.407 to read as follows:

§ 228.407 (Item 407) Corporate governance.

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the small business issuer under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the small business issuer does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the small business issuer must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the small business issuer shall use the applicable definition of independence, as follows:

(i) If the small business issuer is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the small business issuer's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the small business issuer. When determining whether the members of a committee of the board of directors are independent, the small business issuer's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the small business issuer uses for determining if a majority of the board of directors are independent. If the small business issuer does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the small business issuer uses for determining if a majority of the board of directors are independent.

(ii) If the small business issuer is not a listed issuer, a definition of independence of a national securities exchange or of a national securities association which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the small business issuer chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the member of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this item is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) or Form SB–2 (§ 239.10 of this chapter) under the Securities Act or on a Form 10 or Form 10–SB (§ 249.210 or § 249.210b of this chapter) under the Exchange Act where the small business issuer has applied for listing with a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the definition of independence that the small business issuer uses for determining if a majority of the board of directors is independent, and the definition of independence that the small business issuer uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the small business issuer has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the small business issuer uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the small business issuer's Web site. If so, provide the small business issuer's Web site address. If not, include a copy of these policies in an appendix to the small business issuer's proxy statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the small business issuer's last fiscal year. If a current copy of the policies is not available to security holders on the small business issuer's Web site, and is not included as an appendix to the small business issuer's proxy statement, identify the most recent fiscal years in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§ 228.404(a)) that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instruction to Item 407(a). No information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the small business issuer is not subject to the reporting requirements of sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), or 78*o*(d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

(b) *Board meetings and committees.* (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the small business issuer's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2). In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the small business issuer may instead provide the small business issuer's Web site address where such information appears.

(3) State whether or not the small business issuer has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the small business issuer has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (d)(4) of this Item.

(c) *Nominating committee.* (1) If the small business issuer does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the small business issuer's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the small business issuer's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the small business issuer's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the small business issuer's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source;

(viii) If the small business issuer pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the small business issuer's nominating committee received, by a date not later than the 120th calendar day before the date of the small business issuer's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the small business issuer's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the small business issuer's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix). 1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the small business issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the small business issuer's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the small business issuer receives the security holder recommendation a reasonable time before the small business issuer begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the small business issuer if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the small business issuer to evidence the required ownership percentage and holding period:

a. A written statement from the ''record'' holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§ 240.13d–101 of this chapter), Schedule 13G (§ 240.13d–102 of this chapter), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the small business issuer's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the small business issuer, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2). For purposes of paragraph (c)(2) of this Item, the term ''nominating committee'' refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the small business issuer's board of directors, where those changes were implemented after the small business issuer last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3). 1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a small business issuer's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the small business issuer's board of directors, where the small business issuer's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the small business issuer did not have in place such procedures, will constitute a material change.

(d) *Audit committee.* (1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A–3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1, AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the small business issuer's Annual Report on Form 10–K (17 CFR 249.310) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If you meet the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) You are a listed issuer, as defined in § 240.10A–3 of this chapter;

(B) You are filing either an annual report on Form 10–K or 10–KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be

taken with respect to the election of directors; and

(C) You are neither:

(*1*) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(*2*) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) *Audit committee financial expert.* (i)(A) Disclose that the small business issuer's board of directors has determined that the small business issuer either:

(*1*) Has at least one audit committee financial expert serving on its audit committee; or

(*2*) Does not have an audit committee financial expert serving on its audit committee.

(B) If the small business issuer provides the disclosure required by paragraph (d)(5)(i)(A)(*1*) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the small business issuer provides the disclosure required by paragraph (d)(5)(i)(A)(*2*) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i). If the small business issuer's board of directors has determined that the small business issuer has more than one audit committee financial expert serving on its audit committee, the small business issuer may, but is not required to, disclose the names of those additional persons. A small business issuer choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the small business issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) *Safe harbor.*

(A) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5). 1. The disclosure under paragraph (d)(5) of this Item is required only in a small business issuer's annual report. The small business issuer need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction E(3) to Form 10–KSB (17 CFR 249.310b).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the small business issuer shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(a)(4) (§ 228.401(a)(4)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. Following the effective date of the first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*) by a small business issuer, the small business issuer or successor issuer need not make the disclosures required by this Item in its first annual report filed pursuant to section 13(a) or 15(d) (15 U.S.C. 78m(a) or 78o(d)) of the Exchange Act after effectiveness.

Instructions to Item 407(d). 1. The information required by paragraphs (d)(1)–(3) of this Item shall not be deemed to be ''soliciting material,'' or to be ''filed'' with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 through 240.14b–2 or 240.14c–1 through 240.14c–101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the small business issuer specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the small business issuer specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1)–(3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a small business issuer's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) *Compensation committee.* (1) If the small business issuer does not have a standing compensation committee or

committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the small business issuer's processes and procedures for the consideration and determination of executive and director compensation, including:

(i)(A) The scope of authority of each of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement and identifying the executive officer within the small business issuer the consultants contacted in carrying out their assignment.

(f) *Shareholder communications and annual meeting attendance.* (1) State whether or not the small business issuer's board of directors provides a process for security holders to send communications to the board of directors and, if the small business issuer does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a process.

(2) If the small business issuer has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the small business issuer's process for determining which communications will be relayed to board members.

Instructions to Item 407(f). 1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the small business issuer may instead provide the small business issuer's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a small business issuer's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the small business issuer's process is approved by a majority of the independent directors.

3. For purposes of this paragraph, communications from an officer or director of the small business issuer will not be viewed as ''security holder communications.'' Communications from an employee or agent of the small business issuer will be viewed as ''security holder communications'' for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to § 240.14a–8 of this chapter, and communications made in connection with such proposals, will not be viewed as ''security holder communications.''

Instructions to Item 407. 1. For purposes of this Item:

a. *Listed issuer* means a listed issuer as defined in § 240.10A–3 of this chapter;

b. *National securities exchange* means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. *Inter-dealer quotation system* means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)); and

d. *National securities association* means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the small business issuer's Web site, and if so, provide the small business issuer's Web site address. If a current copy of the charter is not available to security holders on the small business issuer's Web site, include a copy of the charter in an appendix to the small business issuer's proxy statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the small business issuer's last fiscal year. If a current copy of the charter is not available to security holders on the small business issuer's Web site, and is not included as an appendix to the small business issuer's proxy statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

9. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

10. Amend § 229.201 by revising Instruction 2 to paragraph (d) to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

Instructions to paragraph (d). 1. * * *

2. For purposes of this paragraph, an ''individual compensation arrangement'' includes, but is not limited to, the following: a written compensation contract within the meaning of ''employee benefit plan'' under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(6)(ii) of Regulation S–K (§ 229.402(a)(6)(ii)).

* * * * *

§ 229.306 [Removed and reserved]

11. Remove and reserve § 229.306.

12. Amend § 229.401 by removing paragraphs (h), (i) and (j) and by revising paragraph (g)(1) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(g) *Promoters and control persons.* (1) Registrants, which have not been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), 78*o*(d)) for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is

applicable, and which had a promoter at any time during the past five fiscal years, shall describe with respect to any promoter, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this Item that occurred during the past five years and that are material to a voting or investment decision.

* * * * *

13. Revise § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) *General.* (1) *Treatment of foreign private issuers.* A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B and 6.E.2 of Form 20–F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

(2) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (l) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(3) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the ''named executive officers''):

(i) All individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year (''PEO''), regardless of compensation level;

(ii) All individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year (''PFO''), regardless of compensation level;

(iii) The registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and

(iv) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(iii) of this Item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(3). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(iii) of this Item), *provided, however*, that no disclosure need be provided for any executive officer, other than the PEO and PFO, whose total compensation does not exceed $100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a registrant to include as named executive officers one or more executive officers of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this Item an individual, other than its PEO or PFO, who is one of the registrant's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the PEO or PFO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO or PFO) served as an executive officer of the registrant (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by, or paid to any of the named executive officers required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this Item:

(i) The term *stock appreciation rights* (''SARs'') refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other performance measure. A *non-stock incentive plan* is an incentive plan or portion of an incentive plan where the relevant performance measure is not based on the price of the registrant's equity securities or the award does not permit settlement by issuance of registrant equity securities. The term *incentive plan award* means an award provided under an incentive plan.

(b) *Compensation discussion and analysis.* (1) Discuss the compensation awarded to, earned by, or paid to the named executive officers. The discussion shall explain all elements of the registrant's compensation of the named executive officers. The discussion shall describe the following:

(i) The objectives of the registrant's compensation programs;

(ii) What the compensation program is designed to reward and not reward;

(iii) Each element of compensation;

(iv) Why the registrant chooses to pay each element;

(v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay; and

(vi) How each compensation element and the registrant's decisions regarding that element fit into the registrant's overall compensation objectives and affect decisions regarding other elements.

(2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

(i) The policies for allocating between long-term and currently paid out compensation;

(ii) The policies for allocating between cash and non-cash

compensation, and among different forms of non-cash compensation;

(iii) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant's long-term goals, management's exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant);

(iv) For equity-based compensation, how the determination is made as to when awards are granted;

(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

(vi) How specific forms of compensation are structured to reflect the named executive officer's individual performance and/or individual contribution to these items of the registrant's performance, describing the elements of individual performance and/or contribution that are taken into account;

(vii) How specific forms of compensation are structured to reflect these items of the registrant's performance, including whether discretion can be exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of an award);

(viii) The factors considered in decisions to increase or decrease compensation materially;

(ix) How compensation or amounts realizable from prior compensation (*e.g.*, gains from prior option or stock awards) are considered in setting other elements of compensation (*e.g.*, how gains from prior option or stock awards are considered in setting retirement benefits);

(x) The impact of the accounting and tax treatments of the particular form of compensation;

(xi) The registrant's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any registrant policies regarding hedging the economic risk of such ownership;

(xii) Whether the registrant engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and

(xiii) The role of executive officers in determining executive compensation.

Instructions to Item 402(b). 1. The purpose of the Compensation Discussion and Analysis is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

2. The Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to this Item.

3. The Compensation Discussion and Analysis should focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions, and shall not use boilerplate language or repeat the more detailed information set forth in the tables and narrative disclosures that follow.

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the registrant.

(c) *Summary compensation table.* (1) General. Provide the information specified in paragraph (c)(2) of this Item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Total ($)	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
PEO	—							
	—							
	—							
PFO	—							
	—							
	—							
A	—							
	—							
	—							
B	—							
	—							
	—							
C	—							
	—							
	—							

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of total compensation for the covered fiscal year (column (c)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (d) through (i);

(iv) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

(v) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (e));

Instructions to Item 402(c)(2)(iv) and (v). 1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that

the amount of salary or bonus is expected to be determined, and such amount must be disclosed in a filing under Item 5.02(e) of Form 8–K (17 CFR 249.308).

2. Registrants need not include in the salary column (column (d)) or bonus column (column (e)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant's program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (*e.g.*, stock awards (column (f)); option awards (column (g)); all other compensation (column (i)); or if made pursuant to a non-stock incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Grants of Performance-Based Awards Table (required by paragraph (d) of this Item) where the award is reported.

(vi) For awards of stock, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units and other similar instruments that do not have option-like features, the aggregate grant date fair value computed in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (''FAS 123R''), as modified or supplemented, applying the same valuation model and assumptions as the registrant applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (f));

(vii) For awards of stock options, with or without tandem SARs, freestanding SARs and other similar instruments with option-like features (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R applying the same valuation model and assumptions as the registrant applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(c)(2)(vi) and (vii). 1. For awards reported in columns (f) and (g), include a footnote disclosing all assumptions made in the valuation, by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

2. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of stock options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (''repriced''), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (g), the total fair value of options or SARs as so repriced or modified, measured as of the repricing or modification date.

3. All earnings on outstanding awards must be identified and quantified in a footnote to column (f) or (g), as applicable, whether the earnings were paid during the fiscal year, payable during the period but deferred, or payable by their terms at a later date.

(viii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-stock incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (h)); and

Instructions to Item 402(c)(2)(viii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-stock incentive plan compensation must be identified and quantified in a footnote to column (h), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(ix) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (d)–(h) must be reported in this column and must be identified and quantified in a footnote if the amount of the item exceeds $10,000 (or in the case of any perquisite or personal benefit, must be identified unless the aggregate value of perquisites and personal benefits is less than $10,000, and must be quantified if it is valued at the greater of $25,000 or 10% of total perquisites and other personal benefits as specified in Instruction 3 to this paragraph). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on non-qualified defined contribution plans;

(C) All ''gross-ups'' or other amounts reimbursed during the fiscal year for the payment of taxes;

(D) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost computed in accordance with FAS 123R applying the same valuation model and assumptions as the registrant applies for financial statement reporting purposes;

(E) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant;

(F) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(G) The aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial pension plans (including supplemental plans) accrued during the registrant's covered fiscal year; and

(H) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer.

Instructions to Item 402(c)(2)(ix). 1. Incentive plan awards and earnings; earnings on restricted stock, options, SARs and similar awards; and amounts received on exercise of options and SARs are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are reportable as All Other Compensation in column (i) if paid to the named executive officer during the period covered by the Table. Otherwise information concerning these plans is reportable pursuant to paragraph (i) of this Item.

3. Each perquisite or personal benefit must be identified by type unless the aggregate value of perquisites and personal benefits is less than $10,000 and each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits must be quantified for a named executive officer pursuant to paragraph (c)(2)(ix)(A) of this Item, and each item reported for a named executive officer pursuant to paragraph (c)(2)(ix) of this Item that exceeds $10,000

must be identified by type and amount in a footnote to column (i). All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be so identified. Reimbursements of taxes owed with respect to perquisites or other personal benefits are subject to inclusion in column (i) and to separate quantification and identification as tax reimbursements (paragraph (c)(2)(ix)(C) of this Item) even if the associated perquisites or other personal benefits are not required to be separately quantified or the perquisite or other personal benefit is not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

5. Regarding paragraph (c)(2)(ix)(B) of this Item, if the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Footnote disclosure may be provided disclosing the portion of any earnings that the registrant considers to be paid at an above-market rate, provided that the footnote explains the registrant's criteria for determining the portion considered to be above market.

6. The disclosure required pursuant to paragraph (c)(2)(ix)(G) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental employee retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans.

Instructions to Item 402(c). 1. Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), 78*o*(d)) at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (l) of this Item.

4. Amounts deferred at the election of a named executive officer or at the direction of the registrant, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned. The amount so deferred must be disclosed in a footnote to the applicable column.

(d) *Grants of performance-based awards table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning each grant of an award made to a named executive officer in the last completed fiscal year under any performance-based plan (including a performance-based portion of any plan), including awards that subsequently have been transferred, in the following tabular format:

GRANTS OF PERFORMANCE-BASED AWARDS

Name	Perform-ance-based stock and stock-based incentive plans: num-ber of shares, units or other rights (#)	Perform-ance-based options: number of securities underlying options (#)	Non-stock incentive plan awards: number of units or other rights (#)	Dollar amount of consider-ation paid for award, if any ($)	Grant date for stock or option awards	Perform-ance or other period until vesting or payout and option expiration date	Estimated future payouts		
							Threshold ($) or (#)	Target ($) or (#)	Maximum ($) or (#)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The number of shares of performance-based stock, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or similar instruments that do not have option-like features granted under an award, and the number of shares, units or other rights granted under an award under any stock-based incentive plan (and if applicable, the number of shares underlying any such unit or right) (column (b));

(iii) The number of performance-based options, SARs, and similar instruments with option-like features (column (c)) granted under an award under any such plan;

(iv) The number of units or other rights granted under an award under any non-stock incentive plan (column (d));

(v) The dollar amount of consideration, if any, paid by the executive officer for the award (column (e));

(vi) The grant date for stock, option or similar awards reported in columns (b) and (c) (column (f));

(vii) The performance or other time period until earning, payout or maturation of the award, and the option/SAR expiration date (column (g)); and

(viii) The dollar value of the estimated future payout or the number of shares to be awarded in the future as the payout on satisfaction of the conditions in question, or the applicable range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (h) through (j)).

Instructions to Item 402(d). 1. Separate disclosure shall be provided in the Table for each grant of an award made to a named executive officer, accompanied by the information specified in Instruction 2 to this paragraph. If grants of awards were made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such grant was made.

2. For column (h), *threshold* refers to the minimum amount payable for a certain level of performance under the plan. For column (i), *target* refers to the amount payable if the specified performance target(s) are reached. For column (j), *maximum* refers to the maximum payout possible under the plan. If the award provides only for a single estimated payout, that amount should be reported as the *target* in column (i). In column (i), registrants must provide a representative amount based on the previous fiscal year's performance if the target amount is not determinable.

3. A tandem grant of two instruments, only one of which is performance-based, such as an option granted in tandem with a performance share, need be reported only in the table applicable to the other instrument. For example, an option granted in tandem with a performance share would be reported only as an option grant, with the tandem feature noted.

4. Options, SARs and similar option-like instruments granted in connection with a repricing transaction shall be reported in this table. See Instruction 2 to paragraphs (c)(2)(vi) and (vii) of this item.

(e) *Grants of all other equity awards table.* (1) Provide the information specified in paragraph (e)(2) of this Item, concerning each grant of an equity-based award that is not performance-based (including awards that subsequently have been transferred) made during the last completed fiscal year to each of the named executive officers in the following tabular format:

GRANTS OF ALL OTHER EQUITY AWARDS

Name	Number of securities underlying options granted (#)	Exercise or base price ($/Sh)	Expiration date	Number of shares of stock or units granted (#)	Vesting date	Grant date
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
PFO						
A						
B						
C						

(2) The Table shall include, with respect to each grant:

(i) The name of the executive officer (column (a));

(ii) The number of securities underlying options, SARs and similar option-like instruments granted that are not performance-based (column (b));

(iii) The per-share exercise or base price of the options, SARs and similar option-like instruments granted (column (c)). If such exercise or base price is less than the market price of the underlying security on the date of the grant, a separate, adjoining column shall be added showing market price on the date of the grant;

(iv) The expiration date of the options, SARs and similar option-like instruments (column (d));

(v) The number of shares of stock, including restricted stock, units and similar instruments that are not option-like, granted that are not performance-based (column (e));

(vi) The vesting date of the restricted shares, units and similar instruments (column (f)); and

(vii) The grant date of any options, stock or similar instruments reported in columns (b) and (e) (column (g)).

Instructions to Item 402(e). 1. The awards reportable in this Table are share-based awards that are not subject to a performance condition or a market condition, as those terms are defined in FAS 123R.

2. If more than one award was made to a named executive officer during the last completed fiscal year, a separate line should be used to disclose each such award. However, multiple option grants during a single fiscal year may be aggregated where each grant was made at the same exercise and/or base price and has the same expiration date. A single grant consisting of options, SARs and/or similar option-like instruments shall be reported as separate grants with respect to each tranche with a different exercise and/or base price or expiration date.

3. Options, SARs and similar option-like instruments granted in connection with a repricing transaction shall be reported in this Table. See Instruction 2 to paragraphs (c)(2)(vi) and (vii) of this Item.

4. Any material term of the grant or award, including but not limited to the date of exercisability, the number and nature of any tandem instruments, a reload feature, or a tax-reimbursement feature, must be described in a footnote.

5. If any provision of a grant or award (other than an antidilution provision) could cause the exercise price to be lowered, registrants must disclose that provision and its potential consequences either by a footnote or accompanying textual narrative.

6. In determining if the exercise or base price of the options, SARs and similar option-like instruments is less than the market price of the underlying security on the date of the grant, the registrant may use either the closing price per share of the security on an established public trading market on the date of the grant, or if no such market exists, any other formula prescribed for the security.

(f) *Narrative disclosure to summary compensation table and subsidiary tables.* (1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the tables required by paragraphs (c), (d) and (e) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten.

(ii) If at any time during the last fiscal year, any outstanding option, SAR or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification.

(iii) The material terms of any award reported in response to paragraph (d) of this Item, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule. For example, state where applicable that dividends will be paid on stock (including restricted stock, restricted stock units or other similar instruments), and if so, the applicable dividend rate and whether that rate is preferential. Describe the performance-based conditions, and any other material conditions, that are applicable to the award. Registrants are not required to disclose any factor, criteria or performance-related or other condition to payout or maturation of a

particular award that involves confidential commercial or business information, disclosure of which would adversely affect the registrant's competitive position. For purposes of the Table required by paragraph (d) of this Item and the narrative disclosure required by paragraph (f) of this Item, performance-based conditions include both performance conditions and market conditions, as those terms are defined in FAS 123R.

(iv) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation reported in column (h) to the Summary Compensation Table required by paragraph (c) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition.

(v) The assumptions underlying any determination of an increase in the actuarial value of defined benefit and actuarial plans and the method of calculating earnings on deferred compensation plans including defined contribution plans.

Instruction to Item 402(f)(1). 1. Include a discussion of provisions regarding post-termination compensation only to the extent disclosure of such compensation is required in the Summary Compensation Table pursuant to paragraph (c)(2)(ix)(E) of this Item; otherwise disclose these provisions pursuant to paragraph (k) of this Item.

2. The disclosure required by paragraph (f)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(2) For up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers, disclose each of such employee's total compensation for that year and describe their job positions.

(g) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (g)(2) of this Item, concerning the number and value of unexercised options, SARs and similar instruments; nonvested stock (including restricted stock, restricted stock units or other similar instruments); and incentive plan awards for each named executive officer outstanding as of the end of the registrant's last completed fiscal year on an aggregated basis in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Number of securities underlying unexercised options (#) exercisable/ unexercisable	In-the-money amount of unexercised options ($) exercisable/ unexercisable	Number of shares or units of stock held that have not vested (#)	Market value of nonvested shares or units of stock held that have not vested ($)	Incentive plans: number of nonvested shares, units or other rights held (#)	Incentive plans: market or payout value of nonvested shares, units or other rights held ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
PFO						
A						
B						
C						

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The total number of securities underlying unexercised options, SARs and similar instruments with option-like features held at the end of the last completed fiscal year, including awards that have been transferred, separately identifying the exercisable and unexercisable options, SARs and similar instruments (column (b));

(iii) The aggregate in-the-money amount of unexercised options, SARs and similar instruments with option-like features held at the end of the fiscal year, including awards that have been transferred, separately identifying the exercisable and unexercisable options, SARs and similar instruments (column (c));

(iv) The total number of nonvested shares of stock (including restricted stock, restricted stock units or similar instruments that do not have option-like features) held at the end of the fiscal year (column (d));

(v) The aggregate market value of nonvested shares of stock (including restricted stock, restricted stock units or similar instruments that do not have option-like features) held at the end of the fiscal year (column (e));

(vi) The total number of nonvested shares, units or other rights awarded under any incentive plan, and, if applicable the number of shares underlying any such unit or right, held at the end of the fiscal year (column (f)); and

(vii) The aggregate market or payout value of nonvested shares, units or other rights awarded under any incentive plan held at the end of the fiscal year (column (g)).

Instructions to Item 402(g)(2). 1. Options, SARs or similar instruments are in-the-money if the market price of the underlying securities exceeds the exercise or base price of the option, SAR or similar instrument. Compute the amounts in column (c) by determining the difference between the market price at fiscal year-end of the securities underlying the options, SARs or similar instruments and the exercise or base price of the options, SARs or similar instruments.

2. The expiration dates of options, SARs and similar instruments held at fiscal year-end, separately identifying the exercisable and unexercisable options, SARs and similar instruments must be disclosed by footnote to column (b). If the expiration date of an option, SAR or similar instrument held at fiscal year-end subsequently has occurred, state whether it was exercised or expired unexercised. The vesting dates of restricted stock shares and similar instruments and incentive plan awards held at fiscal-year end must be disclosed by footnotes to columns (d) and (f), respectively.

3. Compute the market values of stock (including restricted stock, restricted stock units or similar instruments)

holdings reported in column (e) and equity-based incentive plan awards reported in column (g) by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of restricted stock or incentive plan award holdings, respectively.

(h) *Option exercises and stock vested table.* (1) Provide the information specified in paragraph (h)(2) of this Item, concerning each exercise of stock options, SARs and similar instruments, and each vesting of stock, including restricted stock, restricted stock units and similar instruments, during the last completed fiscal year for each of the named executive officers on an aggregated basis in the following tabular format:

OPTION EXERCISES AND STOCK VESTED

Name of executive officer	Number of shares acquired on exercise or vesting (#)	Value realized upon exercise or vesting ($)	Grant date fair value previously reported in summary compensation table ($)
(a)	(b)	(c)	(d)
PEO—Options			
Stock			
PFO—Options			
Stock			
A—Options			
Stock			
B—Options			
Stock			
C—Options			
Stock			

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of securities for which the options, SARs and similar instruments were exercised, and the number of shares of stock, including restricted stock, restricted stock units and similar instruments that vested (column (b));

(iii) The aggregate dollar value realized upon exercise and vesting (column (c)); and

(iv) The grant date fair value previously reported in the Summary Compensation Table for the same options, SARs, and similar instruments, and the same shares of stock, including restricted stock, restricted stock units or similar instruments (column (d)).

Instructions to Item 402(h)(2). 1. Report in column (c), line 1, the aggregate dollar amount realized by the named executive officer upon exercise of the options, SARs and similar instruments. Compute the dollar amount realized upon exercise by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options, SARs or similar instruments. Do not include the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes. (Any such payment or other consideration provided by the registration is required to be disclosed in accordance with paragraph (c)(2)(ix) of this item.) Report in column (c), line 2, the aggregate dollar amount realized by the named executive officer upon the vesting of stock, including restricted stock, restricted stock units and similar instruments. Compute the aggregate dollar amount realized upon vesting by multiplying the number of shares of stock or units by the market value of the underlying shares on the vesting date.

2. Report in column (d), line 1, the aggregate grant date fair value previously reported in the registrant's Summary Compensation Table for the fiscal year of the grant for the options, SARs and similar instruments that were exercised by the named executive officer during the last completed fiscal year. Report in column (d), line 2, the aggregate grant date fair value previously reported in the registrant's Summary Compensation Table for the fiscal year of the grant for the shares of stock or units, including restricted stock, restricted stock units and similar instruments held by the named executive officer that vested during the last completed fiscal year. If the named executive officer was not previously a named executive officer during the fiscal year of the grant, report in column (d) the grant date fair value of the award valued in accordance with FAS 123R.

(i) *Retirement plan potential annual payments and benefits.* (1) Provide the information specified in paragraph (i)(2) of this Item with respect to each plan that provides for payments or other benefits at, following, or in connection with retirement, in the following tabular format:

RETIREMENT PLAN POTENTIAL ANNUAL PAYMENTS AND BENEFITS

Name	Plan name	Number of years credited service (#)	Normal retirement age (#)	Estimated normal retirement annual benefit ($)	Early retirement age (#)	Estimated early retirement annual benefit ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
PEO						
PFO						
A						
B						
C						

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The name of the plan (column (b));

(iii) The number of years of service credited to the named executive officer under the plan (column (c));

(iv) The normal retirement age under the plan (column (d));

(v) The estimated dollar amount of annual payments and benefits that the named executive officer would be entitled to receive upon attaining normal retirement age, or, if the named executive officer currently is eligible to retire, the dollar amount of annual payments and benefits that the named executive officer would be entitled to receive, if he or she had retired at the end of the registrant's last completed fiscal year (column (e));

(vi) The early retirement age, if applicable, under the plan (column (f)); and

(vii) The estimated dollar amount of annual payments and benefits that the named executive officer would be entitled to receive upon attaining early retirement age, or, if the named executive officer currently is eligible for early retirement under the plan, the dollar amount of annual payments and benefits that the named executive officer would be entitled to receive if he or she had so retired at the end of the registrant's last completed fiscal year (column (g)).

Instructions to Item 402(i)(2). 1. The disclosure required pursuant to this Table applies to each plan that provides for specified retirement payments and benefits, or payments and benefits that will be provided primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental employee retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. Provide a separate row for each such plan in which the named executive officer participates.

2. If a named executive officer's number of years of credited service with respect to any plan is different from the named executive officer's number of actual years of service with the registrant, provide footnote disclosure quantifying the difference and any resulting benefit augmentation.

3. *Normal retirement age* means normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. *Early retirement age* means early retirement age as defined in the plan, or otherwise available to the executive.

4. Quantification of payments and benefits should reflect the form of benefit currently elected by the executive, such as joint and survivor annuity or single life annuity, specifying that form in a footnote. Where the named executive officer is not yet eligible to retire, the dollar amount of annual payments and benefits that the named executive officer would be entitled to receive upon becoming eligible shall be computed assuming that the named executive officer will continue to earn the same amount of compensation as reported for the registrant's last fiscal year.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by the tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The material terms and conditions of payments and benefits available under the plan, including the plan's normal retirement payment and benefit formula and eligibility standards, and (if applicable) early retirement payment and benefit formula and eligibility standards. If the plan permits a lump sum distribution at the election of the executive or the registrant, quantify the amount of such distribution that would be available on such election as of the end of the registrant's last fiscal year, and disclose the valuation method and all material assumptions applied in quantifying such amount;

(ii) The specific elements of compensation (*e.g.*, salary, bonus, etc.) included in applying the payment and benefit formula, identifying each such element;

(iii) With respect to named executive officers'' participation in multiple plans, the reasons for each plan; and

(iv) Registrant policies with regard to such matters as granting extra years of credited service.

(j) *Nonqualified defined contribution and other deferred compensation plans.* (1) Provide the information specified in paragraph (j)(2) of this Item with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified in the following tabular format:

NONQUALIFIED DEFINED CONTRIBUTION AND OTHER DEFERRED COMPENSATION PLANS

Name	Executive contributions in last FY ($)	Registrant contributions in last FY ($)	Aggregate earnings in last FY ($)	Aggregate withdrawals/ distributions ($)	Aggregate balance at last FYE ($)
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					
A					
B					
C					

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The dollar amount of aggregate executive contributions during the registrant's last fiscal year (column (b));

(iii) The dollar amount of aggregate registrant contributions during the registrant's last fiscal year (column (c));

(iv) The dollar amount of aggregate interest or other earnings accrued during the registrant's last fiscal year (column (d));

(v) The aggregate dollar amount of all withdrawals by and distributions to the executive during the registrant's last fiscal year (column (e)); and

(vi) The dollar amount of total balance of the executive's account as of the end of the registrant's last fiscal year (column (f)).

Instruction to Item 402(j)(2). Provide a footnote quantifying the extent to which amounts reported in the contributions and earnings columns are reported as compensation in the last completed fiscal year in the registrant's Summary Compensation Table and amounts reported in the aggregate balance at last fiscal year end (column (f)) previously were reported as compensation to the named executive officer in the registrant's Summary Compensation Table for previous years.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;

(ii) The measures for calculating interest or other plan earnings (including whether such measure(s) are selected by the executive or the registrant and the frequency and manner in which selections may be changed), quantifying interest rates and other earnings measures applicable during the registrant's last fiscal year; and

(iii) Material terms with respect to payouts, withdrawals and other distributions.

(k) *Potential payments upon termination or change-in-control.* Regarding each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with any termination, including without limitation resignation, severance, retirement or a constructive termination of a named executive officer, or a change in control of the registrant or a change in the named executive officer's responsibilities, with respect to each named executive officer:

(1) Describe and explain the specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites;

(2) Describe and quantify the estimated annual payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided;

(3) Describe and explain the specific factors used to determine the appropriate payment and benefit levels under the various circumstances that trigger payments or provision of benefits;

(4) Describe and explain any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver of breach of such agreements; and

(5) Describe any other material factors regarding each such contract, agreement, plan or arrangement.

Instruction to Item 402(k). The registrant must provide quantitative disclosure under these requirements even where uncertainties exist as to amounts in given circumstances payable under these plans and arrangements. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make reasonable estimates and disclose material assumptions underlying such estimates in its disclosure. In such event the disclosure would require forward-looking information as appropriate. Perquisites and other personal benefits or property may be excluded only if the aggregate amount of such compensation will be less than $10,000. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 3 to paragraph (c)(2)(ix) of this Item.

(l) *Compensation of directors.* (1) Provide the information specified in paragraph (l)(2) of this Item, concerning the compensation of the directors for the registrant's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name	Total ($)	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-stock incentive plan compensation ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
A						
B						
C						
D						
E						

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs 402(d)–(k) (column (a)) of this Item;

(ii) The dollar value of total compensation for the covered fiscal year (column (b)). With respect to each director, disclose the sum of all amounts reported in columns (c) through (g);

(iii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (c));

(iv) For awards of stock, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar instruments that do not have option-like features, the aggregate grant date fair value computed in accordance with FAS 123R, applying the same valuation model and assumptions as the registrant applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (d));

(v) For awards of stock options, with or without tandem SARs, freestanding SARs and other similar instruments with option-like features (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R applying the same valuation model and assumptions as the registrant applies for financial statement reporting purposes, and all earnings on any outstanding awards (column (e));

Instruction to Item 402(l)(2)(iv) and (v). Disclose, for each director, by footnote to the appropriate column, the outstanding equity awards at fiscal year end as would be required if the tabular presentation for named executive officers specified in paragraph (g) of this Item were required for directors.

(vi) The dollar value of all earnings for services performed during the fiscal year pursuant to non-stock incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (f)); and

(vii) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item for the last completed fiscal year that is not properly reportable in columns (c)–(f) must be reported in this column and must be identified and quantified in a footnote if the amount of the item exceeds $10,000 (or in the case of any perquisites or personal benefits, must be itemized unless the aggregate value of perquisites and personal benefits is less than $10,000, and must be quantified if it is valued at the greater of $25,000 or 10% of total perquisites and personal benefits of the director). Such compensation must include, but is not limited to:

(A) All perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All earnings on compensation that is deferred on a basis that is not tax-qualified;

(C) All amounts reimbursed during the fiscal year for the payment of taxes;

(D) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost computed in accordance with FAS 123R applying the same valuation model and assumptions as the registrant applies for financial statement reporting purposes;

(E) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the registrant;

(F) The aggregate increase in actuarial value to the director of all defined benefit and actuarial pension plans (including supplemental plans) accrued during the registrant's covered fiscal year;

(G) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(H) Consulting fees earned from, or paid or payable by the registrant and/or its subsidiaries (including joint ventures);

(I) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs; and

(J) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a director.

Instruction to Item 402(l)(2)(vii). Programs in which registrants agree to make donations to one or more charitable institutions in a director's name, payable by the registrant currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (l)(2)(vii)(I) of this Item. Provide footnote disclosure of the total dollar amount and other material terms of each such program for which tabular disclosure is provided.

Instruction to Item 402(l)(2). Two or more directors may be grouped in a single row in the table if all of their elements of compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(l). In addition to the Instruction to paragraph (l)(2)(vii) of this Item, the following apply equally to paragraph (l) of this Item: Instructions 2 and 3 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iv) and (v) of this Item; Instructions to paragraphs (c)(2)(vi) and (vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item and Instructions to paragraph (c)(2)(ix). These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (l) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

Instruction to Item 402. Specify the applicable fiscal year in the title to each table required under this Item which calls for disclosure as of or for a completed fiscal year.

14. Amend § 229.403 by revising paragraph (b) to read as follows:

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

(a) * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§ 229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d–3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class

* * * * *

15. Revise § 229.404 to read as follows:

§ 229.404 (Item 404) Transactions with related persons and promoters.

(a) *Transactions with related persons.* Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had, or will have, a direct or indirect material interest. Disclose the following information regarding the transaction

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the registrant, including the related person's

position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in each transaction and of the amount of the related person's interest in each transaction, each of which shall be computed without regard to the amount of profit or loss.

(4) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(5) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a). 1. For the purposes of paragraph (a) of this Item, the term *related person* means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the registrant,

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of a related person identified in paragraph 1.a.i or 1.a.ii. of this instruction; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§ 229.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, of such security holder and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a *transaction* includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any required or optional payments due during or at the conclusion of the lease.

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of transactions involving indebtedness, the following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business.

5. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction, need not be provided pursuant to paragraph (a) of this Item if:

a. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§ 229.402); or

b. The executive officer is not an immediate family member of a related person (as specified in Instruction 1. to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§ 229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§ 229.402(a)(3)), and such compensation had been approved as such by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant.

6. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(l) (§ 229.402(l)).

7. In the case of a transaction involving indebtedness, if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

a. Were made in the ordinary course of business;

b. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

c. Did not involve more than the normal risk of collectibility or present other unfavorable features.

8. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect ''material'' interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization which is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

(b) *Review, approval or ratification of transactions with related persons.* (1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures.

(ii) The standards to be applied pursuant to such policies and procedures.

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures.

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

(c) *Promoters.* (1) Registrants that are filing a registration statement on Form S–1 or Form SB–2 under the Securities Act (§ 239.11 or § 239.10 of this chapter) or on Form 10 or Form 10–SB under the

Exchange Act (§ 249.210 or § 249.210b of this chapter) and that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights or any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(ii) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

(2) Registrants shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of an issuer that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, that acquired control of an issuer that is a shell company.

Instructions to Item 404. 1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S–4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.

2. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Item 7.B. of Form 20–F (17 CFR 249.220f) with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

16. Add § 229.407 to read as follows:

§ 229.407 (Item 407) Corporate governance.

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the registrant under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the registrant does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the registrant must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the registrant shall use the applicable definition of independence, as follows:

(i) If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the registrant's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the registrant. When determining whether the members of a committee of the board of directors are independent, the registrant's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent. If the registrant does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent.

(ii) If the registrant is not a listed issuer, a definition of independence of a national securities exchange or of a national securities association which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the registrant chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the member of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) or Form SB–2 (§ 239.10 of this chapter) under the Securities Act or on a Form 10 or Form 10–SB (§ 249.210 or § 249.210b of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the registrant uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the registrant's Web site. If so, provide the registrant's Web site address. If not, include a copy of these policies in an appendix to the registrant's proxy statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the policies is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement, identify the most recent fiscal years in which the

policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§ 229.404(a)), or for investment companies, Item 22(b) of Schedule 14 (§ 240.14a–101 of this chapter), that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instruction to Item 407(a). No information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the registrant is not subject to the reporting requirements of sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), 78*o*(d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

(b) *Board meetings and committees.* (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2). In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

(3) State whether or not the registrant has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (d)(4) of this Item.

(c) *Nominating committee.* (1) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the registrant's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

(viii) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix). 1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act (or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, the registrant's most recent report on Form N–CSR (§§ 249.331 and 274.128 of this chapter)), unless the party relying on such report knows or has reason

to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

a. A written statement from the ''record'' holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§ 240.13d–101 of this chapter), Schedule 13G (§ 240.13d–102 of this chapter), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2). For purposes of paragraph (c)(2) of this Item, the term *nominating committee* refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3). 1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

(d) *Audit committee.* (1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A–3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's Annual Report on Form 10–K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the annual report to shareholders required by section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(e)) and Rule 30d–1 (17 CFR 270.30d–1) thereunder) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If you meet the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) You are a listed issuer, as defined in § 240.10A–3 of this chapter;

(B) You are filing either an annual report on Form 10–K or 10–KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(C) You are neither:

(*1*) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(*2*) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) *Audit committee financial expert.* (i)(A) Disclose that the registrant's board of directors has determined that the registrant either:

(*1*) Has at least one audit committee financial expert serving on its audit committee; or

(*2*) Does not have an audit committee financial expert serving on its audit committee.

(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(*1*) of this Item, it must disclose the name of the audit committee financial expert and whether

that person is *independent*, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(*2*) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i). If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) *Safe harbor.* (A) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5). 1. The disclosure under paragraph (d)(5) of this Item is required only in a registrant's annual report. The registrant need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction G(3) to Form 10–K (17 CFR 249.310).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(e) (§ 229.401(e)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 229.1101) is not required to disclose the information required by paragraph (d)(5) of this Item.

Instructions to Item 407(d). 1. The information required by paragraphs (d)(1)–(3) of this Item shall not be deemed to be ''soliciting material,'' or to be ''filed'' with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 through 240.14b–2 or 240.14c–1through 240.14c–101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1)–(3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) *Compensation committee.* (1) If the registrant does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the registrant's processes and procedures for the consideration and determination of executive and director compensation, including:

(i)(A) The scope of authority of each of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement and identifying any

executive officer within the registrant the consultants contacted in carrying out their assignment.

(4) Under the caption ''Compensation Committee Interlocks and Insider Participation'':

(i) The registrant shall identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(A) Was, during the fiscal year, an officer or employee of the registrant;

(B) Was formerly an officer of the registrant; or

(C) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 (§ 229.404). In this event, the disclosure required by Item 404 (§ 229.404) shall accompany such identification.

(ii) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant, and any former officer of the registrant, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(iii) The registrant shall describe any of the following relationships that existed during the last completed fiscal year:

(A) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(B) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(C) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served a director of the registrant.

(iv) Disclosure required under paragraph (e)(4)(iii) of this Item regarding a compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 with respect to that person.

Instruction to Item 407(e)(4). For purposes of paragraph (e)(4) of this Item, the term *entity* shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(f) *Shareholder communications and annual meeting attendance.* (1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process.

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members.

Instructions to Item 407(f). 1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a registrant that is an investment company, a majority of the directors who are not ''interested persons'' of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

3. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as ''security holder communications.'' Communications from an employee or agent of the registrant will be viewed as ''security holder communications'' for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to § 240.14a–8 of this chapter, and communications made in connection with such proposals, will not be viewed as ''security holder communications.''

Instructions to Item 407. 1. For purposes of this Item:

a. *Listed issuer* means a listed issuer as defined in § 240.10A–3 of this chapter;

b. *National securities exchange* means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. *Inter-dealer quotation system* means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)); and

d. *National securities association* means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the registrant's Web site, and if so, provide the registrant's Web site address. If a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter in an appendix to the registrant's proxy statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

17. Amend § 229.601 to revise paragraph (b)(10)(iii)(C)(5) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(10) * * *

(iii) * * *

(C) * * *

(*5*) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information under Item 402(a)(1) (§ 229.402(a)(1)) and the public filing of the plan, contract or arrangement, or portion thereof, is not required in the registrant's home country and is not otherwise publicly disclosed by the registrant.

* * * * *

18. Amend § 229.1107 by revising paragraph (e) to read as follows:

§ 229.1107 (Item 1107) Issuing Entities.

* * * * *

(e) If the issuing entity has executive officers, a board of directors or persons performing similar functions, provide the information required by Items 401, 402, 403 404 and 407(a), (c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S–K (§§ 229.401, 229.402, 229.403, 229.404 and 229.407(a), (c)(3), (d)(4), (d)(5) and (e)(4)) for the issuing entity.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

19. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 77mm, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

20. Amend Form SB–2 (referenced in § 239.10) by revising Item 15 to read as follows:

Note: The text of Form SB–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form SB–2 Registration Statement Under the Securities Act of 1933

* * * * *

Item 15. Organization Within Last Five Years.

Furnish the information required by Item 404 of Regulation S–B and Item 407(a) of Regulation S–B.

* * * * *

21. Amend Form S–1 (referenced in § 239.11) by revising Item 11, paragraphs (l) and (n) to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–1 Registration Statement Under the Securites Act of 1933

* * * * *

Item 11. Information with Respect to the Registrant.

* * * * *

(l) Information required by Item 402 of Regulation S–K (§ 229.402 of this chapter), executive compensation, and information required by paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter), corporate governance;

* * * * *

(n) Information required by Item 404 of Regulation S–K (§ 229.404 of this chapter), transactions with related persons and promoters, and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter), corporate governance.

* * * * *

22. Amend Form S–3 (referenced § 239.13) by revising General Instruction I.A.3.(b) and the introductory text of General Instruction I.B.4.(c) to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3 * * *

A. *Registrant Requirements.* * * *

3. * * *

(b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8–K (§ 249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

* * * * *

B. *Transaction Requirements.* * * *

4. * * *

(c) The issuer also must have provided, within the twelve calendar months immediately before the Form S–3 registration statement is filed, the information required by Items 401, 402, 403 and 407(c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S–K (§ 229.401–§ 229.403 and § 229.407(c)(3),(d)(4), (d)(5) and (e)(4) of this chapter) to:

* * * * *

23. Amend Form S–4 (referenced in § 239.25) by revising Items 18(a)(7)(ii) and (iii) and 19(a)(7)(ii) and (iii) to read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–4 Registration Statement Under the Securities Act of 1933

* * * * *

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) * * *

(7) * * *

(ii) Item 402 of Regulation S–K (§ 229.402 of this chapter), executive compensation, and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter), corporate governance;

(iii) Item 404 of Regulation S–K (§ 229.404 of this chapter), transactions with related persons and promoters, and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter), corporate governance.

* * * * *

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) * * *

(7) * * *

(ii) Item 402 of Regulation S–K (§ 229.402 of this chapter), executive compensation, and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter), corporate governance;

(iii) Item 404 of Regulation S–K (§ 229.404), transactions with related persons and promoters, and Item 407(a) of Regulation S–K (§ 229.407(a)), corporate governance.

* * * * *

24. Amend Form S–11 (referenced in § 239.18) by revising Items 22 and 23 to read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–11 For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

* * * * *

Item 22. Executive Compensation.

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter), and the information required by paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter).

Item 23. Certain Relationships and Related Transactions.

Furnish the information required by Items 404 and 407(a) of Regulation S–K (§§ 229.404 and 229.407(a) of this chapter). If a transaction involves the purchase or sale of assets by or to the registrant, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Furthermore, if the assets have been acquired by the seller within five years prior to the transaction, disclose the aggregate depreciation claimed by the seller for federal income tax purposes. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

25. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

26. Amend § 240.13a–11 by revising paragraph (c) to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

27. Add § 240.13a–20 to read as follows:

§ 240.13a–20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 13(a) of the Act (15 U.S.C. 78m(a)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–B (§§ 228.402, 228.403, 228.404 or 228.407 of this chapter) or Item 402, 403, 404 or 407 of Regulation S–K (§§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and subheadings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) [Reserved].

Note to § 240.13a–20. In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague ''boilerplate'' explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

28. Amend § 240.14a–6 to revise paragraph (a)(4) to read as follows:

§ 240.14a–6 Filing requirements.

(a) * * *

(4) The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(6)(ii) of this chapter) or amendments to such a plan;

* * * * *

29. Amend § 240.14a–101 by:

a. Removing paragraphs (f), (g), and (h) of Item 7 and paragraph (b)(13)(iii) of Item 22;

b. Revising ''$60,000'' to read ''$120,000'' in the introductory text of Items 22(b)(7), (b)(8), and (b)(9); Instruction 2 to Item 22(b)(7); and Instruction 6 to Item 22(b)(9);

c. Revising Note C, Item 7(b), (c), (d), and (e), the introductory text of Item 8, the undesignated paragraph following Item 8(d), Item 10(b)(1)(ii), the Instruction to Item 10(b)(1)(ii), the introductory text of Item 22(b), Item 22(b)(11), the Instruction to paragraph (b)(11) of Item 22, and the introductory text of Item 22(b)(13); and

d. Adding Items 22(b)(15), (b)(16), and (b)(17).

The revisions and additions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes.

* * * * *

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationship at any time during the period. Information, other than information required by Item 404 of Regulation S–B or Item 404 of Regulation S–K, need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

* * * * *

Item 7. Directors and executive officers.

* * *

* * * * *

(b) The information required by Items 401, 404(a) and (b), 405 and 407(d)(4) and (d)(5) of Regulation S–K (§ 229.401, § 229.404, § 229.405 and § 229.407 of this chapter).

(c) The information required by Item 407(a) of Regulation S–K (§ 229.407 of this chapter).

(d) The information required by Item 407(b), (c)(1), (c)(2), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3) and (f) of Regulation S–K (§ 229.407 of this chapter).

(e) In lieu of the information required by this Item 7, investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a) must furnish the information required by Item 22(b) of this Schedule 14A.

* * * * *

Item 8. Compensation of directors and executive officers. Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter) and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter) if action is to be taken with regard to:

* * * * *

(d) * * *

However, if the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees. In the case of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a), furnish the information required by Item 22(b)(13) of this Schedule.

* * * * *

Item 10. Compensation plans. * * *

(b)(1) *Additional information regarding specified plans subject to security holder action.* * * *

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (i)(2) of Item 402 of Regulation S–K (§ 229.402(i)(2) of this chapter).

Instruction to paragraph (b)(1)(ii). In the case of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a), refer to Instruction 4 in Item 22(b)(13)(i) of this Schedule in lieu of

paragraph (i)(2) of Item 402 of Regulation S–K (§ 229.402(i)(2) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

(a) * * *

(b) *Election of Directors.* If action is to be taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to, in the case of business development companies, the information (and in the format) required by Item 7 and Item 8 of this Schedule 14A.

* * * * *

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a), and 405 of Regulation S–K (§§ 229.401(f) and (g), 229.404(a), and 229.405 of this chapter).

Instruction to paragraph (b)(11). Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Item 404(a) of Regulation S–K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

* * * * *

(13) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), for all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 (''Compensated Persons''):

* * * * *

(15)(i) Provide the information (and in the format) required by Item 407(b)(1), (b)(2) and (f) of Regulation S–K (§ 229.407(b)(1), (b)(2) and (f) of this chapter); and

(ii) Provide the following regarding the requirements for the director nomination process:

(A) The information (and in the format) required by Item 407(c)(1) and (c)(2) of Regulation S–K (§ 229.407(c)(1) and (c)(2) of this chapter); and

(B) If the Fund is a listed issuer (as defined in § 240.10A–3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)) that has independence requirements for nominating committee members, identify each director that is a member of the nominating committee that is not independent under the independence standards described in this paragraph. In determining whether the nominating committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the nominating committee are independent in compliance with the independence standards applicable for the members of the nominating committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the nominating committee, use the independence standards for the nominating committee in the listing standards applicable to the Fund.

(16) In the case of a Fund that is a closed-end investment company:

(i) Provide the information (and in the format) required by Item 407(d)(1), (d)(2) and (d)(3) of Regulation S–K (§ 229.407(d)(1), (d)(2) and (d)(3) of this chapter); and

(ii) Identify each director that is a member of the Fund's audit committee that is not independent under the independence standards described in this paragraph. If the Fund does not have a separately designated audit committee, or committee performing similar functions, the Fund must provide the disclosure with respect to all members of its board of directors.

(A) If the Fund is a listed issuer (as defined in § 240.10A–3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)) that has independence requirements for audit committee members, in determining whether the audit committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the audit committee are independent in compliance with the independence standards applicable for the members of the audit committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the audit committee, use the independence standards for the audit committee in the listing standards applicable to the Fund.

(B) If the Fund is not a listed issuer whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)), in determining whether the audit committee members are independent, use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)) which has requirements that a majority of the board of directors be independent and that has been approved by the Commission, and state which definition is used. Whatever such definition the Fund chooses, it must use the same definition with respect to all directors and nominees for director. If the national securities exchange or national securities association whose standards are used has independence standards for the members of the audit committee, use those specific standards.

(17) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), if a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

* * * * *

30. Amend § 240.15d–11 by revising paragraph (c) to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

31. Add § 240.15d–20 to read as follows:

§ 240.15d–20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 15(d) of the Act (15 U.S.C. 78o(d)) that is required to be disclosed pursuant to Items 402, 403, 404 or 407 of Regulation S–B (§§ 228.402, 228.403, 228.404 or 228.407 of this chapter) or Items 402, 403, 404 or 407 of Regulation S–K (§§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and subheadings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required

information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) [Reserved].

Note to § 240.15d–20. In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague ''boilerplate'' explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

§ 240.16b–3 [Amended]

32. Amend § 240.16b–3 by:

a. Adding ''and'' at the end of paragraph (b)(3)(i)(B);

b. Removing ''; and'' at the end of paragraph (b)(3)(i)(C) and in its place adding a period; and

c. Removing paragraph (b)(3)(i)(D).

PART 245—REGULATION BLACKOUT TRADING RESTRICTION (REGULATION BTR—BLACKOUT TRADING RESTRICTION)

33. The authority citation for Part 245 continues to read in part as follows:

Authority: 15 U.S.C. 78w(a), unless otherwise noted.

* * * * *

§ 245.100 [Amended]

34. Amend § 245.100, paragraph (a)(2), by revising the phrase ''paragraph (a) or (b) of Item 404'' to read ''paragraph (a) of Item 404''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

35. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

36. Amend Form 10 (referenced in § 249.210) by revising Items 6 and 7 to read as follows:

Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10

General Form for Registration of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

* * * * *

Item 6. Executive Compensation.

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter) and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter).

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter) and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter).

* * * * *

37. Amend Form 10–SB (referenced in § 249.210b), Information Required in Registration Statement, by revising Item 7 to read as follows:

Note: The text of Form 10–SB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–SB General Form for Registration of Securities of Small Business Issuers

* * * * *

Information Required in Registration Statement

* * * * *

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–B and Item 407(a) of Regulation S–B.

* * * * *

38. Amend Form 20–F (referenced in § 249.220f) by revising Instruction 4.(c)(v) to the Instructions as to Exhibits to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Instructions as to Exhibits

* * * * *

4.(a) * * *

(c) * * *

(v) Public filing of the management contact or compensatory plan, contract or arrangement, or portion thereof, is not required in the company's home country and is not otherwise publicly disclosed by the company.

* * * * *

39. Form 8–K (referenced in § 249.308) is amended by:

a. Revising General Instruction D;

b. Revising the last sentence of Instruction 1 to Item 1.01;

c. Revising the heading of Item 5.02;

d. Revising Item 5.02(b), the introductory text of Item 5.02(c), Item 5.02(c)(2) and (c)(3);

e. Adding Item 5.02(d)(5) and (e); and

f. Adding Instruction 3 to Item 5.02.

The revisions and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

D. Preparation of Report.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12b–12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13). To the extent that Item 1.01 and one or more other items of the form are applicable, registrants need not provide the number and caption of Item 1.01 so long as the substantive disclosure required by Item 1.01 is disclosed in the report and the number and caption of the other applicable item(s) are provided. All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

* * * * *

Item 1.01 Entry into a Material Definitive Agreement.

* * * * *

Instructions. 1. * * * An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) need not be disclosed under this item.

* * * * *

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

* * * * *

(b) If the registrant's principal executive officer, president, principal financial officer, principal accounting

officer, principal operating officer, or any person performing similar functions, or any named executive officer for the registrant's most recent fiscal year (as defined by Item 402(a)(3) of Regulation S-K (17 CFR 229.402(a)(3)), retires, resigns or is terminated from that position, or if a director retires, resigns, is removed, or refuses to stand for re-election (except in circumstances described in paragraph (a) of this Item 5.02), disclose the fact that the event has occurred and the date of the event.

(c) If the registrant appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions, disclose the following information with respect to the newly appointed officer:

(1) * * *

(2) the information required by Items 401(b), (d), (e) and Item 404(a) of Regulation S–K (17 CFR 229.401(b), (d), (e) and 229.404(a)), or, in the case of a small business issuer, Items 401(a)(4), (a)(5), (c), and Items 404(a) of Regulation S–B (17 CFR 228.401(a)(4), (a)(5), (c), and 228.404(a), respectively); and

(3) a brief description of any material plan, contract or arrangement (whether or not written) to which a covered officer is a party or in which he or she participates that is entered into or a material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(d) * * *

(5) a brief description of any material plan, contract or arrangement (whether or not written) to which the director is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(e) If the registrant enters into, adopts, or otherwise commences a material compensatory plan, contract or arrangement (whether or not written), as to which the registrant's principal executive officer, principal financial officer, or a named executive officer (as defined by Item 402(a)(3) of Regulation S–K (17 CFR 229.402(a)(3)) for the registrant's most recent fiscal year participates or is a party, or such compensatory plan, contract or arrangement is materially amended or modified, or a material grant or award under any such plan, contract or arrangement to any such person is made or materially modified, then the registrant shall provide a brief description of the terms and conditions of the plan, contract or arrangement and the amounts payable to the officer thereunder.

Instructions to paragraph (e). 1. Disclosure under this Item 5.02(e) shall be required whether or not the specified event is in connection with events otherwise triggering disclosure pursuant to this Item 5.02.

2. Grants or awards (or modifications thereto) made pursuant to a plan, contract or arrangement, that are materially consistent with the original terms of such plan, contract or arrangement, need not be disclosed under this Item 5.02(e), provided the registrant has previously disclosed such original terms and the grant, award or modification is disclosed when Item 402 of Regulation S–K (17 CFR 229.402) requires such disclosure.

3. If the salary and bonus of a named executive officer cannot be calculated as of the most recent practicable date and are omitted from the Summary Compensation Table as specified in Instruction 1 to Item 402(b)(2)(iv) and (v) of Regulation S–B or Instruction 1 to Item 402(c)(2)(iv) and (v) of Regulation S–K, disclose the appropriate information under this Item 5.02(e) when there is a payment, grant, award, decision or other occurrence as a result of which such amounts become calculable in whole or part. Disclosure is required even where Instruction 2 would permit such information not to be disclosed.

Instructions to Item 5.02.

* * * * *

3. The registrant need not provide information with respect to plans, contracts, and arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

* * * * *

40. Amend Form 10–Q (referenced in § 249.308a) by revising Item 5(b) in Part II to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

(a) * * *

(b) Furnish the information required by Item 407(c)(3) of Regulation S–K (§ 229.407).

* * * * *

41. Amend Form 10–QSB (referenced in § 249.308b) by revising Item 5(b) in Part II to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

(a) * * *

(b) Furnish the information required by Item 407(c)(3) of Regulation S–B (§ 228.407).

* * * * *

42. Amend Form 10–K (referenced in § 249.310) by revising Item 10 before the instruction and Items 11 and 13 in Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part III

* * * * *

Item 10. Directors, Executive Officers and Corporate Governance.

Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4) and (d)(5) of Regulation S–K (§§ 229.401, 229.405, 229.406, and 229.407(c)(3), (d)(4) and (d)(5) of this chapter).

* * * * *

Item 11. Executive Compensation.

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter) and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter).

* * * * *

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter) and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter).

* * * * *

43. Amend Form 10–KSB (referenced in § 249.310b) by revising Item 9 before the instruction and Item 12 in Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

Item 9. Directors, Executive Officers, Promoters, Control Persons and Corporate Governance; Compliance With Section 16(a) of the Exchange Act.

Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4)

and (d)(5) of Regulation S–B (§§ 228.401, 228.405, 228.406, and 228.407(c)(3), (d)(4) and (d)(5) of this chapter).

* * * * *

Item 12. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–B (§ 228.404 of this chapter) and Item 407(a) of Regulation S–B (§ 228.407(a) of this chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

44. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

45. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:

a. Revising ''$60,000'' to read ''$120,000'' in the introductory text of Items 12(b)(6), (b)(7), and (b)(8); Instruction 2 to Item 12(b)(6); and Instruction 5 to Item 12(b)(8); and

b. Removing the word ''relocation,'' in Instruction 2 to Item 15(b).

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

46. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by:

a. Removing paragraph 14(c) of Item 18;

b. Redesignating paragraphs 15 and 16 of Item 18 as paragraphs 16 and 17, respectively;

c. Adding new paragraph 15 of Item 18;

d. Revising ''$60,000'' to read ''$120,000'' in the introductory text of paragraphs 9, 10, and 11 of Item 18; Instruction 2 to paragraph 9 of Item 18; and Instruction 5 to paragraph 11 of Item 18;

e. Revising the introductory text of paragraph 14 of Item 18;

f. Removing ''relocation,'' from Instruction 2 to paragraph 2 of Item 21; and

g. Revising the cite ''Item 18.16'' to read ''Item 18.17'' in Instruction 8.a. to Item 24.

The addition and revision read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 18. Management.

* * * * *

14. In the case of a Registrant that is not a business development company, provide the following for all directors of the Registrant, all members of the advisory board of the Registrant, and for each of the three highest paid officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 (''Compensated Persons'').

* * * * *

15. In the case of a Registrant that is a business development company, provide the information required by Item 402 of Regulation S–K (17 CFR 229.402).

* * * * *

47. Amend Form N–3 (referenced in §§ 239.17a and 274.11b) by:

a. Revising ''$60,000'' to read ''$120,000'' in the introductory text of paragraphs (h), (i), and (j) of Item 20; Instruction 2 to paragraph (h) of Item 20; and Instruction 5 to paragraph (j) of Item 20; and

b. Removing the word ''relocation,'' in Instruction 2 to Item 22(b).

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

48. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by revising Item 10 to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 10. Submission of Matters to a Vote of Security Holders.

Describe any material changes to the procedures by which shareholders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S–K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a–101)), or this Item.

Instruction. For purposes of this Item, adoption of procedures by which shareholders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S–K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a–101)), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

* * * * *

Dated: January 27, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–946 Filed 2–7–06; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
February 8, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants—Gray Wolf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU53

Endangered and Threatened Wildlife and Plants; Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment; Removing the Northern Rocky Mountain Distinct Population Segment of Gray Wolf From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intention to conduct rulemaking to establish a distinct population segment (DPS) of the gray wolf (*Canis lupus*) in the Northern Rocky Mountains of the United States (NRM). The NRM DPS of gray wolf encompasses the eastern one-third of Washington and Oregon, a small part of north-central Utah, and all of Montana, Idaho, and Wyoming. The threats to the wolf population in the NRM DPS have been reduced or eliminated as evidenced by the population exceeding the numerical, distributional, and temporal recovery goals each year since 2002. The States of Montana and Idaho have adopted State laws and State wolf management plans that would conserve a recovered NRM wolf population within their boundaries into the foreseeable future. However, we have determined that Wyoming State law and its wolf management plan do not provide the necessary regulatory mechanism to assure that Wyoming's share of a recovered NRM wolf population will be conserved if the ESA's protections were removed. Therefore, we intend to conduct a future rulemaking to propose that the gray wolf in the NRM wolf DPS be removed from the List of Threatened and Endangered Wildlife under the Endangered Species Act of 1973 (ESA), as amended, if Wyoming adopts a State law and a State wolf management plan that is approved by the Service. Concerns regarding the Wyoming plan would have to be resolved before a NRM DPS delisting could be finalized. This ANPRM is being issued in advance of completion of the 12 month status review of NRM wolves. This status review remains in progress.

DATES: We request that comments on this notice be submitted by the close of business on April 10, 2006.

ADDRESSES: If you wish to comment, you may submit comments and materials concerning this notice, identified by ''RIN number 1018–AU53,'' by any of the following methods:

1. Federal e-Rulemaking Portal—*http://www.regulations.gov*. Follow the instructions for submitting comments.

2. E-mail—*NRMGrayWolf@fws.gov*. Include ''RIN number 1018–AU53'' in the subject line of the message.

3. Mail—U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601.

4. Hand Delivery/Courier—U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone (406) 449–5225, extension 204.

SUPPLEMENTARY INFORMATION:

Background

Gray wolves (*Canis lupus*) are the largest wild members of the dog family (Canidae). Adult gray wolves range from 40–175 pounds (lb) (18–80 kilograms [kg]) depending upon sex and region (Mech 1974). In the NRM, adult male gray wolves average over 100 lb (45 kg), but may weigh up to 130 lb (60 kg). Females weigh slightly less than males. Wolves' fur color is frequently a grizzled gray, but it can vary from pure white to coal black (Gipson *et al.* 2003). Wolves may appear similar to coyotes (*C. latrans*) and some domestic dog breeds (such as the German shepherd or Siberian husky) (*C. familiaris*). However, the gray wolf's size, long legs, narrow chest, large feet, wide head and snout, and straight tail distinguish it from both the coyote and dog.

Gray wolves have a circumpolar range including North America, Europe and Asia. The only areas within North America that lacked gray wolf populations prior to European settlement were southern and interior Greenland, the coastal regions of Mexico, Central America, coastal and other large parts of California, the extremely arid deserts and mountaintops of the western United States, parts of eastern and southeastern United States, and possibly southeastern Canada (Young and Goldman 1944; Hall 1981; Mech 1970; Nowak 1995, 2003; Wilson *et al.* 2000, 2003; Grewal *et al.* 2004). Some authorities question the reported historical absence of gray wolves from large parts of California (Carbyn in litt. 2000; Mech in litt. 2000; Schmidt 1987, 1991).

Wolves primarily prey on medium and large mammals. Wild prey species in the NRM include white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), moose (*Alces alces*), elk (*Cervus canadensis*), pronghorn antelope (*Antilocapra americana*), bison (*Bison bison*), bighorn sheep (*Ovis canadensis*), mountain goat (*Oreamnos americanus*), woodland caribou (*Rangifer caribou*), and beaver (*Castor canadensis*). While other small and mid-sized mammals, birds, large invertebrates, fish, and fruits are occasionally eaten, they are rarely important in the wolf's diet (Mech and Boitani 2003). Since 1987, wolves in the NRM also have preyed on domestic animals, including cattle (*Bos sp.*), sheep (*Ovis sp.*), llamas (*Lama glama*), horses (*Equus sp.*), goats (*Capra sp.*), and dogs (Service *et al.* 2005).

Wolves have a social structure, normally living in packs of 2 to 12 animals. Wolf packs are usually family groups consisting of a breeding pair, their pups from the current year, offspring from previous years, and an occasional unrelated wolf. Wolf pack structure can be ''complex'' (multiple generations) or ''simple'' (breeding pair and pups). In the NRM, pack sizes average about 10 wolves in protected areas, but a few complex packs have been substantially bigger in some areas of Yellowstone National Park (YNP) (D. Smith, Yellowstone NPS, pers. comm., 2005; Service *et al.* 2005). In areas where conflicts with humans and livestock are most prevalent, packs are typically smaller and are more likely to be ''simple.'' Packs typically occupy large distinct territories (200–500 square miles (mi^2) (518–1,295 square kilometers (km^2) and defend these areas from other wolves or packs. Once a given area is occupied by resident wolf packs, it becomes saturated and wolf numbers become regulated by the amount of available prey, intraspecies conflict, other forms of mortality, and dispersal.

Both male and female yearling wolves often disperse from their packs, although some non-breeding wolves remain with their natal packs for years. Dispersing wolves may cover large areas as lone animals as they try to join other packs or attempt to form their own pack in unoccupied habitat. Dispersal distances in the NRM average about 60 miles (mi) (97 kilometers (km)), but dispersals over 500 mi (805 km) have been documented (Boyd *et al.* in prep.; Boyd and Pletscher 1997).

Typically, only the top-ranking (''alpha'') male and female in each pack

breed and produce pups (Packard 2003; Smith, pers. comm., 2005; Service *et al.* 2005). Females and males typically begin breeding as 2-year olds and may annually produce young until they are over 10 years old. Litters are typically born in April and range from 1 to 11 pups, but average around 5 pups (Service 1992a; Service *et al.* 2001). Most years, 4 of these 5 pups survive until winter (Service *et al.* 2005). Wolves can live 13 years but the average lifespan in the NRM is about 4 years (Smith, pers. comm., 2005). Pups are raised by the entire pack. If alphas are lost when pups are very young, other pack members or even a single adult can successfully raise them (Boyd and Jimenez 1994; Brainerd *et al.* in prep.). Pup production and survival can increase when wolf density is lower and food availability per wolf increases (Fuller *et al.* 2003). Breeding members also can be quickly replaced either from within or outside the pack (Packard 2003; Brainerd *et al.* in prep.). Consequently, wolf populations can rapidly recover from severe disruptions, such as very high levels of human-caused mortality or disease. After severe declines, wolf populations can more than double in just 2 years if mortality is reduced; increases of nearly 100 percent per year have been documented in low-density suitable habitat (Fuller *et al.* 2003; Smith, pers. comm., 2005; Service *et al.* 2005).

Recovery

Background—As Europeans began settling the United States, they poisoned, trapped, and shot wolves, causing this once widespread species to be eradicated from most of its range in the 48 conterminous States (Mech 1970; McIntyre 1995). Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada by the 1930s (Young and Goldman 1944). Thereafter, only isolated observations of individuals and non-breeding pairs were reported in the area (Ream and Mattson 1982; Weaver 1978). After human-caused mortality of wolves in southwestern Canada was regulated in the 1960s, populations expanded southward (Carbyn 1983, Pletscher *et al.* 1991). Dispersing individuals occasionally reached the NRM (Ream and Mattson 1982; Nowak 1983), but lacked legal protection there until 1974 when they were listed as endangered under the ESA (39 FR 1171, January 4, 1974).

Recovery Planning and the Selection of Recovery Criteria—Shortly after listing we formed the interagency wolf recovery team to complete a recovery plan for the NRM population (Service 1980; Fritts *et al.* 1995). The NRM Wolf Recovery Plan (Rocky Mountain Plan) was approved in 1980 (Service 1980) and revised in 1987 (Service 1987). It specifies a recovery criterion of 10 breeding pairs of wolves (defined in 1987 as two wolves of opposite sex and adequate age, capable of producing offspring) for 3 consecutive years in each of 3 distinct recovery areas—(1) northwestern Montana (Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public lands), (2) central Idaho (Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; and adjacent, mostly Federal, lands), and (3) the Yellowstone National Park (YNP) area (including the Absaroka-Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas; and adjacent public lands). The Rocky Mountain Plan states that if 2 recovery areas maintain 10 breeding pairs for 3 successive years, gray wolves in the NRM can be reclassified to threatened status. It also states that if all 3 recovery areas maintain 10 breeding pairs for 3 successive years, the NRM wolf population can be considered fully recovered and can be considered for delisting.

The 1994 environmental impact statement (EIS) reviewed wolf recovery in the NRM and the adequacy of the recovery goals (Service 1994). The EIS indicated that the 1987 recovery goal was, at best, a minimal recovery goal, and that modifications were warranted on the basis of more recent information about wolf distribution, connectivity, and numbers. This review concluded that as a minimum the recovery goal should be, ''Thirty or more breeding pairs (*i.e.*, an adult male and an adult female wolf that have produced at least 2 pups that survived until December 31 of the year of their birth, during the previous breeding season) comprising some +300 wolves in a metapopulation (a population that exists as partially isolated sets of subpopulations) (Service 1994) with genetic exchange between subpopulations should have a high probability of long-term persistence.''

We conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002 (Bangs 2002). Relevant literature was reviewed (Fritts *et al.* 1994; Fritts and Carbyn 1995), and responses were received and evaluated from 50 of 88 experts contacted. This review showed that there is a wide variety of professional opinion about wolf population viability. Based on the review, we adopted the 1994 EIS's more relevant and stringent definition of wolf population viability and recovery (Service 1994) and began using entire States, in addition to recovery areas, to measure progress towards recovery goals (Service *et al.* 2002). We have determined that an essential part of achieving recovery is a well distributed number of wolf packs and individual wolves among the three States and the three recovery zones. While absolute equitable distribution is not necessary, a well distributed population with no one State maintaining a disproportionately low number of packs or number of individual wolves is needed.

Fostering Recovery—In 1982, a wolf pack from Canada began to occupy Glacier National Park along the United States Canada border. In 1986, the first litter of pups documented in over 50 years was born in the Park (Ream *et al.* 1989). Also in 1986, a pack denned just east of the Park on the Blackfeet Reservation, but was not detected until 1987, when they began to depredate livestock (Bangs *et al.* 1995). The number of wolves resulting from this ''natural'' recovery in northwestern Montana steadily increased for the next decade (Service *et al.* 2005).

In 1995 and 1996, we reintroduced wolves from southwestern Canada to remote public lands in central Idaho and YNP (Bangs and Fritts 1996; Fritts *et al.* 1997; Bangs *et al.* 1998). These wolves were classified as nonessential experimental populations under section 10(j) of the ESA to increase management flexibility and address local and State concerns (59 FR 60252 and 60266, November 22, 1994). This reintroduction and accompanying management programs greatly expanded the numbers and distribution of wolves in the NRM. Because of the reintroduction, wolves soon became established throughout central Idaho and the Greater Yellowstone Area (GYA) (Bangs *et al.* 1998; Service *et al.* 2005).

Monitoring and Managing Recovery—By 1989, we formed an interagency wolf working group (Working Group), composed of Federal, State, and tribal agency personnel (Bangs 1991; Fritts *et al.* 1995; Service 1989). The Working Group, whose membership has evolved as wolf range has expanded, conducted 4 basic recovery tasks, in addition to the standard enforcement functions associated with the take of a listed species. These tasks were—(1) monitor wolf distribution and numbers; (2) control wolves that attacked livestock by moving and other non-lethal measures or by killing them; (3) conduct research on wolf relationships to ungulate prey, other carnivores and scavengers, livestock, and people; and

(4) provide accurate science-based information to the public through reports and mass media so that people could develop their opinions about wolves and wolf management from an informed perspective (Service *et al.* 1989–2005).

The size and distribution of the wolf population is estimated by the Working Group each year and, along with other information, is published in interagency annual and weekly reports (Service *et al.* 1989–2005; Service 1998–2005). Since the early 1980s, the Service and our cooperating partners have radio-collared and monitored over 716 wolves in the NRM to assess population status, conduct research, and to reduce/resolve conflicts with livestock. The Work Group's annual population estimates represent the best scientific and commercial information available regarding year-end NRM gray wolf population size and trends, as well as distributional information.

At the end of 2000, the NRM population first met its numerical and distributional recovery goal of a minimum of 30 ''breeding pairs'' and over 300 wolves well-distributed among Montana, Idaho, and Wyoming (68 FR 15804, April 1, 2003; Service *et al.* 2003). That year, Montana attained 8 breeding pairs and approximately 97 wolves; Wyoming attained 12 breeding pairs and approximately 153 wolves; and Idaho attained 10 breeding pairs and 187 wolves. This minimum recovery goal was attainted or exceeded in 2001, 2002, 2003 and 2004. In 2001, Montana attained 7 breeding pairs and approximately 123 wolves; Wyoming attained 13 breeding pairs and approximately 189 wolves; and Idaho attained 14 breeding pairs and 251 wolves. In 2002, Montana attained 17 breeding pairs and approximately 183 wolves; Wyoming attained 18 breeding pairs and approximately 217 wolves; and Idaho attained 14 breeding pairs and 216 wolves. In 2003, Montana attained 10 breeding pairs and approximately 182 wolves; Wyoming attained 16 breeding pairs and approximately 234 wolves; and Idaho attained 25 breeding pairs and 345 wolves. In 2004, Montana attained 15 breeding pairs and approximately 153 wolves; Wyoming attained 24 breeding pairs and approximately 260 wolves; and Idaho attained 27 breeding pairs and 422 wolves. Figure 1 illustrates wolf population trends by State from 1979 to 2004. Official population estimates for 2005 are not yet available.

The following section discusses recovery within each of the three major recovery areas. Because the recovery areas cross State lines, the population estimates sum differently.

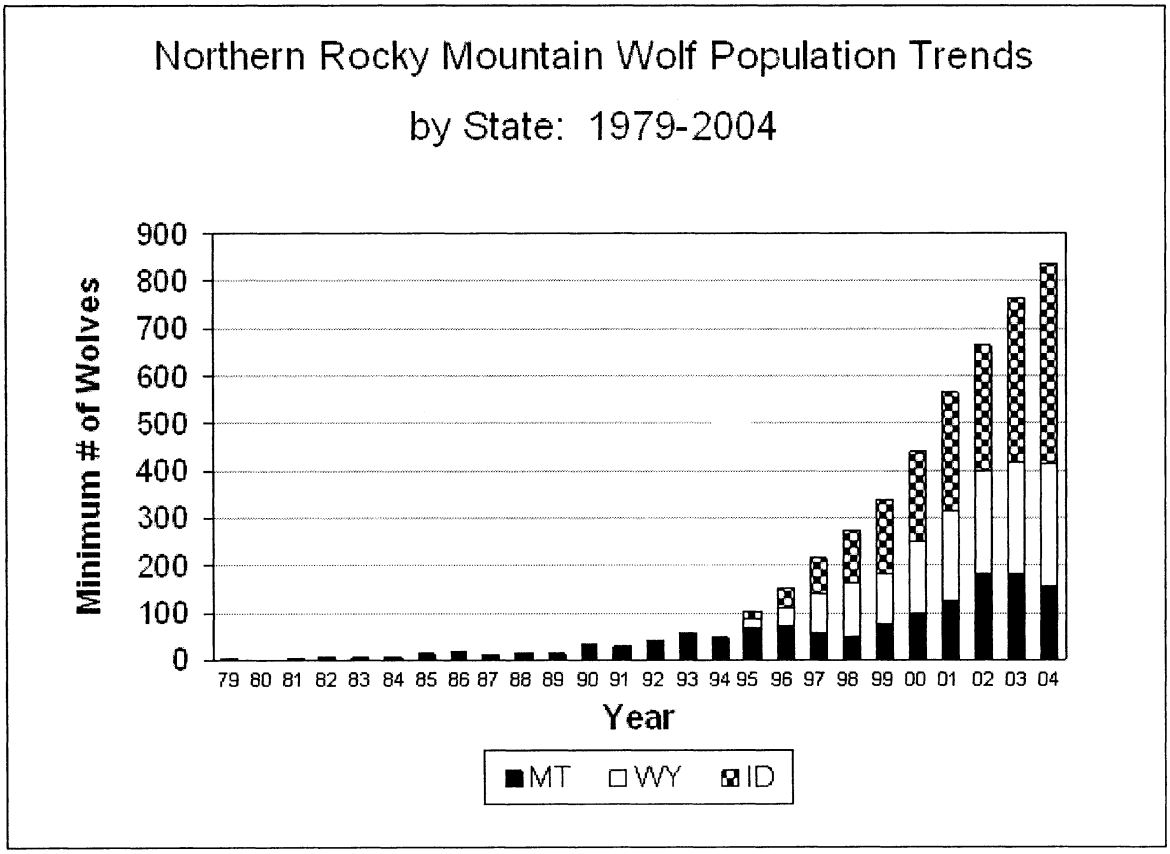

Figure 1: Northern Rocky Mountain wolf population estimates by State, as calculated and reported in the interagency annual wolf status reports (Service et al. 1989-2005).

Recovery in the Northwestern Montana Recovery Area—Reproduction first occurred in northwestern Montana in 1986. The natural ability of wolves to find and quickly recolonize empty habitat and the interagency recovery program combined to effectively promote an increase in wolf numbers. By 1996, the number of wolves had grown to about 70 wolves in 7 breeding pairs. However, since 1997 the number of breeding groups and number of wolves has fluctuated widely, varying from 4–12 breeding pairs and from 49–108 wolves (Service *et al.* 2005). Our

1998 estimate was a minimum of 49 wolves in 5 breeding pairs. In 1999, and again in 2000, 6 breeding pairs produced pups, and the northwestern Montana population increased to about 63 wolves. In 2001, we estimated that 84 wolves in 7 breeding pairs occurred; in 2002, there were an estimated 108 wolves in 12 breeding pairs; in 2003, there were an estimated 92 wolves in 4 breeding pairs; and in 2004, there were an estimated 59 wolves in 6 breeding pairs (Service *et al.* 2002, 2003, 2004, 2005). (See Figure 1.)

The likely reasons for the lack of further growth are that suitable wolf habitat in northwestern Montana is limited and wolf packs there are at a local social and biological carrying capacity. Some of the variation in our wolf population estimates for northwestern Montana is due to the difficulty of counting wolves in its' thick forests. Wolves in northwestern Montana prey mainly on white-tailed deer and pack size is smaller, which also makes packs more difficult to detect (Bangs *et al.* 1998). It appears that wolf numbers in northwestern Montana are likely to fluctuate around 100 wolves. Since 2001, this area has maintained an average of nearly 86 wolves and about 7 packs.

Northwestern Montana wolves are demographically and genetically linked to both the wolf population in Canada and to central Idaho (Pletscher *et al.* 1991; Boyd and Pletscher 1997). Wolf dispersal into northwestern Montana from both directions will continue to supplement this segment of the overall wolf population, both demographically and genetically (Boyd *et al.* in prep.; Forbes and Boyd 1996, 1997; Boyd *et al.* 1995).

Wolf conflicts with livestock have fluctuated with wolf population size and prey population density (Service *et al.* 2005). For example, in 1997, immediately following a severe winter that reduced white-tailed deer populations in northwestern Montana, wolf conflicts with livestock increased dramatically and the wolf population declined (Bangs *et al.* 1998). Wolf numbers increased as wild prey numbers rebounded. Unlike YNP or the central Idaho Wilderness, northwestern Montana lacks a large core refugium that contains over-wintering wild ungulates. Therefore, wolf numbers are not ever likely to be as high in northwestern Montana as they are in central Idaho or the GYA. However, the population has persisted for nearly 20 years and is robust today. State management, pursuant to the Montana State wolf management plan, will ensure this population continues to persist (see Factor D).

Recovery in the Central Idaho Recovery Area—In January 1995, 15 young adult wolves were captured in Alberta, Canada, and released by the Service in central Idaho (Bangs and Fritts 1996; Fritts *et al.* 1997; Bangs *et al.* 1998). In January 1996, an additional 20 wolves from British Columbia were released. Central Idaho contains the greatest amount of highly suitable wolf habitat compared to either northwestern Montana or the GYA (Oakleaf *et al.* in press). In 1998, the central Idaho wolf population consisted of a minimum of 114 wolves, including 10 breeding pairs (Bangs *et al.* 1998). By 1999, it had grown to about 141 wolves in 10 breeding pairs. By 2000, this population had 192 wolves in 10 breeding pairs and by 2001 it had climbed to about 261 wolves in 14 breeding pairs (Service *et al.* 2002). In 2002, there were 284 wolves in 14 breeding pairs; in 2003, there were 368 wolves in 26 breeding pairs; and by the end of 2004, there were 452 wolves in 30 breeding pairs (Service *et al.* 2003, 2004, 2005) (Figure 1).

Recovery in the Greater Yellowstone Area—In 1995, 14 wolves from Alberta, representing 3 family groups, were released in YNP (Bangs and Fritts 1996; Fritts *et al.* 1997; Phillips and Smith 1997). Two of the 3 groups produced young in late April. In 1996, this procedure was repeated with 17 wolves from British Columbia, representing 4 family groups. Two of the groups produced pups in late April. Finally, 10 five-month old pups removed from northwestern Montana, were released in YNP in the spring of 1997.

By 1998, the wolves had expanded from YNP to the GYA and the population consisted of 112 wolves, including 6 breeding pairs that produced 10 litters of pups. The 1999 population consisted of 118 wolves, including 8 breeding pairs. In 2000, the GYA had 177 wolves, including 14 breeding pairs, and there were 218 wolves, including 13 breeding pairs, in 2001 (Service *et al.* 2002). In 2002, there were an estimated 271 wolves in 23 breeding pairs; in 2003, there were an estimated 301 wolves in 21 breeding pairs; and in 2004, there were an estimated 324 wolves in 30 breeding pairs (Service *et al.* 2003, 2004, 2005) (Figure 1).

Preliminary estimates suggest that wolf numbers in GYA are down in 2005 (221 wolves in 13 breeding pairs) (Service September 9, 2005). The decline of wolves in YNP occurred because (1) highly suitable habitat is saturated with wolf packs; (2) conflict among packs appears to be limiting population density; (3) there are fewer elk than when reintroduction took place (White and Garrott 2006; Vucetich *et al.* 2005); and, (4) a suspected, but as yet unconfirmed, outbreak of canine parvovirus (CPV) or canine distemper, reduced pup survival in 2005. Additional significant growth in the YNP portion of the Wyoming wolf population is unlikely because suitable wolf habitat is saturated with resident wolf packs. Wolf recovery in the GYA segment of the NRM wolf DPS will likely depend on wolf packs living outside YNP in Wyoming.

In conclusion, having attained or exceeded the minimum numerical and distributional recovery goals for five consecutive years, the NRM wolf population has now achieved the biological criteria necessary for a viable and recovered wolf population.

Previous Federal Action

In 1974, four subspecies of gray wolf were listed as endangered including the NRM gray wolf (*Canis lupus irremotus*); the eastern timber wolf (*C. l. lycaon*) in the northern Great Lakes region; the Mexican wolf (*C. l. baileyi*) in Mexico and the southwestern United States; and the Texas gray wolf (*C. l. monstrabilis*) of Texas and Mexico (39 FR 1171, January 4, 1974). In 1978, we published a rule (43 FR 9607, March 9, 1978) relisting the gray wolf as endangered at the species level (*C. lupus*) throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened. At that time, critical habitat was designated in Minnesota and Isle Royale, Michigan.

On November 22, 1994, we designated unoccupied portions of Idaho, Montana, and Wyoming as two nonessential experimental population areas for the gray wolf under section 10(j) of the ESA. The Yellowstone Experimental Population Area consists of that portion of Idaho east of Interstate 15; that portion of Montana that is east of Interstate 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming (59 FR 60252, November 22, 1994). The Central Idaho Experimental Population Area consists of that portion of Idaho that is south of Interstate 90 and west of Interstate 15; and that portion of Montana south of Interstate 90, west of Interstate 15 and south of Highway 12 west of Missoula (59 FR 60266, November 22, 1994). This designation assisted us in initiating gray wolf reintroduction projects in central Idaho and the GYA (59 FR 60252, November 22, 1994). On January 6, 2005, we revised the regulations under

section 10(j) and liberalized management options for problem wolves (70 FR 1285). We also encouraged State and Tribal leadership in wolf management in the nonessential experimental population areas (70 FR 1286, January 6, 2005) where States and Tribes had Service-approved wolf management plans.

On July 13, 2000, we proposed to reclassify and delist the gray wolf in various parts of the contiguous United States (65 FR 43449). On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States from endangered to threatened (68 FR 15804). In terms of the NRM population, this rule (1) designated Washington, Oregon, California, Nevada, Montana, Idaho, Wyoming and the northern portions of Utah and Colorado as the Western gray wolf DPS (covering a larger area than proposed in 2000); (2) reclassified this DPS to threatened status, except in the experimental population areas; and (3) implemented a special regulation under section 4(d) of the ESA to allow increased management flexibility for problem wolves. On January 31, 2005, and August 19, 2005, the U.S. District Courts in Oregon and Vermont, respectively, concluded that the 2003 final rule was ''arbitrary and capricious'' and violated the ESA (*Defenders of Wildlife* v. *Norton*, 03–1348–JO, D. OR 2005; *National Wildlife Federation* v. *Norton*, 1:03–CV–340, D. VT. 2005). The courts' rulings invalidated the April 2003 changes to the ESA listing for the gray wolf. Therefore, the gray wolf in the Rocky Mountains, outside of areas designated as nonessential experimental populations, reverted back to the endangered status that existed prior to the 2003 reclassification.

The Service has received a number of petitions relevant to the NRM wolf population. On July 16, 1990, the Service received a petition from the Farm Bureau Federations of Wyoming, Montana, and Idaho to delist the gray wolf. On November 30, 1990, the Service published a finding that the petition did not present substantial information to indicate that the petitioned action may be warranted (55 FR 49656).

Subsequent to our July 13, 2000, reclassification proposal (65 FR 43449), but after the close of the comment period, we received petitions from Defenders of Wildlife to list, as endangered, gray wolf DPSs in the—(1) southern Rocky Mountains, (2) northern California-southern Oregon, and (3) western Washington. Because wolves were already protected as endangered throughout the 48 conterminous States, we did not need to take action on these petitions.

On October 30, 2001, we received a petition dated October 5, 2001, from the Friends of the Northern Yellowstone Elk Herd, Inc. (Friends Petition) that sought removal of the gray wolf from endangered status under the ESA (Karl Knuchel, P.C., A Professional Corporation Attorneys at Law, in litt., 2001a). Additional correspondence in late 2001 provided clarification that the petition only applied to the Montana, Wyoming, and Idaho population and that the petition requested full delisting of this population (Knuchel in litt. 2001b). Additionally, on July 19, 2005, we received a petition dated July 13, 2005, from the Office of the Governor, State of Wyoming and the Wyoming Game and Fish Commission (Wyoming Petition) to revise the listing status for the gray wolf (*Canis lupus*) by establishing the northern Rocky Mountain DPS and to concurrently remove the gray wolf in the NRM DPS from the Federal list of threatened and endangered species (Dave Freudenthal, Office of the Governor, State of Wyoming, in litt. 2005). On October 26, 2005, we published a finding that—(1) the Friends Petition failed to present a case for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted; and (2) the Wyoming petition presented substantial scientific and commercial information indicating that the NRM gray wolf population may qualify as a DPS and that this potential DPS may warrant delisting (70 FR 61770). We considered the collective weight of evidence and initiated a 12-month status review, which continues.

In June of 2003, the Nevada Department of Wildlife (NDOW) submitted a petition to delist wolves in Nevada. The NDOW petition asserted that the 1978 listing of gray wolves as endangered in Nevada and the 2003 reclassification of gray wolves as threatened in Nevada were in error. On December 9, 2005, we published a finding that the NDOW petition did not provide substantial information that the petitioned action may be warranted (70 FR 73190).

For additional information on previous Federal actions for gray wolves beyond the NRM, see the April 1, 2003, ''Final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the conterminous United States'' (68 FR 15804).

Distinct Vertebrate Population Segment Policy Overview

Pursuant to the ESA, we consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. To interpret and implement the DPS provision of the ESA and Congressional guidance, the Service and the National Marine Fisheries Service (NMFS) published, on December 21, 1994, a draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the ESA and invited public comments on it (59 FR 65884). After review of comments and further consideration, the Service and NMFS adopted the interagency policy as issued in draft form, and published it in the **Federal Register** on February 7, 1996 (61 FR 4722). This policy addresses the recognition of a DPS for potential listing, reclassification, and delisting actions.

Under our DPS policy, three factors are considered in a decision regarding the establishment and classification of a possible DPS. These are applied similarly for additions to the list of endangered and threatened species, reclassification of already listed species, and removals from the list. The first two factors—discreteness of the population segment in relation to the remainder of the taxon (*i.e., Canis lupus*); and the significance of the population segment to the taxon to which it belongs (*i.e., Canis lupus*)—bear on whether the population segment is a valid DPS. If a population meets both tests, it is a DPS and then the third factor is applied—the population segment's conservation status in relation to the ESA's standards for listing, delisting, or reclassification (*i.e.*, is the population segment endangered or threatened).

Analysis for Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions—(1) is markedly separated from other populations of the same taxon (*i.e., Canis lupus*) as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory

mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

Markedly Separated From Other Populations of the Taxon—The eastern edge of the tentative NRM wolf DPS (See Figure 2) is about 400 mi (644 km) from the western edge of the area currently occupied by the Great Lakes wolf population (eastern Minnesota) and is separated from it by hundreds of miles of unsuitable habitat (See discussion of suitable habitat in Factor A). The southern edge of the NRM wolf DPS border is about 450 mi (724 km) from the nonessential experimental populations of wolves in the southwestern United States with vast amounts of unoccupied marginal or unsuitable habitat separating them. No wolves are known to occur west of the contemplated DPS. No wolves from other populations are known to have dispersed as far as the borders of the NRM wolf DPS.

Although dispersal distance data for North America (Fritts 1983; Missouri Department of Conservation 2001; Ream *et al.* 1991; Boyd and Pletscher 1997; Boyd *et al.* in prep.) show that gray wolves can disperse over 500 mi (805 km) from existing wolf populations, the average dispersal of NRM wolves is about 60 mi (97 km). Only 7 of nearly 200 known NRM wolf dispersal events from 1994 through 2004 have been over 180 mi (290 km) (Boyd *et al.* in prep.). Six of these seven U.S. long-distance dispersers remained within the tentative DPS. None of those long-distance wolves found mates nor survived long enough to breed in the United States (Boyd in prep.). Of the three wolves that dispersed into eastern Oregon, two died and one was relocated by the Service back to central Idaho. Of the two wolves that dispersed into eastern Washington, one died and the other moved north into Canada. The wolf that dispersed to northern Utah was incidentally captured by a coyote trapper and relocated back to Wyoming by the Service.

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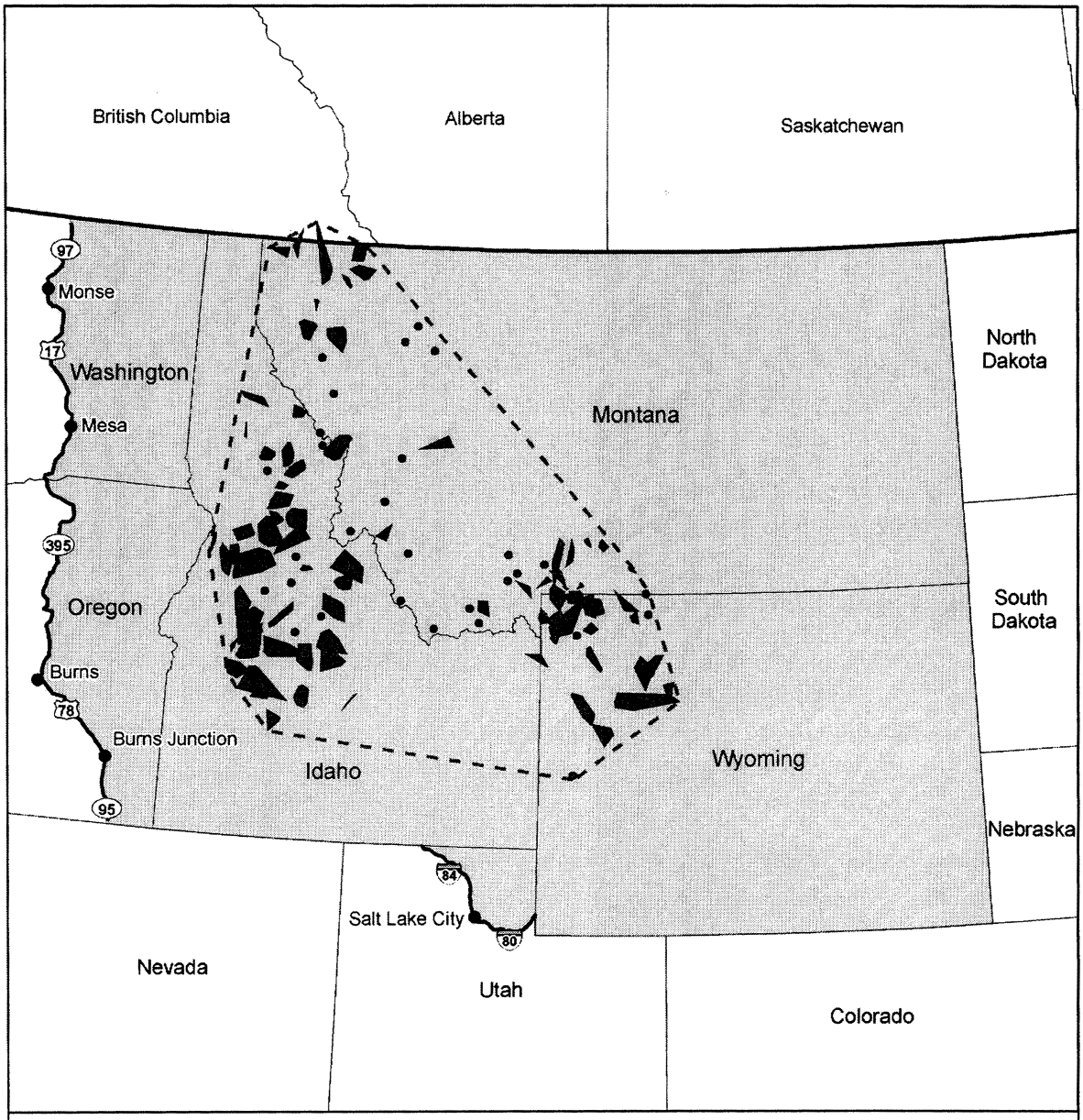
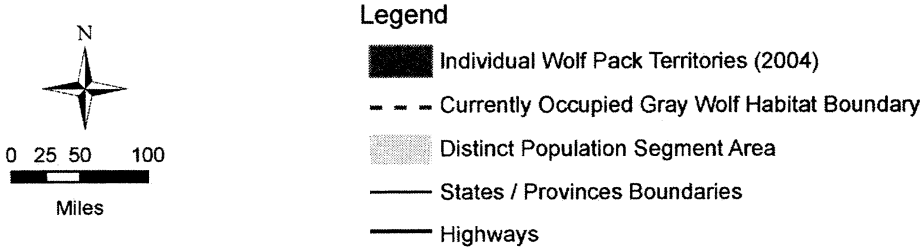


Figure 2: Distinct Population Segment area, including all currently occupied gray wolf habitat.



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The only wolf known to have dispersed (within the United States) beyond the border of the tentative NRM wolf DPS was killed by a vehicle collision along Interstate 70 in north-central Colorado.

No connectivity currently exists between the three U.S. gray wolf populations, nor are there any resident wolf packs in intervening areas. While it is theoretically possible that a lone wolf might transverse over 400 mi from one population to the other, it has never been documented and is extremely unlikely. Furthermore, the DPS Policy does not require complete separation of one DPS from other populations, but instead requires ''marked separation.''

Management Differences Among the United States and Canadian Wolf Populations—The DPS Policy allows us to use international borders to delineate

the boundaries of a DPS even if the current distribution of the species extends across that border. Therefore, we will continue to use the United States-Canada border to mark the northern boundary of the DPS due to the difference in control of exploitation, conservation status, and regulatory mechanisms between the two countries. About 52,000–60,000 wolves occur in Canada where suitable habitat is abundant (Boitani 2003). Because of this abundance, protection and intensive management are not necessary to conserve the wolf in Canada. This contrasts with the situation in the United States, where, to date, intensive management has been necessary to recover the wolf. Wolves in Canada are not protected by Federal laws and are only minimally protected in most Canadian provinces (Pletscher *et al.* 1991). If delisted, States in the NRM would carefully monitor and manage to retain populations at or above the recovery goal (see Factor D below). Significant differences exist in management between U.S.-Canadian wolf populations.

Analysis for Significance

If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon (*i.e., Canis lupus*) to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following—(1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and/or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. Below we address Factors 1 and 2. Factors 3 and 4 do not apply to the tentative NRM wolf DPS and thus are not included in our analysis for significance.

Unusual or Unique Ecological Setting—Within the range of holarctic wolves, the NRM is the only area where such a high diversity of large predators occupy the same areas as a large variety of native ungulate prey species, resulting in complex ecological interaction between the ungulate prey, predator, and scavenger groups (Smith *et al.* 2003). In the NRM wolf DPS, gray wolves share habitats with black bears (*Ursus americanus*), grizzly bears (*Ursus arctos horribilis*), cougars (*Felis concolor*), lynx (*Lynx canadensis*), wolverine (*Gulo gulo*), coyotes, badgers (*Taxidea taxus*), bobcats (*Felis rufus*), fisher (*Martes pennanti*), and marten (*Martes americana*). The unique and diverse assemblage of native prey include elk, mule deer, white-tailed deer, moose, bighorn sheep, mountain goats, pronghorn antelope, bison, and beaver. This complexity leads to unique ecological cascades in some areas, such as in YNP (Smith *et al.* 2003; Robbins 2004; Bangs and Smith in press). For example, wolves appear to be changing elk behavior and elk relationships and competition with other ungulates and other predators (*e.g.* cougars) that did not occur when wolves were absent. These complex interactions could be increasing streamside willow production and survival (Ripple and Beschta 2004), which in turn can affect beaver and nesting by riparian birds (Nievelt 2001). This suspected pattern of wolf-caused changes also may be occurring with scavengers, whereby wolf predation is providing a year-round source of food for a diverse variety of carrion feeders (Wilmers *et al.* 2003). The wolf population in the NRM has significantly extended the range of the gray wolf in the continental United States into a much more diverse, ecologically complex, and unique assemblage of species than is found elsewhere within historical wolf habitat in the northern hemisphere, including Europe and Asia.

Significant Gap in the Range of the Taxon—Loss of the NRM wolf population would represent a significant gap in the holarctic range of the taxon. As noted above, wolves once lived throughout most of North America. Wolves have been extirpated from most of the southern portions of their North American range. The loss of the NRM wolf population would represent a significant gap in the species' holarctic range in that this loss would create a 15 degree latitudinal or over 1,000 mi (1,600 km) gap across the Rocky Mountains between the Mexican wolf and wolves in Canada. If this potential gap were realized, substantial cascading ecological impacts would occur in that area (Smith *et al.* 2003; Robbins 2004; Bangs and Smith in press).

Given the wolf's historic occupancy of the conterminous States and the portion of the historic range the conterminous States represent, recovery in the lower 48 States has long been viewed as important to the taxon (*C. lupus*) (39 FR 1171, January 4, 1974; 43 FR 9607, March 9, 1978). The tentative NRM wolf DPS is significant in achieving this objective, as it is 1 of only 3 known occupied areas in the lower 48 States and constitutes nearly 20 percent of the remaining wolves in the conterminous States.

We believe, based on our analysis of the best available scientific information, that the NRM wolf DPS is significant to the taxon in that NRM wolves exist in a unique ecological setting and their loss would represent a significant gap in the range of the taxon. Therefore, the NRM wolf DPS appears to meet the criterion of significance under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments.

Defining the Boundaries of the Tentative NRM Wolf DPS

Although our DPS policy does not provide for State or other intra-national governmental boundaries to be used in determining the discreteness of a potential DPS, an artificial or manmade boundary may be used as a boundary of convenience in order to clearly identify the geographic area included within a DPS designation. Easily identifiable manmade features, such as roads and highways, also can serve as a boundary of convenience for delineating a DPS. The boundaries of the tentative NRM wolf DPS include all of Montana, Idaho, and Wyoming, the eastern third of Washington and Oregon, and a small part of north central Utah (See Figure 2). Specifically, the DPS includes that portion of Washington east of Highway 97 and Highway 17 north of Mesa and that portion of Washington east of Highway 395 south of Mesa. It includes that portion of Oregon east of Highway 395 and Highway 78 north of Burns Junction and that portion of Oregon east of Highway 95 south of Burns Junction. Finally, the DPS includes that portion of Utah east of Highway 84 and north of Highway 80. The centerline of these roads will be deemed the border of the DPS.

One factor considered in defining the boundaries of the NRM wolf DPS was the documented current distribution of all known wolf pack locations in 2004 (Figure 2) (Service *et al.* 2005). We also viewed the annual distribution of wolf packs back to 2002 (the first year the population exceeded the recovery goal) (Service *et al.* 2002, 2003, 2004). Our estimate of the overall area occupied by wolf packs in the NRM would not have substantially changed our conclusions had we included other years of data, so we used the most current information available. All known wolf packs in recent history have only been located in Montana, Idaho, and Wyoming. Only

occasional lone dispersing wolves from the NRM population have been documented beyond those three States, in eastern Washington, eastern Oregon, northern Utah, and central Colorado (Boyd *et al.* in prep.).

Dispersal distances played a key role in determining how far to extend the DPS. We examined the known dispersal distance of over 200 marked dispersing wolves from the NRM, primarily using radio-telemetry locations and recoveries of the carcasses of marked wolves from the 1980s until the present time (Boyd and Pletscher 1997; Boyd *et al.* in prep). These data indicate the average dispersal distance of wolves from the NRM for the last 10 years was about 60 mi (97 km) (Boyd *et al.* in prep.). We determined that 180 mi (290 km), three times the average dispersal distance, was a break-point for unusually long-distance dispersal out from existing wolf pack territories, in part, because only 7 wolves (none of which subsequently bred) have dispersed farther into the United States. Only dispersal within the United States was considered in these calculations because we were trying to determine the appropriate DPS boundaries within the United States. Dispersers to Canada were irrelevant because the Canadian border formed the northern edge of the DPS. Thus, we plotted the average dispersal distance and three times the average dispersal distance out from existing wolf pack territories. The resulting map indicated a wide-band of likely wolf dispersal that might be frequent enough to result in additional pack establishment from the core wolf population given the availability of nearby suitable habitat. Our specific data on wolf dispersal in the NRM may not be applicable to other areas of North America (Mech and Boitani 2003).

We also examined suitable wolf habitat in Montana, Idaho, and Wyoming (Oakleaf *et al.* in press) and throughout the western United States (Carroll *et al.* 2003, 2006) by comparing the biological and physical characteristics of areas currently occupied by wolf packs with the characteristics of adjacent areas that remain unoccupied by wolf packs. The basic findings and predictions of those models (Oakleaf *et al.* in press; Carroll *et al.* 2003, 2006) were similar in many respects. Suitable wolf habitat in the NRM wolf DPS is typically characterized by public land, mountainous forested habitat, abundant year-round wild ungulate populations, lower road density, lower numbers of domestic livestock that were only present seasonally, few domestic sheep, low agricultural use, and low human populations (See Factor A). The models indicate there is a large block of suitable wolf habitat in central Idaho and the GYA, and to a lesser extent northwestern Montana. These findings support the recommendations of the 1987 wolf recovery plan (Service 1987) that identified those three areas as the most likely locations to support a recovered wolf population. The models indicate there is little suitable habitat within the portion of the NRM wolf DPS in Washington, Oregon, or Utah. (See Factor A).

Unsuitable habitat also is important in determining the boundaries of our DPS. Model predictions by Oakleaf *et al.* (in press) and Carroll *et al.* (2003, 2006) and our observations during the past 20 years (Bangs 2004, Service *et al.* 2005) indicate that non-forested rangeland and croplands associated with intensive agricultural use (prairie and high desert) would preclude wolf pack establishment and persistence. This is due to chronic conflict with livestock and pets, local cultural intolerance of large predators, and wolf behavioral characteristics that make them extremely vulnerable to human-caused mortality in open landscapes (See Factor A). We looked at the distribution of large expanses of unsuitable habitat that would form a ''barrier'' or natural boundary separating the current population from both the southwestern and midwestern wolf populations and from the core of any other possible wolf population that might develop in the foreseeable future in the northwestern United States. It is important to note that the DPS Policy does not require complete separation of one DPS from other populations, but instead requires ''marked separation.'' Thus, if occasional individual wolves or packs disperse among populations, the NRM wolf DPS could still display the required discreteness.

Within the NRM wolf DPS, we included the eastern parts of Washington and Oregon and a small portion of north central Utah, because—(1) these areas are within a 60 to 180 mile (97 to 290 km) band from the core wolf population where dispersal is likely; (2) lone dispersing wolves have been found in these areas in recent times (Boyd *et al.* in prep.); (3) these areas contain some suitable habitat (see Factor A for a more in-depth discussion of suitable habitat); and (4) the potential for connectivity exists between these relatively small and fragmented habitat patches and the large blocks of suitable habitat in the NRM wolf DPS. If wolf packs do establish in these areas, they would be more connected to the core populations in central Idaho and northwestern Wyoming than to any future wolf populations that might become established in other large blocks of suitable habitat outside the NRM wolf DPS. As noted earlier, large swaths of unsuitable habitat would isolate these populations from other suitable habitat patches to the west or south.

Although we have received reports of individual and wolf family units in the North Cascades of Washington (Almack and Fitkin 1998), agency efforts to confirm them were unsuccessful and to date no individual wolves or packs have ever been documented there (Boyd and Pletscher 1997, Boyd *et al.* in prep.). Intervening unsuitable habitat makes it highly unlikely that wolves from the NRM population have dispersed to the North Cascades of Washington in recent history. However, if the wolf were to be delisted in the NRM wolf DPS, it would remain protected by the ESA as endangered outside the DPS. We will continue to provide recommendations for appropriate protections on a site-specific basis should wolves ultimately disperse into and form packs in areas outside of the NRM wolf DPS.

We would include all of Wyoming, Montana, and Idaho in the NRM wolf DPS because their State regulatory frameworks apply State-wide. We recognize that this includes large swaths of unsuitable habitat in eastern Wyoming and Montana. We chose not to extend the NRM wolf DPS border beyond eastern Montana and Wyoming to provide clearly delineated, easily understood boundaries for law enforcement purposes, consistency with State wolf regulations and planning efforts, and for administrative convenience. Including all of Wyoming in the NRM wolf DPS would also result in including portions of the Sierra Madre, the Snowy, and the Laramie Ranges. Oakleaf *et al.* (2006, pers. comm.) chose not to analyze these areas of SE Wyoming because they are fairly intensively used by livestock and are surrounded with, and interspersed by, private land, making pack establishment unlikely. While Carroll *et al.* (2003, 2006) indicated it was suitable habitat, the model optimistically predicted that under current conditions these areas were largely sink habitat and that by 2025 (within the foreseeable future) they were likely to be ranked as low occupancy because of increased human population growth and road development. Therefore, we do not consider these areas to be suitable wolf habitat and they were not significant factors in determining the DPS border.

Summary of Factors Affecting the Species

Section 4 of the ESA and regulations (50 CFR part 424) promulgated to implement the listing provisions of the ESA set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the ESA threaten the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data used for classification of the species.

A recovered population is one that no longer meets the ESA's definition of threatened or endangered. The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Determining whether a species is recovered requires consolidation of the same five categories of threats specified in section 4(a)(1). For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that could potentially affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the ESA's protections.

For the purposes of this notice, we consider ''foreseeable future'' as 30 years. We use 30 years to represent both a reasonable timeframe for analysis of future potential threats and relate this timeframe back to wolf biology. Wolves were listed in 1973 and reached recovery levels by 2002 in both the midwestern United States and the NRM wolf DPS. It has taken about 30 years for the causes of wolf endangerment to be alleviated and for those wolf populations to recover. The average lifespan of a wolf in YNP is 4 years and slightly less outside the Park (Smith, pers. comm., 2005). The average gray wolf breeds at 30 months of age and replaces itself in 3 years (Fuller *et al.* 2003). We used 10 wolf generations (30 years) to represent a reasonable biological timeframe to determine if impacts could be significant. Any serious threats to wolf population viability are likely to become evident well before a 30-year time horizon.

For the purposes of this notice, the ''range'' of this NRM wolf DPS is the area within the DPS boundaries where viable populations of the species now exist. However, a species' historic range is also considered because it helps inform decisions on the species status in its current range. While wolves historically occurred over most of the DPS, large portions of it are no longer able to support viable wolf populations.

Significance of a portion of the range is viewed in terms of biological significance. A portion of a species' range that is so important to the continued existence of the species that threats to the species in that area can threaten the viability of the species, subspecies, or DPS as a whole is considered to be a significant portion of the range. In regard to the NRM wolf DPS, the significant portions of the gray wolf's range are those areas that are important or necessary for maintaining a viable, self-sustaining, and evolving representative meta-population in order for the NRM wolf DPS to persist into the foreseeable future.

The following analysis examines all significant factors currently affecting wolf populations or likely to affect wolf populations within the foreseeable future. Factor A considers all factors affecting both currently occupied (defined below in Factor A) and potentially suitable habitat (defined below in Factor A). The issues discussed under Factors B, C, and E are analyzed throughout the entire DPS. Adequate regulatory mechanisms (Factor D) are discussed for each of the 6 States within the DPS and relevant tribes, with an emphasis on the three States with enough suitable habitat to sustain a viable wolf population (Wyoming, Montana, and Idaho).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As discussed in detail below, we believe that impacts to suitable and potentially suitable habitat will occur at levels that will not significantly affect wolf numbers or distribution in the NRM wolf DPS. Occupied suitable habitat in key areas of Montana, Idaho, and Wyoming is secure. These areas include Glacier, Teton, and Yellowstone National Parks and numerous USDA Forest Service Wilderness areas. Nearly two-thirds of the overall area is Federal and State public land. These areas will continue to be managed for high ungulate densities, moderate rates of seasonal livestock grazing, moderate-to-low road densities that will provide abundant native prey, low potential for livestock conflicts, and security from excessive unregulated human-caused mortality. The core recovery areas are also within proximity to one another and have enough public land between them to ensure sufficient connectivity to maintain the wolf population above recovery levels.

The NRM wolf DPS is 378,690 mi (980,803 km^2) and includes 158,807 mi^2 (411,308 km^2) of Federal land (42 percent); 20,734 mi^2 (53,701 km^2) of State land (5 percent); 15,068 mi^2 (39,026 km^2) of Tribal land (4 percent); and 180,543 mi^2 (467,604 km^2) of private land (48 percent). The DPS contains large amounts of 3 Ecoregion Divisions—Temperate Steppe (prairie) (120,521 mi^2 [312,148 km^2]); Temperate Steppe Mountain (forest) (156,341 mi^2 [404,921 km^2]); and Temperate Desert (high desert) (101,755 mi^2 [263,544 km^2]) (Bailey 1995). The following analysis focuses on suitable habitat within the DPS and currently occupied areas (which may include intermittent unsuitable habitat).

Suitable Habitat within the DPS—Wolves once occupied or transited most, if not all, of the NRM wolf DPS. However, much of the wolf s historic range within the DPS has been modified for human use and is no longer suitable habitat. We used two relatively new models, Oakleaf *et al.* (in press) and Carroll *et al.* (2006), to help us determine and estimate the current amount of suitable wolf habitat in the NRM wolf DPS. As expected, the Oakleaf *et al.* (in press) and Carroll *et al.* (2006) models predicted different amounts of theoretically suitable wolf habitat where their analysis overlapped because they used different models with different variables over different areas.

Oakleaf's basic model was a more intensive effort that only looked at potential wolf habitat in the NRM. It used roads accessible to two-wheel and four-wheel vehicles, topography (slope and elevation), land ownership, relative ungulate density (based on state harvest statistics), cattle and sheep density, vegetation characteristics (Ecoregions and land cover), and human density to comprise its geographic information system (GIS) layers. Oakleaf analyzed the characteristics of areas occupied and not occupied by NRM wolf packs through 2000 to predict what other areas in the NRM might be suitable or unsuitable for future wolf pack formation.

Our experience in wolf management for the past 20 years, and the persistence of wolf packs since recovery has been achieved, leads us to concur with the Oakleaf *et al.* (in press) model's predictions that the most important habitat attributes for wolf pack

persistence are forest cover, public land, high elk density, and low livestock density. Therefore, we believe that Oakleaf's calculations of the amount and distribution of suitable wolf habitat, in the parts of Montana, Idaho and Wyoming analyzed, represents the most reasonably realistic prediction of suitable wolf habitat in Montana, Idaho, and Wyoming.

In contrast, Carroll's model analyzed a much larger area (all 12 western States and northern Mexico) in a less specific way. Carroll's model used density and type of roads, human population density and distribution, slope, and vegetative greenness as ''pseudo-habitat'' to estimate relative ungulate density to predict associated wolf survival and fecundity rates. The combination of the GIS model and wolf population parameters were then used to develop estimates of habitat theoretically suitable for wolf pack persistence. In addition, Carroll predicted the potential effect of different levels of road and human density in 2025 to suitable wolf habitat in the western United States. We believe that the Carroll *et al.* (2006) model tended to be more liberal in identifying suitable wolf habitat under current conditions compared to Oakleaf model or our field observations indicated but it provided a valuable relative measure across the western United States upon which comparisons could be made. The Carroll model did not incorporate livestock density into its calculations as the Oakleaf model did. We believe that may in part explain why Carroll ranked more habitat as potentially suitable than appeared to be realistic based upon our observations of wolf pack persistence to date. Many of the more isolated primary habitat patches that the Carroll model predicted as currently suitable, were predicted as unsuitable by the year 2025, indicating they were likely on the lower end of what ranked as suitable habitat in that model. Because these types of areas were typically small and isolated from the core population segments, we do not believe they are currently suitable habitat based upon on our data on wolf pack persistence for the past 10 years (Carroll *et al.* 2003).

Despite the huge differences in each model's analysis area, layers, inputs, and assumptions, they had similar results and assumptions that are directly related to the NRM wolf DPS. These models were extremely valuable to us as we developed the DPS border and analyzed potentially suitable and unsuitable wolf habitat within the NRM wolf DPS. Both models predicted that most suitable wolf habitat in the NRM wolf DPS was in northwestern Montana, central Idaho, and the GYA and in the area currently occupied by the NRM wolf population. They also indicated that these three areas were connected. However, northwest Montana and Idaho were more connected to each other than the GYA, and collectively the three cores areas were surrounded by large areas of unsuitable habitat.

Both models ranked areas as suitable habitat if they had characteristics that suggested they might have a 50 percent or greater chance of supporting wolf packs. Suitable wolf habitat in the NRM wolf DPS was typically characterized by both models as public land with mountainous forested habitat and having abundant year-round wild ungulate populations, low road density, low numbers of domestic livestock that are only present seasonally, few domestic sheep, low agricultural use, and few people. Unsuitable wolf habitat was typically just the opposite (*i.e.*, private land, flat open prairie or desert, low or seasonal wild ungulate populations, high road density, high numbers of year-round domestic livestock including many domestic sheep, high levels of agricultural use, and many people). We generally agree with these criteria. A mix of these characteristics produced varying degrees of suitability. The full spectrum runs from highly suitable (*i.e.*, the northern range of YNP) to highly unsuitable (*i.e.*, a city or a sheep ranch in eastern Montana) and every imaginable combination between the two extremes.

These models are useful in understanding the relative proportions and distributions of various habitat characteristics and their relationships to wolf pack persistence rather than as predictors of absolute acreages or areas that can actually be occupied by wolf packs. Carroll *et al.* (2006) optimistically ranked 102,588 mi2 (265,703 km^2) and Oakleaf *et al.* (in press) ranked 65,725 mi^2 (170,228 km^2) of suitable habitat in Montana, Idaho and Wyoming. We believe that these models' assessments are reasonable and they generally support earlier predictions about wolf habitat suitability in the NRM (Service 1980, 1987, 1994). We used their findings to make interpretations and predictions about wolf pack distribution in relation to potentially suitable habitat in the NRM wolf DPS.

In the NRM wolf DPS, the estimated amounts of potentially suitable wolf habitat predicted by Carroll *et al.* (2006) in each State are—40,924 mi^2 (105,993 km^2) in Montana; 31,856 mi^2 (82,507 km^2) in Idaho; 29,808 mi^2 (77,202 km^2) in Wyoming; 2,556 mi^2 (6,620 km^2) in Oregon; 1,655 mi^2 (4,286 km^2) in Utah; and 297 mi^2 (769 km^2) in Washington. For perspective, a single wolf pack territory normally averages 200–500 mi^2 (518–1,295 km^2). Thus, approximately 28 percent of the NRM wolf DPS would be ranked as suitable habitat in accordance with the most liberal model available (Carroll *et al.* 2006). We used the Carroll model to assess relative habitat suitability in the entire NRM wolf DPS because the Oakleaf model only analyzed areas in Montana, Idaho, and Wyoming. Because theoretical models only define suitable habitat as those areas that have characteristics with a 50 percent or more chance of supporting wolf packs, it is impossible to give an exact acreage of suitable habitat that can actually be successfully occupied by wolf packs. It is important to note that these areas also have up to a 50 percent chance of not supporting wolf packs.

We considered data on the location of suitable wolf habitat from a number of sources in developing our estimate of suitable wolf habitat in the NRM wolf DPS. This included the locations estimated in the 1987 wolf recovery plan (Service 1987), the primary analysis areas analyzed in the 1994 EIS for the GYA (24,600 mi^2 [63,700 km^2]) and central Idaho (20,700 mi^2 [53,600 km^2]) (Service 1994), information derived from theoretical models by Carroll *et al.* (2006) and Oakleaf *et al.* (in press), and our nearly 20 years of field experience managing wolves in the NRM. Oakleaf predicted that there was 65,725 mi^2 (170,227 km^2) of suitable habitat in Montana, Idaho, and Wyoming. Carroll predicted that there was 107,096 mi^2 (277,377 km^2) of suitable habitat within the NRM wolf DPS, and 102,588 mi^2 (265,702 km^2) (96 percent) of that was in Montana, Idaho, and Wyoming. We agree with Oakleaf *et al.* (in press) on the area they concluded is suitable wolf habitat and that there is roughly 65,000 mi^2 (168,000 km^2) of suitable wolf habitat that is realistically available for persistent wolf pack formation in the NRM wolf DPS in Montana, Idaho, and Wyoming under current conditions. Although Carroll determined there maybe some potentially suitable wolf habitat (<5,000 mi^2 [13,000 km^2]) in the NRM wolf DPS outside of Montana, Idaho and Wyoming, we believe it is marginally suitable at best and is insignificant to wolf population recovery because it occurs in small isolated fragmented areas.

Currently Occupied Habitat—The area ''currently occupied'' by the NRM wolf population was calculated by drawing a line around the outer points

of radio-telemetry locations of all known wolf pack (n = 110) territories in 2004 (See Figure 2) (Service *et al.* 2005). We defined occupied wolf habitat as that area confirmed as being used by resident wolves to raise pups or that is consistently used by two or more wolves for longer than one month (Service 1994). Although we relied upon 2004 wolf monitoring data (Service *et al.* 2005), the overall distribution of wolf packs has been similar since 2000 when the numerical and distributional recovery goal was first reached (Service *et al.* 2001–2005). This general distribution of wolf packs would be maintained after delisting because delisting would occur only if Montana, Idaho, and Wyoming committed to manage wolves in their State above the minimum 10 breeding pair and 100 individual wolves recovery level per State. We included areas between the core recovery segments as occupied wolf habitat even though wolf packs did not use certain portions of it. While models ranked some of it as unsuitable habitat, those intervening areas are important to maintaining the meta-population structure since dispersing wolves routinely travel through those areas (Service 1994; Bangs 2002). This would include areas such as the Flathead Valley and other smaller valleys intensively used for agriculture, and a few of the smaller isolated mountain ranges surrounded by agricultural lands in west-central Montana.

We estimate approximately 106,384 mi² (275,533 km²) of occupied habitat in parts of Montana (48,343 mi² [125,208 km²]); Idaho (44,907 mi² [116,309 km²]); and Wyoming (13,134 mi² [34,017 km²]). As noted above, occupancy is limited to these three States and includes both suitable and unsuitable areas (especially in the areas between wolf pack territories). Although currently occupied habitat includes some prairie (1,733 mi² [4,488 km²]) and some high desert (9,451 mi² [24,478 km²]), wolf packs did not use these habitat types successfully. Since 1986, no persistent wolf pack has had a majority of its home range in high desert or prairie habitat. Landownership in the occupied habitat area is 70,844 mi² (183,485 km²) Federal (67 percent); 4,717 mi² (12,217 km²) State (4.4 percent); 1,183 mi² (3,064 km²) Tribal (1.7 percent); and 27,675 mi² (71,678 km²) private (26 percent).

We determined that the current wolf population is a three segment meta-population and that the overall area used by the NRM wolf population has not significantly expanded since the population achieved recovery in 2002. This indicates there is probably limited suitable habitat for the population to expand significantly beyond its current borders. Carroll's model predicted that 63,901 mi² (165,503 km²) of suitable habitat (62 percent) was within the occupied area, however, the model's remaining potentially (38 percent) suitable habitat in Montana, Idaho, and Wyoming was often fragmented and in smaller, more isolated patches. Suitable habitat within the occupied area, particularly between the population segments is important to maintain the overall population. Habitat on the outer edge of the meta-population is insignificant to maintaining the NRM wolf population's viability or maintaining the population throughout a significant portion of its range in the NRM wolf DPS. Oakleaf predicted that there was 65,725 mi² (170,227 km²) of suitable habitat in Montana, Idaho, and Wyoming. Roughly 57,374 mi² (148,599 km²) or 87 percent of that is within the area we describe as the area currently occupied by the NRM wolf population. We consider this 57,374 mi² (148,599 km²) of occupied suitable habitat as the significant portion of the recovered wolf population's range because it is the only area required to maintain the wolf population above recovery levels for the foreseeable future and it is important to the continued existence of wolves in the NRM wolf DPS. Threats to this area would have the effect of threatening the viability of the NRM wolf DPS. These 57,374 mi² (148,599 km²) are also necessary for maintaining a viable, self-sustaining, and evolving representative meta-population in order for the NRM wolf DPS to persist into the foreseeable future.

We believe the remaining roughly 13 percent of theoretical suitable wolf habitat that is unoccupied is primarily outside the NRM wolf population area, is unimportant to maintaining the recovered wolf population, and thus is not a significant portion of the range of the NRM wolf DPS. The requirement that Montana, Idaho, and Wyoming each maintain at least 10 breeding pairs and 100 wolves in mid-winter insures that the recovered wolf population will be maintained throughout a significant portion of its range in the NRM wolf DPS into the foreseeable future. The NRM wolf population occupies nearly 100 percent of the recovery areas recommended in the 1987 recovery plan (*i.e.*, the central Idaho, the GYA, and the northwestern Montana recovery areas) (Service 1987) and nearly 100 percent of the primary analysis areas (the areas where suitable habitat was believed to exist and the wolf population would live) analyzed for wolf reintroduction in central Idaho and the GYA (Service 1994).

Potential Threats Affecting Suitable and Currently Occupied Habitat—Establishing a recovered wolf population in the NRM wolf DPS did not require land-use restrictions or curtailment of traditional land-uses in the northwestern United States because there were enough suitable habitat, enough wild ungulates, and sufficiently few livestock conflicts to recover wolves under existing conditions (Bangs *et al.* 2004). We do not believe that any traditional land-use practices in the NRM wolf DPS need be modified to maintain a recovered NRM wolf population into the foreseeable future. We do not anticipate overall habitat changes in the NRM wolf DPS occurring at a magnitude that will threaten wolf recovery in the foreseeable future because 70 percent of the suitable habitat is in public ownership that is managed for multiple uses including maintenance of viable wildlife populations (Carroll *et al.* 2002; Oakleaf in press).

The GYA and central Idaho recovery areas, 24,600 mi² (63,714 km²) and 20,700 mi² (53,613 km²), respectively, are primarily composed of public lands (Service 1994) and are the largest contiguous blocks of suitable habitat within the NRM wolf DPS. Central Idaho (with 9,375 mi² [24,281 km²] of designated wilderness at its core) and the GYA (with YNP over 3,125 mi² [8,094 km²] and about 6,250 mi² [16,187 km²] of designated wilderness at its core) provide secure habitat and abundant ungulate populations neighboring in the range of over 99,300 ungulates in the GYA and 241,400 in central Idaho (Service 1994), and provide optimal suitable habitat to help maintain a viable wolf population (Service 1994). These areas are in public ownership, and no foreseeable habitat-related threats would prevent them from supporting a wolf population that exceeds recovery levels.

While the northwestern Montana recovery area (>19,200 mi² [>49,728 km²]) also has a core of suitable habitat (Glacier National Park and the Bob Marshal Wilderness Complex), it is not as high quality, as large, or as contiguous as that in either central Idaho or GYA. The primary reason for this is that ungulates do not winter throughout the area because it is higher in elevation. Most wolf packs in northwestern Montana live west of the continental divide where forest habitats are a fractured mix of private and public lands (Service *et al.* 2005). This exposes wolves to higher levels of human-

caused mortality and thus supports smaller and fewer wolf packs. Wolf dispersal into northwestern Montana from the more stable resident packs in the core protected area (largely the North Fork of the Flathead River along the eastern edge of Glacier National Park and the few large river drainages in the Bob Marshall Wilderness Complex) helps to maintain that segment of the NRM wolf population. Wolves also disperse into northwestern Montana from Canada and some packs have trans-boundary territories, helping to maintain the NRM population (Boyd *et al.* 1995). Conversely, wolf dispersal from northwestern Montana into Canada, where wolves are much less protected, continues to draw some wolves into vacant or low density habitats in Canada where they are subject to legal hunting (Bangs *et al.* 1998). The trans-boundary movements of wolves and wolf packs led to the establishment of wolves in Montana, and will continue to have an overall positive effect on wolf genetic diversity and demography in the northwest Montana segment of the NRM wolf population.

Within occupied suitable habitat, enough public land exists so that a delisted wolf population can be safely maintained above recovery levels. Important suitable wolf habitat is in public ownership and the States and Federal land-management agencies will continue to manage habitat that will provide forage and security for high ungulate populations, sufficient cover for wolf security, and low road density. Carroll *et al.* (2003, 2006) predicted future wolf habitat suitability under several scenarios through 2025, including increased human population growth and road development. Those threats were not predicted to alter wolf habitat suitability in Montana, Idaho, and Wyoming enough to cause the wolf population to fall below recovery levels. Ninety-six percent of suitable habitat in the NRM wolf DPS occurs in these three states (Carroll *et al.* in press). Oakleaf *et al.* (in press) only analyzed habitat in those three states because they believed there was limited wolf habitat adjacent to the areas previously identified during recovery planning (Service 1987, 1994). The areas Carroll *et al.* (2006) predicted as theoretically suitable wolf habitat in the NRM wolf DPS within Washington, Oregon, and Utah were small and often fragmented but primarily were in public land ownership. They were not subject to any threats that could affect wolf recovery in the NRM wolf DPS. While they will be visited by dispersing wolves and may support occasional wolf packs, they are an insignificant amount of habitat and are not needed to maintain the recovered wolf population in the NRM wolf DPS. Therefore, these areas do not appear to constitute a significant portion of the range of the NRM wolf DPS.

The recovery plan (Service 1987), the meta-population structure recommended by Fritts (Service 1994), and subsequent investigations (Bangs 2002), recognize the importance of some habitat connectivity between northwestern Montana, central Idaho, and the GYA. There appears to be enough habitat connectivity between occupied wolf habitat in Canada, northwestern Montana, Idaho, and, to a lesser extent, the GYA to ensure exchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the NRM wolf meta-population (Oakleaf *et al.* 2006; Carroll *et al.* 2006; vonHoldt *et al.*, in litt., 2005; Boyd *et al.* in prep.). To date, from radio-telemetry monitoring we have documented routine wolf movement between wolves in Canada and northwestern Montana (Pletscher *et al.* 1991; Boyd and Pletscher 1997), occasional wolf movement between wolves in Idaho and Montana, and at least eleven wolves have traveled into the GYA (vonHoldt *et al.*, in litt., 2005; Boyd *et al.* 1995; Boyd *et al.* in prep.). Because we know only about the 30 percent of the wolf population that has been radio-collared, additional dispersal has undoubtedly occurred. This demonstrates current habitat conditions allow dispersing wolves to occasionally travel from one recovery area to another. Finally, the Montana State plan (the key State regarding connectivity) committed to maintain natural connectivity to ensure the maintenance of genetic integrity by promoting land-uses, such as traditional ranching, that enhance wildlife habitat and conservation.

Another important factor in maintaining wolf populations is the native ungulate population. Wild ungulate prey in these three areas are composed mainly of elk, white-tailed deer, mule deer, moose, and (only in the GYA) bison. Bighorn sheep, mountain goats, and pronghorn antelope are also common but not important, at least at this time, as wolf prey. In total, 100,000 to 250,000 wild ungulates are estimated in each State where wolf packs currently exist. All the States in the NRM wolf DPS have managed resident ungulate populations for decades and maintain them at densities that would easily support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population.

Cattle and sheep are at least twice as numerous as wild ungulates even on public lands (Service 1994a). The only areas large enough to support wolf packs, but lacking livestock grazing, are Yellowstone and Glacier National Parks and some adjacent USDA Forest Service Wilderness and parts of wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle. Every wolf pack outside these areas has interacted with some livestock, primarily cattle. Livestock and livestock carrion are routinely used by wolves, but management discourages chronic use of livestock as prey. Conflict between wolves and livestock has resulted in the annual removal of some wolves (Bangs *et al.* 1995, Bangs *et al.* 2004, 2005, Service *et al.* 2002). This is discussed further under Factor D and E.

Unoccupied Suitable Habitat—Habitat suitability modeling indicates the NRM core recovery areas are atypical of other habitats in the western United States because suitable habitat in those areas occurs in such large contiguous blocks (Service 1987; Carroll *et al.* 2006; Oakleaf *et al.* in press). It is likely that without core refugia areas, like YNP and the central Idaho wilderness, that provide a steady influx of dispersing wolves, other potentially suitable wolf habitat in the NRM wolf DPS (such as east-central Oregon and the smaller isolated fragments of suitable habitat just outside of the area currently occupied by wolf packs) would not be capable of sustaining wolf packs. Some habitat that is ranked by models as suitable that is adjacent to core refugia, like central Idaho, may be able to support wolf packs, while some theoretically suitable habitat that is farther away from a strong source of dispersing wolves, may not be able to support persistent packs. This fact is important to consider as suitable habitat as identified by models still only has a 50 percent or greater chance of being successfully occupied by wolf packs and significantly contributing to overall population recovery. Therefore, not all habitat predicted by models thought to be suitable can be successfully occupied by wolf packs.

Strips and smaller (less than 1,000 mi^2 [2,600 km^2]) patches of theoretically suitable habitat land (typically isolated mountain ranges) often possess higher mortality risk for wolves because of their enclosure by, and proximity to, areas of high mortality risk. This phenomenon, in which the quality and quantity of suitable habitat is

diminished because of interactions with surrounding less suitable habitat, is known as an edge effect (Mills 1995). Edge effects are exacerbated in small habitat patches with high perimeter to area ratios (*i.e.*, those that are long and narrow like isolated mountain ranges) and in wide-ranging species, like wolves, because they are more likely to encounter surrounding unsuitable habitat (Woodroffe and Ginsberg 1998). This suggests that even though some habitat outside the core areas may rank as suitable in models, it is unlikely to actually be successfully occupied by wolf packs because this type of edge effect was not of overriding importance in either the Oakleaf or Carroll models.

For these reasons, we believe that the wolf population in the NRM wolf DPS will remain centered in northwestern Montana, central Idaho, and the GYA. This is the significant portion of the wolf's range in the NRM that is important or necessary for maintaining a viable, self-sustaining, and evolving representative population or populations in order for the NRM wolf DPS to persist into the foreseeable future. Therefore, we believe that the suitable habitat we predicted within, and adjacent to these areas, are the only areas that are biologically significant to maintaining a viable, self-sustaining, and evolving representative meta-population in the NRM wolf DPS that will persist into the foreseeable future. These areas comprise the only significant portion of the gray wolf's range in the NRM wolf DPS.

These core population segments will continue to provide a constant source of dispersing wolves into surrounding areas, supplementing wolf packs in adjacent but less secure suitable habitat. However, occupancy of such theoretically suitable habitats outside of the core recovery areas will not play a significant role in maintaining a long-term viable wolf population. Therefore, it appears that within the NRM wolf DPS, there are no significant portions of the wolf's range that are currently unoccupied. Most (roughly 87 percent) suitable wolf habitat in the NRM wolf DPS and all suitable habitat significant to maintain a recovered wolf population is, and will remain, occupied by wolves.

We therefore do not foresee that impacts to suitable and potentially suitable habitat will occur at levels that will significantly affect wolf numbers or distribution or affect population recovery and long-term viability in the NRM wolf DPS. Occupied suitable habitat is secured by core recovery areas in northwestern Montana, central Idaho, and the GYA. These areas include Glacier, Teton, and Yellowstone National Parks and numerous USDA Forest Service Wilderness areas. Over two thirds of the overall area is Federal and State public land. These areas will continue to be managed for high ungulate densities, moderate rates of seasonal livestock grazing, moderate-to-low road densities that will provide abundant native prey, low potential for livestock conflicts, and security from excessive unregulated human-caused mortality. The core recovery areas are also within proximity to one another and have enough public land between them to ensure sufficient connectivity to maintain the wolf population above recovery levels.

No significant threats to the suitable habitat in these areas are known to exist. These areas have long been recognized as the most likely areas to successfully support 30 or more breeding pairs of wolves, comprising 300 or more individuals in a metapopulation with some genetic exchange between subpopulations (Service 1980, 1987, 1994). These areas contain approximately 87 percent of the suitable habitat in the NRM wolf DPS. Unsuitable habitat, and small, fragmented areas of suitable habitat away from these core areas, largely represent geographic locations where wolf packs cannot persist. Although they may have been historic habitat, many of these areas are no longer suitable and are not important or necessary for maintaining a viable, self-sustaining, and evolving representative wolf population in the NRM wolf DPS into the foreseeable future, and are not a significant portion of the range of the NRM wolf DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

As detailed below, overutilization for commercial, recreational, scientific, or educational purposes has not been a significant threat to the NRM wolf population, particularly in the core areas of Idaho, Montana, and Wyoming. Delisting the NRM wolf DPS would not threaten recovery by excessive changes in mortality rates caused by commercial, recreational, scientific, or education purposes. However, as discussed later in Factor D, there are potential concerns that human-caused mortality associated with management of wolves in Wyoming as predatory animals could exceed sustainable levels.

Since their listing under the ESA, no gray wolves have been legally killed or removed from the wild in the NRM wolf DPS for commercial, recreational, or educational purposes. In the area of the tentative NRM wolf DPS, about 3 percent of the wolves captured for scientific research, nonlethal control, and monitoring have been accidentally killed. Some wolves may have been illegally killed for commercial use of the pelts and other parts, but illegal commercial trafficking in wolf pelts or wolf parts is believed to be rare. Illegal capture of wolves for commercial breeding purposes also is possible, but is believed to be extremely rare. The potential for ''take'' prosecution provided for by the ESA is believed to have discouraged and minimized the illegal killing of wolves for commercial or recreational purposes. Although Federal penalties under the ESA will not apply if delisting were to be finalized, other Federal laws will still protect wildlife in National Parks and on other Federal lands (Service 1994). In addition, the States and Tribes have similar laws and regulations that protect game or trophy animals from overutilization for commercial, recreational, scientific, and educational purposes (See Factor D for a more detailed discussion of this issue and weblinks to applicable State laws and regulations). We believe these laws will continue to provide a strong deterrent to illegal killing by the public and have been effective in State-led conservation programs for other resident wildlife. In addition, the State fish and game agencies, National Parks and other Federal agencies, and most Tribes have well-distributed experienced cadres of professional law enforcement officers to help enforce State, Federal, and Tribal wildlife regulations (See Factor D).

Scientific Research and Monitoring—From 1984 to 2004, the Service and our cooperating partners have captured over 716 NRM wolves for monitoring, nonlethal control, and research purposes with 23 accidental deaths. If the NRM DPS were to be delisted, the States, National Parks, and Tribes would continue to capture and radio-collar wolves in the NRM area for monitoring and research purposes in accordance with their State wolf management plans (See Factor D and Post-Delisting Monitoring). We expect that capture-caused mortality by Federal agencies, universities, States, and Tribes conducting wolf monitoring, nonlethal control, and research will remain around 3 percent of the wolves captured, and will be an insignificant source of mortality to the wolf population.

Education—We are unaware of any wolves that have been legally removed from the wild for solely educational purposes in recent years. Wolves that are used for such purposes are usually the captive-reared offspring of wolves

that were already in captivity for other reasons. However, States may get requests to place wolves that would otherwise be euthanized in captivity for research or educational purposes. Such requests have been, and will continue to be, rare; would be closely regulated by the State wildlife management agencies through the requirement for state permits for protected species; and would not substantially increase human-caused wolf mortality rates.

Commercial and Recreational Uses—In the States where wolves would be considered for delisting, except Wyoming, any subsequent legal take would be regulated by State or Tribal law so that it would not jeopardize each State's share of the NRM wolf population (See Factor D). Currently, Wyoming State law does not regulate human-caused mortality to wolves throughout most of Wyoming (See factor D for a more detailed description of this issue). This was one of the primary reasons the Service did not approve Wyoming's plan. Because wolves are highly territorial, wolf populations in saturated habitat naturally limit further population increases through wolf-to-wolf conflict or dispersal to unoccupied habitat. Wolf populations can maintain themselves despite a sustained human-caused mortality rate of 30 percent or more per year (Keith 1983; Fuller *et al.* 2003), and human-caused mortality can replace up to 70 percent of natural morality (Fuller *et al.* 2003). This means that wolf populations are quite resilient to human-caused mortality if it can be regulated. The States would regulate human-caused mortality to manipulate wolf distribution and overall population size to help reduce conflicts with livestock and, in some cases, human hunting of big game, just as they do for other resident species of wildlife. The States (except for Wyoming) and Tribes would allow regulated public harvest of surplus wolves in the NRM wolf population for commercial and recreational purposes by regulated private and guided hunting and trapping. Such take and any commercial use of wolf pelts or other parts would be regulated by State or Tribal law (See discussion of State laws and plans in Factor D). The regulated take of those surplus wolves would not affect wolf population recovery or viability in the NRM wolf DPS because the states of Montana and Idaho (and Wyoming, if its plan is approved in the future), would allow such take only for wolves that are surplus to achieving the State's commitment to maintaining a recovered population. Current state laws in Washington, Oregon, and Utah do not allow public take of wolves for recreational or commercial purposes. Regulated hunting and trapping are traditional and effective wildlife management tools that are to be applied to help achieve State and Tribal wolf management objectives as needed.

In summary, the States have organizations and regulatory and enforcement systems in place to limit human-caused mortality of resident wildlife (except for wolves in Wyoming). Montana and Idaho State plans commit these States to regulate all take of wolves, including that for commercial, recreational, scientific and educational purposes, and will incorporate any tribal harvest as part of the overall level of allowable take to ensure that the wolf population does not fall below the NRM wolf population's numerical and distributional recovery levels. If Wyoming's regulatory framework is modified and approved by the Service, and if delisting were to occur, the States and Tribes would regulate human-caused morality for recreational and commercial uses to ensure it is not excessive or does not jeopardize wolf population goals. The States and Tribes have humane and professional animal handling protocols and trained personnel that will ensure that population monitoring and research results in few unintentional mortalities. Furthermore, the state permitting process for captive wildlife and animal care will ensure that few, if any wolves, will be removed from the wild solely for educational purposes.

C. Disease or Predation

As discussed in detail below, there are a wide range of diseases that may affect the NRM wolf DPS. However, there are no indications that these diseases are of such magnitude that the DPS is in danger of extinction, particularly within the core areas of Idaho, Montana, and Wyoming. Similarly, there are no indications that predation poses a significant threat to the NRM wolf DPS. The rates of mortality caused by disease and predation are well within acceptable limits and there is no reason to expect those rates to change appreciably if wolves were delisted in the DPS.

Disease—Wolves in the NRM wolf DPS are exposed to a wide variety of diseases and parasites that are common throughout North America. Many diseases (viruses and bacteria, many protozoa and fungi) and parasites (helminthes and arthropods) have been reported for the gray wolf, and several of them have had significant, but temporary impacts during wolf recovery in the 48 conterminous States (Brand *et al.* 1995; Kreeger 2003). The EIS on gray wolf reintroduction identified disease impact as an issue, but did not evaluate it further, as it appeared to be insignificant (Service 1994). Infectious disease induced by parasitic organisms is a normal feature of the life of wild animals and the typical wild animal hosts a broad multi-species community of potentially harmful parasitic organisms (Wobeser 2002). We fully anticipate that these diseases and parasites will follow the same pattern seen in other areas of North America (Brand *et al.* 1995; Bailey *et al.* 1995; Kreeger 2003) and will not significantly threaten wolf population viability. Nevertheless, because these diseases and parasites, and perhaps others, have the potential to impact wolf population distribution and demographics, careful monitoring (as per the State wolf management plans) will track such events. Should such an outbreak occur, human-caused mortality would be regulated in an area and over an appropriate time period by the State to ensure populations are maintained above recovered levels.

Canine Parvovirus (CPV) infects wolves, domestic dogs, foxes, coyotes, skunks, and raccoons. The population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (WI DNR 1999a). Clinical CPV is characterized by severe hemorrhagic diarrhea and vomiting-debility and subsequent mortality is a result of dehydration, electrolyte imbalances, and shock. The CPV has been detected in nearly every wolf population in North America including Alaska (Bailey *et al.* 1995; Brand *et al.* 1995; Kreeger 2003) and exposure in wolves is thought to be almost universal. Currently, nearly 100 percent of the wolves handled by Montana Fish, Wildlife and Parks (M. Atkinson, Montana Fish, Wildlife and Parks, pers. comm., 2005) had blood antibodies indicating exposure to CPV. CPV contributed to low pup survival in the northern range of YNP in 1999 and is suspected to have done so again in 2005 (Smith, pers. comm., 2005). However, the impact to the overall NRM wolf population was localized and temporary, as has been documented elsewhere (Bailey *et al.* 1995, Brand *et al.* 1995, Kreeger 2003).

Canine distemper is an acute, fever-causing disease of carnivores caused by a paramyxo-virus (Kreeger 2003). It is common in domestic dogs and some wild canids, such as coyotes and foxes in the areas of the NRM wolf DPS (Kreeger 2003). The seroprevalence in North American wolves is about 17 percent (Kreeger 2003). Nearly 85

percent of Montana wolf blood samples analyzed in 2005 had blood antibodies indicating non-lethal exposure to canine distemper (Atkinson pers. comm. 2005). Mortality in wolves has only been documented in Canada (Carbyn 1992), Alaska (Peterson *et al.* 1984, Bailey *et al.* 1995), and in a single Wisconsin pup (Wydeven and Wiedenhoeft 2003b). Distemper is not a major mortality factor in wolves, because despite exposure to the virus, affected wolf populations demonstrate good recruitment (Brand *et al.* 1995). Mortality from canine distemper has never been documented in the NRM wolf DPS despite the wolves' high exposure to it.

Lyme disease, caused by the spirochete bacterium, is spread primarily by deer ticks (*Ixodes dammini*). Host species include humans, horses, dogs, white-tailed deer, mule deer, elk, white-footed mice, eastern chipmunks, coyotes, and wolves. Lyme disease has not been reported from wolves beyond the Great Lakes regions (Wisconsin Department of Natural Resources 1999a; Johnson *et al.* 1994). In those populations, it does not appear to cause adult mortality, but might be suppressing population growth by decreased wolf pup survival.

Sarcoptic mange is caused by a mite (*Sarcoptes scabeii*) that infests the skin. The irritation caused by feeding and burrowing mites results in intense itching resulting in scratching and severe fur loss, which can lead to mortality from exposure during severe winter weather or secondary infections (Kreeger 2003). Advanced sarcoptic mange can involve the entire body and can cause emaciation, decreased flight distance, staggering, and death (Kreeger 2003). In a long-term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995). Mange has been shown to temporarily affect wolf population growth rates and perhaps wolf distribution (Kreeger 2003).

Mange has been detected in, and caused mortality to, wolves in the NRM, but almost exclusively in the GYA, and primarily east of the continental divide (Jimenez *et al.* in prep.). Those wolves likely contracted mange from coyotes or fox whose populations experience occasional outbreaks. In southwestern Montana, 8 percent of 12 packs in 2003, 24 percent of 17 packs in 2004, and 61 percent of 18 packs in 2005 showed evidence of mange, although not all members of every pack appeared infested. In Wyoming, east of the YNP, 12.5 percent of 8 packs in 2003, 22 percent of 9 packs in 2003 and 2004, and 0 percent of 13 packs in 2005, showed evidence of mange. Mange has not been confirmed in wolves from Idaho or northwestern Montana. In packs with the most severe infestations, pup survival appeared low and some adults died (Jimenez in prep.). In addition, we euthanized three wolves with severe mange. We predict that mange in the NRM wolf DPS will act as it has in other parts of North America (Brand *et al.* 1995; Kreeger 2003) and not threaten wolf population viability. Evidence suggests NRM wolves will not be infested on a chronic population-wide level given the recent response of Wyoming wolf packs that naturally overcame mange infestation.

Dog-biting lice (*Trichodectes canis*) commonly feed on domestic dogs, but can infest coyotes and wolves (Schwartz *et al.* 1983; Mech *et al.* 1985). The lice can attain severe infestations, particularly in pups. The worst infestations can result in severe scratching, irritated and raw skin, substantial hair loss particularly in the groin, and poor condition. While no wolf mortality has been confirmed, death from exposure and/or secondary infection following self-inflicted trauma caused by the inflammation and itching, appears possible. For the first time, we confirmed dog-biting lice in two members of the Battlefield pack in the Big Hole Valley of southwestern Montana in 2005, but their infestations were not severe. Its source is unknown, but was likely domestic dogs.

Rabies, canine heartworm, blastomycosis, brucellosis, neosporsis, leptospirosis, bovine tuberculosis, canine coronavirus, hookworm, coccidiosis, and canine hepatitis have all been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995; Johnson 1995; Mech and Kurtz 1999; Thomas in litt. 1998; Wisconsin Department of Natural Resources 1999; Kreeger 2003). Canid rabies caused local population declines in Alaska (Ballard 1997) and may temporarily limit population growth or distribution where another species, such as arctic foxes, act as a reservoir for the disease. Range expansion could provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, bovine tuberculosis, and possibly new diseases such as Chronic Wasting Disease and West Nile Virus (Thomas in litt. 2000), further emphasizing the need for vigilant disease monitoring programs.

Since several of the diseases and parasites are known to be spread by wolf-to-wolf contact, their incidence may increase if wolf densities increase. However, because wolf densities appear to be stabilizing (Service *et al.* 2005), wolf-to-wolf contacts will not likely lead to a continuing increase in disease prevalence (Mech in litt. 1998). The wolves' exposure to these types of organisms may be most common outside of the core population areas, where domestic dogs are most common, and lowest in the core population areas because wolves tend to flow out of, not into, saturated habitats. Despite this dynamic, we assume that all wolves in the NRM wolf DPS have some exposure to all diseases and parasites in the system. Diseases or parasites have not been a significant threat to wolf population recovery in the NRM to date, nor are they likely to be.

In terms of future monitoring, each post-delisting management entity (State, Tribal, and Federal) in the NRM wolf DPS has wildlife agency specialists with sophisticated wildlife health monitoring protocols, including assistance from veterinarians, disease experts, and wildlife health laboratories. Each State has committed to monitor the NRM wolf population for significant disease and parasite problems (See State plans in Factor D). These State wildlife health programs often cooperate with Federal agencies and universities and usually have both reactive and proactive wildlife health monitoring protocols. Reactive strategies are the periodic intensive investigations after disease or parasite problems have been detected through routine management practices, such as pelt examination, reports from hunters, research projects, or population monitoring. Proactive strategies often involve ongoing routine investigation of wildlife health information through collection and analysis of blood and tissue samples from all or a sub-sample of wildlife carcasses or live animals that are handled.

Natural Predation—There are no wild animals that routinely prey on gray wolves (Ballard *et al.* 2003). Occasionally wolves have been killed by large prey such as elk, deer, bison, and moose (Mech and Nelson 1989; Smith *et al.* 2000; Mech and Peterson 2003). Since NRM wolves have been monitored, only three wolves have been confirmed killed by other large predators. Two adults were killed by mountain lions and one pup was killed by a grizzly bear (Jimenez *et al.* in prep.). Wolves in the NRM inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves evolved with other large predators, and no other large predators in North America, except

humans, have the potential to significantly impact wolf populations. Wolves are occasionally killed by prey they are attacking, but those instances are few. Since the 1980s, wolves in the NRM have died from wounds they received while attacking prey (elk, moose, and bison) on about a dozen occasions. That level of mortality could not significantly affect wolf population viability or stability.

Other wolves are the largest cause of natural ''predation'' among wolves. Numerous mortalities have resulted from territorial conflicts between wolves and about 3 percent of the wolf population is removed annually by territorial conflict in the NRM wolf DPS (Smith, pers. comm., 2005). Wherever wolf packs occur, including the NRM, some low level of wolf mortality will result from territorial conflict. Wolf populations tend to regulate their own density. Consequently territorial conflict is highest in saturated habitats. That cause of mortality is infrequent and does not cause a level of mortality that would significantly affect a wolf population's viability in the NRM wolf DPS. (Smith, pers. comm., 2005)

Human-caused Predation—Wolves are very susceptible to human-caused mortality especially in open habitats such as those that occur in the western United States (Bangs *et al.* 2004). An active eradication program is the sole reason that wolves were extirpated from the NRM (Weaver 1978). Humans kill wolves for a number of reasons. In all locations where people, livestock, and wolves coexist, some wolves are killed to resolve conflicts with livestock (Fritts *et al.* in Mech and Boitani 2003). Occasionally wolf killings are accidental (*e.g.*, wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals) (Service *et al.* 2005). Some of these accidental killings are reported to State, Tribal, and Federal authorities.

However, many wolf killings are intentional, illegal, and are never reported to authorities. Wolves do not appear particularly wary of people (Boyd 2003) or human activity, and that makes them very vulnerable to human-caused mortality (Mech and Boitani 2003). In the NRM, mountain topography concentrates both wolf and human activity in valley bottoms (Boyd and Pletscher 1997), especially in winter, which increases wolf exposure to human-caused mortality. The number of illegal killings is difficult to estimate and impossible to accurately determine because they generally occur in areas with few witnesses. Often the evidence has decayed by the time the wolf's carcass is discovered or the evidence is destroyed or concealed by the perpetrators. While human-caused mortality, including illegal killing, has not prevented population recovery, it has affected wolf distribution in the NRM wolf DPS (Bangs *et al.* 2004). No wolf packs have successfully established and persisted solely in open prairie or high desert habitats that are used for intensive agriculture production in the past 20 years (Service *et al.* 2005).

As part of the interagency wolf monitoring program and various research projects, up to 30 percent of the NRM wolf population has been radio-collared since the 1980s. The annual survival rate of mature wolves in northwestern Montana and adjacent Canada from 1984 to 1995, was 80 percent (Pletscher *et al.* 1997); 84 percent for resident wolves and 66 percent for dispersers. That study found 84 percent of wolf mortality to be human-caused. Bangs *et al.* (1998) found similar statistics, with humans causing most wolf mortality. Radio-collared wolves in the largest blocks of remote habitat without livestock, such as central Idaho and YNP, had annual survival rates around 80 percent (Smith, pers. comm., 2005). Wolves outside of large remote areas had survival rates as low as 54 percent in some years. This is among the lower end of adult wolf survival rates that an isolated population segment can sustain (Fuller *et al.* 2003; Smith, pers. comm., 2005).

Some information suggests these numbers could be overestimated, while other information suggests it could be underestimated. Wolves are more likely to be radio-collared if they come into conflict with people, so the proportion of mortality caused by agency depredation control actions could be overestimated by radio-telemetry data. People who illegally kill wolves may destroy the radio-collar, so the proportion of illegal mortality could be under-estimated. However, the wolf populations have continued to expand in the face of ongoing levels of human-caused mortality.

An ongoing preliminary analysis of the survival data among NRM radio-collared wolves (n = 716) (Smith, pers. comm., 2005) from 1984 through 2004 indicates that about 26 percent of the adult-sized wolves die every year, so annual adult survival averages about 74 percent, which typically results in wolf population growth (Keith 1983; Fuller 2003). Humans caused just over 75 percent of all radio-collared wolf deaths (Smith, pers. comm., 2005). This type of analysis does not estimate the cause or rate of survival among pups younger than 7 months of age because they are too small to radio-collar. Agency control of problem wolves and illegal killing are the two largest causes of wolf death; and combined they removed nearly 20 percent of the population annually and are responsible for 60 percent of all known wolf death.

Wolf mortality from agency control of problem wolves (which includes legal take by private individuals under defense of property regulations in section 10(j) rules) is estimated to remove around 10 percent of the adult radio-collared wolves annually. Since 1995, 28 wolves have been legally killed by private citizens under Federal defense of property regulations (Service 1994 and 2005) that, except for Wyoming, are similar to State laws that would take effect and direct take of problem wolves by both the public and agencies if wolves were delisted. Agency control removed 292 problem wolves from 1987 to 2004, indicating that private citizen take under State defense of property laws will not significantly increase the overall rate of problem wolf removal. Wolves have been illegally killed by shooting and poisoning, and radio collar tracking data indicate that illegal killing is as common a cause of wolf death as agency control, also removing around 10 percent the adult wolf population annually. A comparison of the overall wolf population and the number of wolves removed using different analysis than just radio-collared wolves indicates agency control removes, on average, about 6 percent of the overall wolf population annually (Service *et al.* 2005). Wolf mortality under State and Tribal defense of property regulations, incidental to other legal activities, agency control of problem wolves, and legal hunting and trapping would be regulated by the States and Tribes if the ESA's protections were removed. Regulated wolf mortality is to be managed so it would not reduce wolf numbers or distribution below recovery levels. This issue is discussed further below under Factor D.

The overall causes and rates of annual wolf mortality vary based upon a wide number of variables. Wolves in higher quality suitable habitat such as remote, forested areas with few livestock, like National Parks, have higher survival rates. Wolves in unsuitable habitat and areas without substantial refugia have higher overall mortality rates. Mortality rates also vary whether the wolves are resident pack members or dispersers, if they have a history with livestock depredation, or have been relocated (Bradley *et al.* 2005). However, overall wolf mortality has been low enough from 1987 until the present time that the

wolf population in the NRM has steadily increased, and is now at least twice as numerous as needed to meet recovery levels (Service 1987, 1994).

If the DPS were to be delisted, state management would likely increase the mortality rate in the NRM wolf population, outside National Parks, National Wildlife Refuges, and Tribal reservations, from its current level of about 26 percent annually. A level of wolf mortality as high as 50 percent is typically sustainable on an annual basis (Fuller *et al.* 2003). The States, except Wyoming, have the regulatory authorization and commitment to regulate human-caused mortality so that the wolf population remains above its numerical and distributional recovery goals. This issue is discussed further below under Factor D.

In summary, human-caused mortality to adult radio-collared wolves in the NRM wolf DPS that averaged about 20 percent per year, still allowed for rapid wolf population growth. The protection of wolves under the ESA promoted rapid initial wolf population growth in suitable habitat. The States, except for Wyoming, have committed to continue to regulate human-caused mortality so that it does not reduce the wolf population below recovery levels. Except for Wyoming, the States have adequate laws and regulations (See discussion of adequate regulatory mechanisms and Wyoming State law under Factor D.). Each post-delisting management entity (State, Tribal, and Federal) has experienced and professional wildlife staff to ensure those commitments can be accomplished.

D. The Adequacy or Inadequacy of Existing Regulatory Mechanisms

To address this factor, we compare the current regulatory mechanisms within the DPS with the future mechanisms that will provide the framework for wolf management after delisting. These regulatory mechanisms are carried out by the State governments included in the DPS, with the main emphasis placed on those States that make up the significant portion of the range in the DPS, Idaho, Montana, and Wyoming. State and Tribal programs are designed to maintain a recovered wolf population while minimizing damage by allowing for removal of wolves in areas of chronic conflict or in unsuitable habitat. The three States have proposed wolf management plans that will govern how wolves are managed if delisted. As discussed below, we have approved the Idaho and Montana plan because they have proposed management objectives of maintaining at least 10 breeding pairs and 100 wolves per State by managing for a safety margin of 15 packs in each State. However, we have been unable to approve the Wyoming plan because it does not provide for the same sustainable levels of protection.

Current Wolf Management

The 1980 and 1987, NRM wolf recovery plans recognized that conflict with livestock was the major reason that wolves were extirpated and that management of conflicts was a necessary component of wolf restoration. The plans also recognized that control of problem wolves was necessary to maintain local public tolerance of wolves and that removal of so few wolves would not prevent wolf population from achieving recovery. In 1988, the Service developed an interim wolf control plan that applied to Montana and Wyoming, but was amended in 1990 to include Idaho and eastern Washington. We analyzed the effectiveness of those plans in 1999, and revised our guidelines for management of problem wolves listed as endangered (Service 1999). Evidence showed that most wolves do not attack livestock, especially larger livestock, such as adult horses and cattle (Bangs *et al.* 2005). Therefore, we developed a set of guidelines under which depredating wolves could be harassed, moved, or killed by agency officials to prevent chronic livestock depredation. The control plans were based on the premise that agency wolf control actions would affect only a small number of wolves, but would sustain public tolerance for non-depredating wolves, thus enhancing the chances for successful population recovery (Mech 1995). Our assumptions have proven correct, as wolf depredation on livestock and subsequent agency control actions have remained at low levels, and the wolf population has expanded its distribution and numbers far beyond, and more quickly than, earlier predictions (Service 1994; Service *et al.* 2005).

The conflict between wolves and livestock has resulted in the average annual removal of 6–10 percent of the wolf population (Bangs *et al.* 1995; Bangs *et al.* 2004, 2005; Service *et al.* 2002; Smith, pers. comm., 2005). Illegal killing removed another 10 percent of the wolf population and accidental and unintentional human-caused deaths have removed 1 percent of the population annually.

Wolves within the NRM DPS are classified as either endangered or members of a non-essential experimental population. Wolf control in the experimental population areas of the DPS is more liberal than in the areas where wolves are listed as endangered. In the area of the DPS where wolves are listed as endangered, only designated agencies may conduct control under the conservative protocols established by the Service's 1999 wolf control plan. In the nonessential experimental population areas, wolf control protocols by agencies and the public are directed by the experimental population regulations, promulgated under section 10(j) of the ESA (59 FR 60252, November 22, 1994; 70 FR 1285, January 6, 2005). These regulations specify which wolves can be designated as problem animals, what forms of control are allowed, and who can carry them out.

Current wolf control consists of the minimum actions believed necessary to reduce further depredations, and includes a wide variety of non-lethal and lethal measures (Bangs and Shivik 2001; Bangs *et al.* 2004; Bangs *et al.* 2005). However, while helpful, non-lethal methods to reduce wolf livestock conflict are often only temporarily effective (Bangs and Shivik 2001; Bangs *et al.* 2005; Woodroffe *et al.* 2005) and by themselves do not offer effective long-term solutions to chronic livestock damage. For instance, relocation of problem wolves is typically ineffective at reducing conflicts or allowing problem wolves to contribute to population recovery if vacant suitable habitat is not available (Bradley *et al.* 2005). Since 2001, all suitable areas for wolves have been filled with resident packs and consequently most wolves that repeatedly depredate on livestock are now removed from the population (Service *et al.* 2005). Between 1987 and 2005, we removed 292 wolves and relocated wolves 117 times to reduce the potential for chronic conflicts with livestock. Of those wolves, 19 wolves incurred injuries from capture/relocation that ultimately resulted in their death or removal from the wild (7 in Montana, 8 in Idaho, 4 in Wyoming). Accidental mortality from capture during non-lethal control was low (3 percent) and not a significant portion of total mortality in the wolf population.

At the end of 2004, 62 to 100 percent of the suitable wolf habitat in the NRM wolf DPS was occupied by resident wolf packs (see discussion in Factor A). If the wolf population continues to expand, wolves will increasingly disperse into unsuitable areas that are intensively used for livestock production. A higher percentage of wolves in those areas will become involved in conflicts with livestock, and a higher percentage of them will probably be removed to reduce future livestock damage. Human-

caused mortality would have to remove 34 percent or more of the wolf population annually before population growth would cease (Fuller *et al.* 2003). Preliminary wolf survival data from radio telemetry studies suggests that adult wolf mortality resulting from conflict could be doubled to an average of 12 to 20 percent annually and still not significantly impact wolf population recovery (Smith, pers. comm.). The State management laws and plans will balance the level of wolf mortality with the recovery goals in each State.

One of the most important factors affecting the level of wolf/livestock conflict and need for wolf control is the availability of wild ungulate prey. Important wild ungulate prey in the NRM wolf DPS are elk, white-tailed deer, mule deer, moose, and (only in the GYA) bison. A large decline in native ungulate populations could result in an increase in conflicts with livestock and the level of wolf control.

Changes in livestock availability have also changed the rate of livestock depredations by wolves, thus necessitating control actions. Nearly 100,000 wild ungulates were estimated in the GYA and northwestern Montana, and 250,000 in central Idaho where wolf packs currently exist. However, domestic ungulates, primarily cattle and sheep, are typically twice as numerous in those same areas, even on public lands (Service 1994). The only areas large enough to support wolf packs where the prey is mostly wild ungulates are YNP, Glacier National Park including adjacent USFS wilderness, and parts of wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle (Bradley 2002). This overlap between wolf pack territories and livestock has led to the conflict between wolves and livestock because depredation control practices discourage chronic use of livestock as prey.

Other management control tools used for managing wolf conflict were using shoot-on-site permits to private landowners and allowing take of wolves in the act of attacking or molesting livestock, pets or other domestic animals. Since 1995, only 28 (less than 7 percent of the 292 wolves removed for livestock depredations from 1987 to 2004) experimental population wolves were shot by private landowners under shoot-on-sight permits in areas of chronic livestock depredation or as they attacked or harassed livestock.

In the NRM wolf recovery area, reports of suspected wolf-caused damage to livestock are investigated by USDA/APHIS-Wildlife Services (USDA–WS) specialists using standard techniques (Roy and Dorrance 1976; Fritts *et al.* 1992; Paul and Gipson 1994). If the investigation confirms wolf involvement, USDA–WS specialists conduct the wolf control measures that we specify. If the incident occurred in Idaho, USDA–WS also coordinates with Nez Perce Tribal personnel. Since the beginning of 2005, USDA–WS began to coordinate and conduct wolf control in cooperation with Montana Fish, Wildlife and Parks (MFWP) and, since the beginning of 2006 with the Idaho Department of Fish and Game (IDFG), who lead wolf management in their States under a cooperative agreement and a Memorandum of Agreement with the Service, respectively. All investigations of suspected wolf damage on Tribal lands and wolf control are conducted in full cooperation with, and under approval by, the affected Tribe. A private program has compensated ranchers full market value for confirmed, and one-half market value for probable wolf kills of livestock and livestock guard animals (Defenders of Wildlife 2002; Fischer 1989). That program paid an average of $75,580 annually from 2000 to 2004.

Regulatory Assurances in States Within the Significant Portion of the Range

In 1999, the Governors of Montana, Idaho, and Wyoming agreed that regional coordination in wolf management planning among the States, Tribes, and other jurisdictions would be necessary to ensure timely delisting. They signed a memorandum of understanding to facilitate cooperation among the three States in developing adequate State wolf management plans so that delisting could proceed. Governors from the three States renewed that agreement in April 2002.

The wolf population in the NRM achieved its numerical, distributional, and temporal recovery goal, as specified in the recovery plan, in December 2002. However, to delist the species we realized that regulatory assurances would be necessary and therefore, we requested that the States of Montana, Idaho, and Wyoming prepare State wolf management plans to demonstrate how they would manage wolves after the protections of the ESA were removed. The Service provided various degrees of funding and assistance to the States while they developed their wolf management plans.

To provide the necessary regulatory assurances after delisting, we encouraged the States in the significant portion of the range to regulate human-caused mortality of wolves. Several issues were key to the Service approving the plans. First the States had to provide regulations that would allow regulatory control, define a pack biologically consistent with the Service's definition of breeding pair, and manage the population to maintain those pairs/packs above recovery levels.

The final Service determination of the adequacy of those three State management plans was based on the combination of Service knowledge of State law, the management plans, wolf biology, peer review, and the States' response to the peer review. Those State plans and our recommendations can be viewed at: *http://westerngraywolf.fws.gov/*. The Service determined that Montana and Idaho's laws and wolf management plans were adequate to assure the Service that their share of the NRM wolf population would be maintained above recovery levels. Therefore, we approved those two State plans.

However, we determined that problems with the Wyoming legislation and its management plan did not allow us to approve its approach to wolf management. In response, Wyoming litigated this issue (Wyoming U.S. District Court 04–CV–0123–J and 04–CV–0253–J consolidated). The Wyoming Federal District Court dismissed the case on procedural grounds. Wyoming has appealed that decision and the case is under consideration by the Tenth Circuit Court of Appeals.

Since no wolves currently live in Washington, Oregon, or Utah (the NRM wolf population lives only in Montana, Idaho, and Wyoming), and there is very little suitable habitat in the NRM wolf DPS outside of that currently occupied in Montana, Idaho, and Wyoming, we did not request the other three States to prepare wolf management plans. Furthermore, any potential wolves outside of Montana, Idaho, and Wyoming are not needed to maintain the recovered wolf population. However, we reviewed the regulatory framework of all States within the NRM wolf DPS to assess all potential threats to that wolf population.

Montana—The gray wolf was listed under the Montana Nongame and Endangered Species Conservation Act of 1973 (87–5–101 MCA). Senate Bill 163 was passed by the Montana Legislature and signed into law by the Governor in 2001. It establishes the current legal statutes for wolves in Montana. Upon Federal delisting, wolves would be classified and protected under Montana law as a ''Species in Need of Management'' (87–5–101 to 87–5–123) which are primarily managed through regulation of all forms of human-caused

mortality in a manner similar to trophy game animals like mountain lions and black bears. The MFWP and the MFWP Commission would then finalize more detailed administrative rules, as is typically done for other resident wildlife, but they must be consistent with the approved Montana wolf plan and State law. Classification as a ''Species in Need of Management'' and the associated administrative rules under Montana State law create the legal mechanism to protect wolves and regulate human-caused mortality beyond the immediate defense of life/property situations. Some illegal human-caused mortality will still occur, but is to be prosecuted under State law and MFWP Commission regulations which would tend to minimize any potential effect on the wolf population.

In 2001, the Governor of Montana appointed the Montana Wolf Management Advisory Council to advise MFWP regarding wolf management after the species is removed from the lists of Federal and State-protected species. In August 2003, MFWP completed a final EIS as required by Montana State law, and recommended that the Updated Advisory Council alternative be selected as Montana's Final Gray Wolf Conservation and Management Plan. See *http://www.fwp.state.mt.us* to view the MFWP Final EIS and the Montana Gray Wolf Conservation and Management Plan.

Under the MFWP management plan, the wolf population would be maintained above the recovery levels of 10 breeding pairs in Montana by managing for a safety margin of 15 packs (see Post-delisting monitoring section). Montana would manage problem wolves in a manner similar to the control program currently being utilized in the experimental population area in southern Montana, whereby landowners and livestock producers on public land can shoot wolves seen attacking livestock or dogs, and agency control of problem wolves is incremental and in response to confirmed depredations. State management of conflicts would become more protective of wolves and no public hunting would be allowed when there were less than 15 packs. The States would develop their pack definitions to approximate the current breeding pair definition, but would measure wolf populations by the Service's current pair definition. Wolves would not be deliberately confined to any specific areas of Montana, but their distribution and numbers would be managed adaptively based upon ecological factors, wolf population status, conflict mitigation, and human social tolerance. The MFWP plan commits to implement its management framework in a manner that encourages connectivity among wolf populations in Canada, Idaho, GYA, and Montana to maintain the overall meta-population structure. Montana's plan predicts that under State management the wolf population would increase to between 328 wolves or 27 breeding pairs and 657 wolves or 54 breeding pairs by 2015.

An important ecological factor determining wolf distribution in Montana is the availability and distribution of wild ungulates. Montana has a rich, diverse, and widely distributed prey base on both public and private lands. The MFWP has and will continue to manage wild ungulates according to MFWP Commission-approved policy direction and species management plans. The plans typically describe a management philosophy that protects the long-term sustainability of the ungulate populations, allows recreational hunting of surplus game, and aims to keep the population within management objectives based on ecological and social considerations. The MFWP takes a proactive approach to integrate management of ungulates and carnivores. Ungulate harvest is to be balanced with maintaining sufficient prey populations to sustain Montana's segment of a recovered wolf population. Ongoing efforts to monitor populations of both ungulates and wolves will provide credible, scientific information for wildlife management decisions.

Wolves would be managed in the same manner as other resident wildlife designated as trophy game, whereby human-caused mortality would be regulated by methods of take, seasons, bag limits, areas, and conditions under which defense of property take can occur. In addition all agency control of problem wolves would be directed by MFWP. All forms of wolf take would be more restricted when there are 15 or fewer packs in the State and less restricted when there are more than 15 packs. By managing for 15 packs, MFWP would maintain a safety margin to assure that the Montana segment of the wolf population would be maintained above the 10 breeding pair and 100 wolf minimum population goal. Wolf management would include population monitoring, routine analysis of population health, management of and in concert with prey populations, law enforcement, control of domestic animal/human conflicts, consideration of a wolf-damage compensation program, research, and information and public outreach.

State regulations would allow agency management of problem wolves by MFWP and USDA–WS, take by private citizens in defense of private property, and when the population is above 15 packs, some regulated hunting of wolves. Montana wildlife regulations allowing take in defense of private property are similar to the 2005 experimental population regulations whereby landowners and livestock grazing permittees can shoot wolves seen attacking or molesting livestock or pets as long as such incidents are reported promptly and subsequent investigations confirmed that livestock were being attacked by wolves. The MFWP intends to enlist and direct USDA–WS in problem wolf management, just as the Service has done since 1987.

When the Service reviewed and approved the Montana wolf plan, we stated that Montana's wolf management plan would maintain a recovered wolf population and minimize conflicts with other traditional activities in Montana's landscape. The Service has every confidence Montana will implement the commitments it made in its current laws, regulations, and wolf plan.

Idaho—The Idaho Department of Fish and Game (IDFG) Commission has authority to classify wildlife under Idaho Code 36–104(b) and 36–201. The wolf was classified as endangered until March 2005, when the IDFG Commission reclassified the gray wolf to a big game animal IDAPA 13.01.06.100.01.d. The big game classification will take effect upon Federal delisting, and until then, they will be managed under Federal status. As a big game animal, State regulations will adjust human-caused wolf mortality to ensure recovery levels are exceeded. Title 36, in the Idaho statutes, currently has laws regarding penalties associated with illegal take of big game animals. These rules are consistent with the legislatively adopted Idaho Wolf Conservation and Management Plan (IDP) (2002) and big game hunting restrictions currently in place. The IDP states that wolves will be protected against illegal take as a big game animal under Idaho Code 36–1402 and 36–1404, and also under the flagrant violation law Idaho Code 36–202(h) at the costs specified under Idaho Code 36–1404.

The IDP was written with the assistance and leadership of the Wolf Oversight Committee established in 1992 by the Idaho Legislature. Many special interest groups including legislators, sportsmen, livestock producers, conservationists, and IDFG personnel were involved in the development of the IDP. The Service provided technical advice to the Committee and reviewed numerous

drafts before the IDP was finalized. In March 2002, the IDP was adopted by joint resolution of the Idaho Legislature. The IDP can be found at: *http://www.fishandgame.idaho.gov/cms/wildlife/wolves/wolf_plan.pdf.*

The IDP calls for IDFG to be the primary manager of wolves once delisted, and like Montana, to maintain a minimum of 15 packs of wolves to maintain a substantial margin of safety over the 10 breeding pair minimum and to manage them as a viable self-sustaining population that will never require relisting under the ESA. Wolf take will be more liberal if there are over 15 packs and more conservative if there are fewer than 15 packs in Idaho. The wolf population will be managed by defense of property regulations similar to those now in effect under the ESA. Public harvest will be incorporated as a management tool when there are 15 or more packs in Idaho to help mitigate conflicts with livestock producers or big game populations that outfitters and guides and others hunt. The IDP allows IDFG to classify the wolf as a big game animal, furbearer, or special classification of predator so that human-caused mortality can be regulated. In March 2005, the IDFG Commission proposed that upon delisting the wolf would be classified as a big game animal with the intent of managing them similar to black bears and mountain lions, including regulated public harvest when populations are above 15 packs. The IDP calls for the State to coordinate with USDA-WS to manage depredating wolves depending on the number of wolves in the State, allowing more liberal control when wolf populations exceed 15 packs and more conservatively when there are less than 15 packs. It also calls for a balanced educational effort.

Elk and deer populations are managed to meet biological and social objectives for each herd unit according to the State's species management plans. The IDFG will manage both ungulates and carnivores, including wolves, to maintain viable populations of each. Ungulate harvest will be focused on maintaining sufficient prey populations to sustain viable wolf and other carnivore populations and hunting. IDFG has implemented research to better understand the impacts of wolves and their relationships to ungulate population sizes and distribution so that regulated take of wolves can be used to assist in management of ungulate populations and vice versa.

The Mule Deer Initiative in southeast Idaho was implemented by IDFG in 2005 to restore and improve mule deer populations. Though most of the initiative lies outside current wolf range and suitable wolf habitat in Idaho, improving ungulate populations and hunter success will decrease negative attitudes toward wolves. When mule deer increase, some wolves may move into the areas that are being highlighted under the initiative. Habitat improvements within much of southeast Idaho will be focusing on improving mule deer conditions. The Clearwater Elk Initiative also is an attempt at improving elk numbers in the area of the Clearwater Region in north Idaho where currently IDFG has concerns about the health of that once-abundant elk herd.

Wolves are currently classified as endangered under Idaho State law, but if delisted under the ESA they would be classified and protected as big game under Idaho fish and game code. Human-caused mortality would be regulated as directed by the IDP to maintain a recovered wolf population. The Service has every confidence Idaho will implement the commitments it made in its current laws, regulations, and wolf plan.

Wyoming—In 2003, Wyoming passed a State law that, upon delisting from the ESA, would designate wolves as trophy game in limited areas in Wyoming, Yellowstone National Park, Grand Teton National Park, John D. Rockefeller Memorial Parkway, and the adjacent USFS designated wilderness areas. The ''trophy game'' status allows the Wyoming Game and Fish Commission and Wyoming Game and Fish Department (WYGF) to regulate the method of take, seasons, types, and numbers that can be killed. However, this classification changes to ''predatory animal'' depending on the number of wolf packs in specific areas in Wyoming. When wolves are classified as a ''predatory animal'' they are under the jurisdiction of the Wyoming Department of Agriculture. Species designated as ''predatory animals'' are considered pests, and may be taken by anyone, at any time, without limit, and by any means, except poison.

State law defined a pack as five wolves traveling together. When there are 7 or more wolf packs in Wyoming outside of the Yellowstone and Grand Teton National Parks, the Parkway, and adjacent wilderness areas or there are 15 or more wolf packs in Wyoming, all wolves in Wyoming outside of those two National Parks and the adjacent wilderness areas would be classified as predatory animals. If there are fewer than 7 packs outside of the National Parks *and* less than 15 packs in Wyoming, the area where wolves would be classified as trophy game would be expanded beyond the National Parks and adjacent wilderness areas to include an area roughly west of Cody and north of Pinedale, Wyoming, to the Idaho and Montana State borders. Any time the number of wolf packs outside the National Park units increased to 7 or more, or there were 15 or more packs in Wyoming, the trophy game designation is removed and predatory animal status would apply to all wolves outside of the National Park units and the adjacent wilderness areas. The areas where the predatory animal designation applies would change back and forth every 90 days based on the number of wolf packs.

The State law removes the legal authorization for the WYGF to manage wolves, unless there are fewer than 7 packs outside the National Parks and there are less than 15 packs in Wyoming, including those in the National Park units. Under such conditions, WYGF would temporarily gain authority to manage wolves, but that authority would end when pack numbers increased to 15 in the State or 7 outside the National Park units and adjacent wilderness areas. WYGF, being the wildlife agency in Wyoming, already manages other large predators and wolf prey. They have the professional knowledge and skill that is necessary to make appropriate decisions to effectively manage wolves in the State and need the management authority in order to accomplish this.

The State wolf management plan generally attempts to implement the State law, with some notable exceptions. It is different than State law in that it only commits to maintaining 7 or more wolf packs outside the National Park units and assumed 8 packs would be present in National Park units. ''Trophy game'' status would be enacted over the larger area (roughly that part of northwestern Wyoming east of Cody and north of Pinedale) only if there were 7 or fewer packs outside the Park units. The area of predatory animal status would remain in effect over the remainder of Wyoming regardless of the number of packs.

Like State law, the plan allows livestock owners to shoot wolves designated as trophy game to defend their livestock and pets on private and public land from wolf attack or harassment. The plan commits to intensive wolf monitoring using standard methods, routine monitoring of diseases and wolf physical characteristics through mandatory reporting of wolf kills and pelts, and a balanced information and education program about wolves in Wyoming.

Wyoming's State law and its wolf management plan were not approved by

the Service as an adequate regulatory mechanism to maintain a recovered wolf population. We intend to propose to delist the NRM DPS when the State of Wyoming addresses the deficiencies in the State Law and management plan as discussed below.

The Service's recovery goal for each State is maintaining at least 10 breeding pairs, and at least 100 wolves per State. We define a breeding pair as an adult male and an adult female that raise at least two pups until December 31. This breeding pair definition is likely equivalent to five or six wolves traveling together in winter (our population estimates are made for the estimated wolf population on December 31st of each year). Our current data support the concept that 15 packs of 5 or more wolves traveling together in winter is equivalent to about 12–15 breeding pairs. Winter was picked because wolves breed in mid-February and the major causes of wolf mortality, wolf control and illegal killing, peak in summer and fall. There is no statistical difference between using either five or six wolves traveling together in winter to develop a biological equivalent definition of pack to the current definition of a breeding pair.

Under Wyoming law, a pack is defined as just 5 wolves, however, the law also allows that if a pack of 10 or more wolves has more than 2 breeding females, a single pack could be classified as multiple breeding pairs. This definition becomes problematic when using it as a biological equivalent to breeding pair because it lacks the flexibility to accommodate variations in pups' survivability. WYGF needs the flexibility to react to new scientific information as it becomes available. For instance, in 1999, and again in 2005, pup production and survival was significantly decreased. In Wyoming, 2002 and 2003, and in Montana, 2004 and 2005, mange was infesting some packs and wolves with mange were not expected to survive the winter decreasing the overall population size. In these types of situations, five wolves traveling together would not be the equivalent to an adult male and female, and two pups on December 31st. With State law dictating biological definitions, WYGF would be prevented from adjusting management and potential levels of human-caused mortality even though they recognize that wolf recruitment was lower than normal and any wolves removed from the population would be less likely to be replaced, as was the case in the situations discussed previously. Scientific decisions need to be made by WYGF in coordination with the other States. To approve the Wyoming State plan, the law and the management plan needs a definition of pack that is biologically equivalent to the Service's definition of breeding pair, which gives the WYGF the flexibility to manage human-caused mortality for population fluctuations.

In order for the WYGF to manage human-caused mortality, they need to be given the regulatory authority to manage wolves by designating wolves as a trophy game species and allowing WYGF to manage for conservation above the recovery levels of 10 packs and 100 wolves in the State. Wolves rarely use the wilderness areas outside the Park units and many southern Park packs leave the Park units in winter regularly utilizing habitat in non-wilderness public lands and some private lands. This means most packs in Wyoming would be subject, under predatory animal status, to unregulated and unlimited human caused mortality. Only when the number of packs falls below seven outside the Park units, would the predatory animal status be changed and management by WYGF be authorized by State law. This could result in unregulated human-caused mortality continuing until the population was below the minimum state plan objective of seven wolf packs outside the Parks.

The more protective and larger trophy game area and WYGF's legal authorization to manage sport harvest would not go into effect until the population crossed below the 15 pack threshold and there were less than 7 packs left to protect or manage outside of the National Park units. Trophy game status, by itself, would not reduce wolf mortality from defense of property by Wyoming livestock, pet, and hunting dog owners, agency control of problem wolves, or illegal killing, or any natural causes of mortality. Once there were fewer than 15 packs in Wyoming and fewer than 7 packs outside the Park Units, WYGF could do little except decline to authorize additional wolf mortality through sport hunting and trapping seasons. This limited authority and the low thresholds that trigger change in status mean that the wolf population would be at levels too low for WYGF to undertake effective action to conserve the wolf population above recovery levels. WYGF needs to be given the regulatory authority to adaptively manage the species throughout the State of Wyoming to account for fluctuations in population levels.

The potential success of the current Wyoming law and wolf plan to maintain its share of wolves in the NRM DPS depends on Yellowstone National Park having at least eight packs. In our September 9, 2005, weekly wolf report, we provided our annual mid-year estimate of the wolf population in the NRM. That was only an interim count but it appeared that wolf numbers are down substantially in Yellowstone National Park. Canine parvo-virus is suspected of causing low pup survival in the Park and pack conflicts over territory appears to have reduced the number of wolves and packs in the Park from 16 breeding pairs and 171 wolves in 2004, to 6 or 7 breeding pairs and 118 wolves in 2005 (Service Sept. 9, 2005). While there are currently more than 7 wolf packs outside the Park because of the Act s protections, it is likely that predatory animal status—if implemented at this time—would quickly reduce wolf packs outside the Park to minimum levels, and based on current conditions only 12–14 packs would exist in the State. Wyoming State law allows no regulation of human-caused mortality until the population falls below seven packs outside the Parks. Wyoming's claim that such extensive removal of wolves is unlikely even if they receive no legal protection is not supported given the past history of wolf extirpation.

Wyoming State law and predatory animal status minimizes opportunities for adaptive professional wildlife management by WYGF, confines wolf packs primarily to Yellowstone National Park, depends on at least eight Park wolf packs to constitute most of the wolves in Wyoming, and minimizes the number of wolves and wolf packs outside the Park. We have previously determined that Wyoming State law would prohibit a timely response to manage wolves effectively by WYGF should modification in state management of wolves be needed to prevent the population from falling below recovery levels of at least 10 breeding pairs and 100 wolves for each of the three core States. Based on these inadequacies, the Service is not assured that Wyoming's State law and wolf management plan would maintain the Wyoming segment of the wolf population above recovery levels.

In accordance with the requirements of the ESA and the positive 90 day finding made by the Service on October 25, 2005, the Service is continuing to carefully review Wyoming's July 2005 petition to delist, its defense of Wyoming's regulatory framework, and the reasons why Wyoming believes we should consider Wyoming State law and its wolf plan as an adequate regulatory mechanism to propose delisting. At this time we continue to believe that current

State law and the State wolf plan in Wyoming do not provide adequate regulatory assurances that Wyoming's share of the NRM DPS population will be maintained into the foreseeable future and thus that the overall wolf population's distribution and numbers will be maintained above recovery levels. However, if Wyoming modified its State law and its wolf management plan to address the inadequacies described above and the Service approved them, we would then consider proposing the delisting of wolves throughout the NRM wolf DPS.

Regulatory Assurances in Other States and Tribal Areas Within the DPS

Washington—Wolves in all of Washington are endangered under State law (RCW 77.12, WAC 232.12.014; these provisions may be viewed at: *http://www.leg.wa.gov/RCW/index.cfm?section=77.12.020&fuseaction=section* and *http://www.leg.wa.gov/WAC/index.cfm?section=232-12-014&fuseaction=section.* If the NRM DPS is delisted, those areas in Washington included in the NRM wolf DPS would still remain listed as endangered by Washington State law, which prohibits nearly all forms of human-caused mortality. The areas in Washington not included in the NRM DPS would remain listed as endangered under both State and Federal law.

At this time, there are no known wolves in Washington and there is little suitable habitat in that part of eastern Washington in the NRM wolf DPS. Wolf management in Washington will have no effect on the recovered wolf population that resides in the significant portion of the range of Montana, Idaho, and Wyoming.

There is currently no Washington State recovery or management plan for wolves. However, Interagency Wolf Response Guidelines are being developed by the Service, WDFW, and USDA–WS to provide a checklist of response actions for five situations that may arise in the future. There are no known wolves in Washington at this time, but a few individuals may occasionally disperse into the State from nearby populations in Idaho, Montana, and Canada. There are no plans to reintroduce wolves to Washington.

Oregon—The gray wolf has been classified as endangered under the Oregon Endangered Species Act (ESA; ORS 496.171–192) since 1987. If federally delisted, wolves in that portion of the NRM DPS in Oregon would remain listed as endangered under State law. There are currently no known wolves in Oregon and wolf management will have no effect on the recovered wolf population that resides in the significant portion of the range of Montana, Idaho, and Wyoming.

The Oregon Wolf Management Plan, as approved in February 2005, called for 3 legislative actions and included several provisions that could not be implemented unless certain actions were taken by the Oregon Legislature. The 2005 Oregon Legislative Assembly considered, but did not adopt, the proposed legislative actions. As a result, the Fish and Wildlife Commission is currently going through a public review process to amend the Oregon Plan and discuss legislative proposals. The Commission remains on record as calling for those legislative enhancements; however, implementation of the Oregon Plan does not depend upon them. Formal amendment of the Oregon Plan is expected to result in a strategy for conserving the gray wolf in Oregon, identify the conditions necessary for delisting the wolf under State law, and provide management after delisting. Under the Oregon Department of Fish and Wildlife management plan, conservation of the gray wolf will be directed by established objectives for wolf distribution, population management, and monitoring. Wolves will not be deliberately confined to any specific areas of the State, but their distribution and numbers will be managed adaptively based upon ecological factors, wolf population status, conflict mitigation, and human social tolerance.

Under the Oregon Wolf Management Plan, the gray wolf will remain classified as endangered under State law until the conservation population objective for eastern Oregon is reached. Once the objective is achieved, the State delisting process will be initiated. Following delisting from the State ESA, wolves will have a classification as nongame wildlife under ORS 496.375.

Utah—If federally delisted, wolves in that portion of the NRM wolf DPS in Utah would remain listed as protected wildlife under State law. In Utah, wolves fall under three layers of protection: (1) State code, (2) Administrative Rule and (3) Species Management Plan. The Utah Code can be found at; *http://www.le.state.ut.us/~code/TITLE23/TITLE23.htm.*

The relevant administrative rules that restrict wolf take can be found at *http://www.rules.utah.gov/publicat/code/r657/r657–003.htm* and *http://www.rules.utah.gov/publicat/code/r657/r657–011.htm.* These regulations restrict all potential taking of wolves in Utah, including that portion in the NRM wolf DPS. Wolf management in Utah will have no effect on the recovered wolf population that resides in suitable habitat in Montana, Idaho, and Wyoming.

In 2003, the Utah Legislature passed House Joint Resolution 12 (HJR–12), which directed the Utah Division of Wildlife Resources (UDWR) to draft a wolf management plan for ''the review, modification and adoption by the Utah Wildlife Board, through the Regional Advisory Council process.'' In April 2003 the Utah Wildlife Board directed UDWR to develop a proposal for a wolf working group to assist the agency in this endeavor. The UDWR created the Wolf Working Group (WWG) in the summer of 2003. The WWG is composed of 13 members that represent diverse public interests regarding wolves in Utah.

On June 9, 2005, the Utah Wildlife Board passed the Utah Wolf Management Plan. The goal of the plan is to manage, study, and conserve wolves moving into Utah while avoiding conflicts with the elk and deer management objectives of the Ute Indian Tribe; minimizing livestock depredation; and protecting wild ungulate populations in Utah from excessive wolf predation. The Utah Wolf Management Plan can be viewed at *http://www.wildlife.utah.gov/wolf/.* Its purpose is to guide management of wolves in Utah during an interim period from Federal delisting until 2015, or until it is determined that wolves have become established in Utah, or the assumptions of the plan (political, social, biological, or legal) change. During this interim period, immigrating wolves will be studied to determine where they are most likely to settle without conflict.

Tribal Plans—There are about 20 tribes in this area. Currently no wolf packs live on, or are entirely dependent on, Tribal lands for their existence in the NRM wolf DPS. In the NRM wolf DPS about 12,719 mi^2 (32,942 km^2) (3 percent) of the area is Tribal land. In the NRM wolf occupied habitat, about 1,813 mi^2 (4,696 km^2) (2 percent) is Tribal land. Therefore, while Tribal lands can contribute some habitat for wolf packs in the NRM, they will be relatively unimportant to maintaining a recovered wolf population in the NRM wolf DPS. Many wolf packs live in areas of public land where Tribes have various treaty rights, such as wildlife harvest. Montana, Idaho, and Wyoming propose to incorporate Tribal harvest into their assessment of the potential surplus of wolves available for public harvest in each State, each year, to assure that the wolf population is maintained above

recovery levels. Utilization of those Tribal treaty rights will not significantly impact the wolf population or reduce it below recovery levels because a small portion of the wolf population could be affected by Tribal harvest or lives in areas subject to Tribal harvest rights.

The overall regulatory framework analyzed depends entirely on State-led management of wolves that are primarily on lands where resident wildlife is traditionally managed primarily by the States. Any wolves that may establish themselves on Tribal lands will be in addition to those managed by the States outside Tribal reservations. At this point in time only the Nez Perce Tribe has a wolf management plan that was approved by the Service, but that plan only applied to listed wolves, and it was reviewed so the Service could determine if the Tribe could take a portion of the responsibility for wolf monitoring and management in Idaho under the 1994 special regulation under section 10(j). No other Tribe has submitted a wolf management plan. In November 2005, the Service requested information from all the Tribes in the tentative NRM wolf DPS regarding their Tribal regulations and any other relevant information regarding Tribal management or concerns about wolves. All responses were reviewed and Tribal comments were incorporated into this notice.

Summary

Montana and Idaho have proposed to regulate wolf mortality over conflicts with livestock after delisting in a manner similar to that used by the Service to reduce conflicts with private property, and that would assure that the wolf population would be maintained above recovery levels. These two State plans have committed to using a definition of a wolf pack that would approximate the Service's current breeding pair definition. Based on that definition, they have committed to maintaining at least 10 breeding pairs and 100 wolves per State by managing for a safety margin of 15 packs in each State. The States are to control problem wolves in a manner similar to that used by the Service (1987, 1994, 1999, 2005) and use adaptive management principles to regulate and balance wolf population size and distribution with livestock conflict and public tolerance. When wolf populations are above State management objectives for 15 packs, wolf control measures may be more liberal. When wolf populations are below 15 packs, wolf control as directed by each State will be more conservative.

Current Wyoming law provides a definition of pack that is not consistent with the Service's definition of breeding pair. In addition, Wyoming uses the State definition of pack in a complicated structure for determining when wolves are protected under the regulatory mechanisms of the ''trophy game'' status and the absent management structure under the ''predatory animal'' status. Wyoming's plan does not provide for regulatory control to balance wolf population size and distribution with livestock conflict and public tolerance.

If the wolf were delisted in the NRM DPS, the major difference between the previous Federal management and the new State management of problem wolves would be with respect to the taking of wolves in the act of attacking or molesting livestock or other domestic animals on private land by private landowners or on grazing allotments by permittees.

Private take of problem wolves under State regulations in Montana and Idaho would replace some agency control, but we believe this would not dramatically increase the overall numbers of problem wolves killed each year because of conflicts with livestock. Under Wyoming State law, the predatory animal status allows all wolves, including pups, to be killed by any means, without limit, at any time, for any reason, and regardless of any direct or potential threat to livestock. Such unregulated take could eliminate wolves from some otherwise suitable habitat in northwestern Wyoming.

In contrast to the Service recovery program, currently approved State and tribal management programs are also to incorporate regulated public harvest, only when wolf populations in Wyoming, Montana, and Idaho are safely above recovery levels of 15 or more packs, to help manage wolf distribution and numbers to minimize conflicts with humans. Wyoming State law and management should also meet this requirement. Each of the three core States routinely uses regulated public harvest to help successfully manage and conserve other large predators and wild ungulates under their authority, and will use similar programs to manage wolf populations safely above recovery levels, when there are more than 15 packs in their State.

The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintain them at densities that would easily support a recovered wolf population. They, and Federal land management agencies, will continue to manage for high ungulate populations in the foreseeable future. Native ungulate populations also are maintained at high levels by Washington, Oregon, and Utah in the portions of those States that are in the tentative NRM wolf DPS. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Public Attitudes Toward the Gray Wolf—The primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are largely based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding the threat to pets, the conviction that the species should never be subject to sport hunting or trapping, and the wolf traditions of Native American Tribes.

In recent decades, national support has been evident for wolf recovery and reintroduction in the NRM (Service 1999). With the continued help of private conservation organizations, the States and Tribes can continue to foster public support to maintain viable wolf populations in the NRM wolf DPS. We believe that the State management regulations that will go into effect if wolves in the NRM wolf DPS are removed from the ESA's protections will further enhance public support for wolf recovery. State management provides a larger and more effective local organization and a more familiar means for dealing with these conflicts (Bangs *et al.* 2004, Williams *et al.* 2002, Mech 1995). State wildlife organizations have specific departments and staff dedicated to providing accurate and science-based public education, information, and outreach. Each State plan has committed to provide balanced wolf outreach programs.

Genetics—Genetic diversity in the GYA segment of the NRM wolf DPS is extremely high. A recent study of wolf genetics among wolves in northwestern Montana and the reintroduced populations found that wolves in those areas were as genetically diverse as their source populations in Canada and that inadequate genetic diversity was not a wolf conservation issue in the NRM at this time (Forbes and Boyd 1997). Because of the long dispersal distances and the relative speed of natural wolf movement between Montana, Idaho, and Wyoming (discussed under Factor A), we anticipate that wolves will continue to maintain high genetic diversity in the NRM wolf DPS. However, should it become necessary

sometime in the distant future, all of the three core States' plans recognized relocation as a potentially valid wildlife management tool.

In conclusion, we reviewed other manmade and natural factors that might threaten wolf population recovery in the foreseeable future. Public attitudes towards wolves have improved greatly over the past 30 years, and we expect that, given adequate continued management of conflicts, those attitudes will continue to support wolf restoration. The State wildlife agencies have professional education, information, and outreach components and are to present balanced science-based information to the public that will continue to foster general public support for wolf restoration and the necessity of conflict resolution to maintain public tolerance of wolves. Additionally, there are no concerns related to wolf genetic viability or interbreeding coefficients that would suggest inadequate connectivity among the recovery areas that could affect wolf population viability (Vonholdt *et al.* in prep.) If significant genetic concerns do arise at some point in the future, our experience with wolf relocation shows that the States could effectively remedy those concerns with occasional wolf relocation actions, but it is highly unlikely such management action would ever be required.

Summary of Our Five-Factor Analysis of Potential Threats

As required by the ESA, we considered the five potential threat factors to assess whether wolves are threatened or endangered throughout all or a significant portion of their range in the NRM wolf DPS and therefore, whether the NRM wolf DPS should be listed. In regard to the NRM wolf DPS, a significant portion of the wolf's range is an area that is important or necessary for maintaining a viable, self-sustaining, and evolving representative meta-population in order for the NRM wolf DPS to persist into the foreseeable future. While wolves historically occurred over most of the tentative DPS, large portions of this area are no longer able to support viable wolf populations, and the wolf population in the NRM wolf DPS will remain centered in northwestern Montana, central Idaho, and the GYA. There does not appear to be any significant portion of the range, except portions of Wyoming, where the NRM wolf DPS remains threatened or endangered.

The large amount and distribution of suitable habitat in public ownership and the presence of three large protected core areas that contain highly suitable habitats assures the Service that threats to the wolf population in the NRM wolf DPS have been reduced or eliminated in all or a significant portion of its range in the foreseeable future. Unsuitable habitat and small, fragmented suitable habitat away from these core areas within the NRM wolf DPS, largely represent geographic locations where wolf packs cannot persist and are not significant to the species. Disease and natural predation do not threaten wolf population recovery in all or a significant portion of the species' range, nor are they likely to within the foreseeable future. Additionally, we believe that other relevant natural or manmade factors (*i.e.*, public attitudes and genetics) are not significant conservation issues that threaten the wolf population in all or a significant portion of its range within the foreseeable future.

Managing take (*i.e.*, overutilization of wolves for commercial, recreational, scientific and educational purposes and human predation) remains the primary challenge to maintaining a recovered wolf population in the foreseeable future. We have determined that both the Montana and Idaho wolf management plans are adequate to regulate human-caused mortality and that Montana and Idaho will maintain their share and distribution of the tri-State wolf population above recovery levels. Wolf management by the tribes and the States of Washington, Oregon, and Utah will be beneficial, but is not necessary to either achieving or maintaining a recovered wolf population in the NRM wolf DPS.

If Wyoming had an approved State law and wolf management plan, we believe that regulation by States and Tribes of human-caused mortality would be adequate to maintain the wolf population in the NRM wolf DPS above recovery levels in all significant portions of its range for the foreseeable future. Therefore, on the basis of the best scientific and commercial information available, we believe that the gray wolf in the NRM DPS would no longer qualify for protection under the ESA, if Wyoming modified its State wolf law and State wolf management plan in a manner that the Service would approve as an adequate regulatory mechanism.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The ESA provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Most of these measures have already been successfully applied to gray wolves in the conterminous 48 States.

We intend to propose rulemaking to remove the protections of the ESA from all or parts of six States, but do not intend to take action until Wyoming's law and wolf management plan are modified and can be approved by the Service. If Wyoming modified its regulatory framework for wolf management in a manner that the Service could approve and if the Service proposed and delisted the NRM wolf in the NRM DPS, the protections of the ESA would still continue to apply to the gray wolves outside the NRM wolf DPS. We do not intend to modify or withdraw the existing special regulations or the nonessential experimental population designations for the reintroduced gray wolf populations in Arizona, New Mexico, and Texas. Where wolves exist outside the NRM wolf DPS, they would continue to be considered during consultations with other Federal agencies under section 7 of the ESA. Should a NRM gray wolf disperse beyond the boundaries of the NRM DPS, it would acquire the status of wolves in the area it enters. For example, if wolves in the NRM DPS were delisted, a wolf that dispersed from Wyoming into Colorado would take on endangered species status under the ESA.

This notice does not apply to the listing or protection of the red wolf (*Canis rufus*).

Post-Delisting Monitoring

Section 4(g)(1) of the ESA, added in the 1988 reauthorization, requires us to implement a system, in cooperation with the States, to monitor for not less than 5 years, the status of all species that have recovered and been removed from the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that a recovered species remains secure from risk of extinction after it no longer has the protections of the ESA. Should relisting be required, we may make use of the emergency listing authorities under section 4(b)(7) of the ESA to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the ESA explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain

responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM.

Monitoring Techniques—The NRM area was intensively monitored for wolves even before wolves were documented in Montana (Weaver 1978; Ream and Mattson 1982; Kaminski and Hansen 1984). Numerous Federal, State, Tribal agencies, universities, and special interest groups assisted in those various efforts. Since 1979, wolves have been monitored using standard techniques including collecting, evaluating, and following-up on suspected observations of wolves or wolf signs by natural resource agencies or the public; howling or snow tracking surveys conducted by the Service, our university and agency cooperators, volunteers, or interested special interest groups; and by capturing, radio-collaring and monitoring wolves. We only consider wolves and wolf packs as confirmed when Federal, State, or Tribal agency verification is made by field staff that can reliably identify wolves and wolf signs. We provide an annual estimate of the number of individuals, wolf packs, and breeding pairs of wolves in the NRM wolf DPS. For example, by the end of 2004, we estimated there were 835 wolves in 110 packs and that 66 of those packs met the criteria for a breeding pair in Montana, Idaho, and Wyoming; no wolves were known to be present in any of the adjacent States (Service *et al.* 2005).

The wolf monitoring system works in a hierarchical nature. Typically we receive a report (either directly or passed along by another agency) that wolves or their signs were observed. We make no judgment whether the report seems credible or not and normally just note the general location of that observation. Unless breeding results, reports of single animals are not important unless tied to other reports or unusual observations that elicit concern (*i.e.*, a wolf reported feeding on a livestock carcass). Lone wolves can wander long distances over a short period of time (Mech and Boitani 2003) and are almost impossible to find again and confirm. However, the patterns and clusters of those individual reports are very informative and critical to subsequent agency decisions about where to focus agency searches for wolf pack activity. When we receive multiple reports of multiple individuals that indicate possible territoriality and pair bonding (the early stage of pack formation), or a report of multiple wolves that seems highly credible (usually made by a biologist or experienced outdoors-person), we typically notify the nearest Federal, State or Tribal natural resource/land management agency and ask them to be on the alert for possible wolf activity during their normal course of field activities. Once they locate areas of suspected wolf activity, we may ask experienced field biologists to search the area for wolf signs (tracks, howling, scats, ungulate kills). Depending on the type of activity confirmed, field crews may decide to capture, radio-collar, and release wolves on site. Radio-collared wolves are then relocated from the air 1 to 4 times per month dependent on a host of factors including funding, personnel, aircraft availability, weather, and other priorities. At the end of the year, we compile agency-confirmed wolf observations to estimate the numbers and locations of adult wolves and pups that were likely alive on December 31 of that year. These data are then summarized by packs to indicate overall population size, composition, and distribution. This is a very intensive level of wildlife population monitoring compared to nearly all others done in North America that we believe results in relatively accurate estimates of wolf population distribution and structure (Service *et al.* 2005) in the NRM wolf DPS. This monitoring strategy has been used to estimate the NRM wolf population for over 20 years.

Montana, Idaho, and Wyoming as well as Oregon and Utah committed to continue monitoring of wolf populations, according to their State wolf management plans (See State plans in Factor D), using similar techniques as the Service and its cooperators (which has included the States, Tribes, and USDA-Wildlife Services—the same agencies that will be managing and monitoring wolves post-delisting) have used. The States have committed to continue to conduct wolf population monitoring through the mandatory 5-year PDM period that is required by the ESA. The States also have committed to publish the results of their monitoring efforts in annual wolf reports just as has been done since 1989 by the Service and its cooperators (Service *et al.* 1989–2005). Other States and Tribes within the DPS adjacent to Montana, Idaho, and Wyoming also have participated in this interagency cooperative wolf monitoring system for at least the past decade and their plans commit them to continue to report wolf activity in their States and coordinate those observations with other States.

Service Review of the Post-Delisting Status of the Wolf Population—To ascertain wolf population distribution and structure and analyze if the wolf population might require a status review to determine whether it should again be listed under the ESA, we intend to review the State and any Tribal annual wolf reports each year. By evaluating the techniques used, and the results of those wolf monitoring efforts, the Service can decide whether further action, including re-listing is warranted. In addition, the States and Tribes are investigating other, perhaps more accurate and less expensive ways to estimate and describe wolf pack distribution and abundance (Service *et al.* 2005; Sime *et al.* in prep.; Kunkel *et al.* in prep.). Data indicate that other survey methods and data can become the ''biological equivalents'' of the breeding pair definition currently used to measure recovery. Montana and Idaho have committed to use a definition of a wolf pack that approximates the current breeding pair standard (such as five or six wolves traveling together in winter). Wyoming law defines a wolf pack as simply five or more wolves traveling together, which could mean only a female and four pups in May and would have no relationship to a breeding pair. Those State and Tribal investigations also include alternative ways to estimate the status of the wolf population and the numbers of breeding pairs that are as accurate, but less expensive, than those that are currently used. The States will continue to cooperate with National Parks and Tribes and publish their annual wolf population estimates after the 5-year mandatory wolf population monitoring required by the ESA is over, but this will not be required by the ESA.

We fully recognize and anticipate that State and Tribal laws regarding wolves and State and Tribal management will change through time as new knowledge becomes available as the States and Tribes gain additional experience at wolf management and conservation. We will base any analysis of whether a status review and relisting are warranted upon the best scientific and commercial data available regarding wolf distribution and abundance in the NRM wolf DPS. For the 5-year PDM period, the best source of that information will be the State annual wolf reports. We intend to post those annual State wolf reports and our annual review and comment on the status of the wolf population in the NRM wolf DPS on our Web site by April 1 of each year. During our yearly analysis for PDM (at least 5 years) of the State's annual reports we also intend to comment on any threats that may have increased during the previous year, such as significant changes in a State regulatory framework, diseases, decreases in prey abundance, increases

in wolf-livestock conflict, or other factors.

Our analysis and response for PDM is to track changes in wolf abundance and distribution and threats to the population. If the wolf population ever falls below the minimum NRM wolf population recovery level (30 breeding pairs of wolves and 300 wolves in Montana, Idaho, and Wyoming), we could initiate an emergency listing of gray wolves throughout the NRM wolf DPS. If the wolf population segment in Montana, Idaho, or Wyoming fell below 10 breeding pairs or 100 wolves in any one of those States for 2 consecutive years, we could initiate a status review and analysis of threats to determine if re-listing was warranted. All such reviews would be made available for public review and comment, including peer review by select species experts. If either of these two scenarios occurred (1) less than 30 breeding pairs or 300 wolves, or (2) less than 10 breeding pairs or 100 wolves in Montana, Idaho, or Wyoming for 2 consecutive years during the mandatory PDM period), the PDM period would be extended 5 additional years from the point of violation.

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this notice. Generally, we seek information, data, and comments concerning the boundaries of the tentative NRM wolf DPS and the status of gray wolf in the NRM. Specifically, we seek documented, biological data on the status of the NRM wolf population and their habitat, and the management of these wolves and their habitat.

We will also consider the possibility of establishing a Northern Rocky Mountain DPS for the gray wolf, but listing the DPS as threatened, if we determine after considering public comments that the population segment meets the criteria in the DPS Policy, but the DPS does not meet the delisting tests in the ESA and our regulations. This is a possible outcome if Wyoming does not adopt a State law and management plan that are sufficient to support delisting. We request public comments on this alternative.

Idaho and Montana have requested that we establish a DPS that excludes Wyoming if Wyoming fails to adopt an appropriate State law and a management plan that would support delisting. An alternative to this proposal would be to include Yellowstone National Park, where exclusive Federal jurisdiction lies and neither State law nor exploitation of wildlife would occur in any event, but to exclude the rest of Wyoming from the DPS. The Idaho and Montana request is inconsistent with the available science discussed earlier in this preamble as it applies to the requirements for establishment of a DPS. Nevertheless, if anyone now advocates such an approach, we request that they address both the scientific and legal basis for it in their comments. We would consider these alternative scenarios to the extent Wyoming does not act and we find such actions to be legally sufficient.

The eastern one third of Washington and Oregon, and a small portion of northern Utah are included within the tentative DPS. We request comments on whether the DPS should be expanded to include more or less land within Utah or any other State. Any such comments should provide relevant scientific data. We will consider the information so submitted in delineating the boundaries for this DPS.

Submit comments as indicated under **ADDRESSES.** If you wish to submit comments by e-mail, please avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at our Helena Office (see **ADDRESSES**). In making a final decision on this notice, we will take into consideration the comments and any additional information we receive. Such communications may lead to a proposed rule that differs from this notice.

References Cited

A complete list of all references cited in this document is available upon request from the Western Gray Wolf Recovery Coordinator (see **ADDRESSES** above).

Dated: January 31, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 06–1102 Filed 2–7–06; 8:45 am]

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LIST OF PUBLIC LAWS

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