



# Federal Register

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- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, April 4, 2006  
9:00 a.m.–Noon

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

**RESERVATIONS:** (202) 741-6008



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Proclamation 7988 of March 10, 2006

The President

National Poison Prevention Week, 2006

By the President of the United States of America

## A Proclamation

National Poison Prevention Week helps raise awareness about the dangers of poison exposure. Our Nation has made great progress in reducing the number of poison-related deaths and injuries since the first National Poison Prevention Week in 1962, yet poisonings remain a threat to the health and safety of many Americans.

Approximately 1 million of our Nation's children under the age of 5 are exposed to poisonous substances each year. Most of these instances are preventable and result from the ingestion of household products. The Consumer Product Safety Commission requires child-resistant packaging for many medicines and household chemicals, and it is important for parents and adults to remember to act responsibly by storing these substances out of the reach of children.

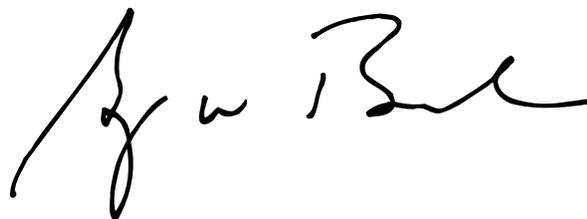
The most common cause of death due to accidental poisoning results from exposure to carbon monoxide, an odorless, colorless gas that is produced by products such as grills, gas stoves, water heaters, and automobiles. Every year, more than 500 Americans die from carbon monoxide poisoning, usually during winter months. Knowledge is the key to preventing this kind of poisoning. Placing a carbon monoxide alarm on each level of a home, and especially near bedrooms, is a good way to monitor air quality and remain alert to potentially high levels of carbon monoxide.

Information about poison exposure and how homes can be made safer is available at the Centers for Disease Control and Prevention website, [www.cdc.gov/health/poisoning.html](http://www.cdc.gov/health/poisoning.html), and the Poison Prevention Week Council website, [www.poisonprevention.org](http://www.poisonprevention.org). In case of emergency, families can contact their nearest Poison Control Center, 24 hours a day, 7 days a week, by calling 1-800-222-1222. By working together and taking the appropriate precautions, we can help to prevent deaths and injuries caused by accidental poisonings.

To encourage Americans to learn more about the dangers of accidental poisonings and to take appropriate preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has requested the President to issue a proclamation designating the third week of March each year as "National Poison Prevention Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 19 through March 25, 2006, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate activities and by learning how to prevent poisonings, especially among children.

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

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is written in a cursive, flowing style with a large initial "G" and a distinct "W".

[FR Doc. 06-2563  
Filed 3-14-06; 8:45 am]  
Billing code 3195-01-P

# Rules and Regulations

Federal Register

Vol. 71, No. 50

Wednesday, March 15, 2006

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE240, Special Condition 23-180-SC]

#### Special Conditions; Heritage Aviation LTD; Honeywell EFIS 40 on a Cessna 208B, Protection of Systems for High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to Heritage Aviation LTD, 2617 Aviation Parkway, Grand Prairie, TX 75052, for a supplemental type certificate for the Cessna 208B. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of a Honeywell EFIS 40, for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). This system will interface to other airplane systems also covered by these special conditions. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes. **DATES:** The effective date of these special conditions is March 6, 2006. Comments must be received on or before April 14, 2006.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk,

Docket No. CE240, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE240. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4127.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE240." The postcard will be date stamped and returned to the commenter.

#### Background

On July 6, 2005, Heritage Aviation LTD, 12617 Aviation Parkway, Grand Prairie, TX 75052, made an application to the FAA for a new supplemental type

certificate for the Cessna 208B. The Cessna 208B is currently approved under TC No. A37CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

#### Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Heritage Aviation LTD must show that the Cessna 208B meets the original certification basis, as listed on Type Data Sheet A37CE, the additional certification requirements added for the Honeywell EFIS 40 system, exemptions, if any; and the special conditions adopted by this rulemaking action. The additional certification requirements for the Honeywell EFIS 40 include §§ 23.1301, 23.1309, 23.1311, 23.1322, 23.1353 and other rules at the amendment appropriate for the date of application. Further details of the certification basis for the installation of the Honeywell EFIS 40 are available on request.

#### Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

#### Novel or Unusual Design Features

Heritage Aviation LTD plans to incorporate certain novel and unusual design features into the Cessna 208B for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an EFIS, which are susceptible to the

HIRF environment that was not envisaged by the existing regulations for this type of airplane.

*Protection of Systems from High Intensity Radiated Fields (HIRF):* Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and

electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

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

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection

against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

### Applicability

As discussed above, these special conditions are applicable to the Cessna 208B. Should Heritage Aviation LTD apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

### Citation

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna 208B airplanes modified by Heritage Aviation LTD to add the Honeywell EFIS 40 system.

1. Protection of Electrical and Electronic Systems from High Intensity

Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

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

Issued in Kansas City, Missouri on March 6, 2006.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06-2491 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2005-22398; Airspace Docket No. 05-ASO-7]

RIN 2120-AA66

#### Establishment of High Altitude Area Navigation Routes; South Central United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects an error in the geographic coordinate for one navigation fix listed in a final rule published in the **Federal Register** on February 13, 2006 (71 FR 7409), Airspace Docket No. 05-ASO-7, FAA Docket No. FAA-2005-22398.

**DATES:** *Effective:* April 13, 2006.

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

#### SUPPLEMENTARY INFORMATION:

##### History

On February 13, 2006, a final rule for Airspace Docket No. 05-ASO-7, FAA Docket No. FAA-2005-22398 was published in the **Federal Register** (71 FR 7409). This rule established 16 high altitude area navigation routes in the South Central United States. In the description for route Q-36, the

longitude coordinate for the SWAPP fix was incorrectly published as 86°10'56" W., which represents a one degree error. The correct longitude coordinate is 85°10'56" W. This action corrects the error. The rule listed the correct coordinates for the SWAPP fix in the descriptions of routes Q-32 and Q-34.

#### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for route Q-36 as published in the **Federal Register** on February 13, 2006 (71 FR 7409), Airspace Docket No. 05-ASO-7, FAA Docket No. FAA-2005-22398, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

#### PART 71—[AMENDED]

##### § 71.1 [Amended]

■ On page 7411, correct the description for route Q-36, to read as follows:

##### Paragraph 2006—Area Navigation Routes

	*	*	*	*	*
<b>Q-36 RZC to SWAPP [Corrected]</b>					
RZC	.....	VORT-	(lat. 36°14'47" N., long.		
		AC.	94°07'17" W.)		
TWITS	WP	.....	(lat. 36°08'32" N., long.		
			90°54'48" W.)		
DEPEC	WP	.....	(lat. 36°06'00" N., long.		
			87°31'00" W.)		
BNA	....	VORT-	(lat. 36°08'13" N., long.		
		AC.	86°41'05" W.)		
SWAPP	Fix	.....	(lat. 36°36'50" N., long.		
			85°10'56" W.)		
	*	*	*	*	*

Issued in Washington, DC, on March 8, 2006.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. 06-2503 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 312

#### Children's Online Privacy Protection Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Retention of rule without modification.

**SUMMARY:** The Federal Trade Commission ("the Commission") has completed its regulatory review of the Children's Online Privacy Protection Rule ("the COPPA Rule" or "the Rule"), which implements the Children's Online Privacy Protection Act of 1998. The Rule regulates how Web site operators and others may collect, use, and distribute personal information from children online. The Commission

requested comment on the costs and benefits of the Rule and whether it should be retained without change, modified, or eliminated. The Commission also requested comment on the Rule's effect on: information practices relating to children; children's ability to obtain online access to information of their choice; and the availability of Web sites directed to children. Pursuant to this review, the Commission concludes that the Rule continues to be valuable to children, their parents, and Web site operators, and has determined to retain the Rule in its current form. This document discusses the comments received in response to the Commission's request for public comment and announces the Commission's decision to retain the Rule without modification.

**DATES:** *Effective Date:* March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Karen Muoio, (202) 326-2491, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Drop NJ-3212, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Pursuant to Congressional direction and the Commission's systematic program of reviewing its rules and guides, in April 2005 the Commission issued a **Federal Register** Proposed Rule seeking public comment on the overall costs and benefits of the COPPA Rule and other issues related to the Rule ("April 2005 NPR").<sup>1</sup> In response, the Commission received 25 comments from various parties, including: trade associations, Web site operators, privacy and educational organizations, COPPA safe harbor programs, and consumers.<sup>2</sup> As part of its review, the Commission also considered the 91 comments received in response to its January 14, 2005 Notice of Proposed Rulemaking ("January 2005 NPR") on the Rule's sliding scale approach to obtaining verifiable parental consent.<sup>3</sup>

<sup>1</sup> 70 FR 21107 (Apr. 22, 2005). The NPR also may be found online at <http://www.ftc.gov/opa/2005/04/coppacomments.htm>.

<sup>2</sup> The comments responsive to the April 2005 NPR have been filed on the Commission's public record as Document Nos. 516296-00001, *et seq.*, and may be found online at <http://www.ftc.gov/os/comments/COPPARuleReview/index.htm>. This document cites comments by commenter name and page number. If a commenter submitted comments in response to the April 2005 NPR and the January 2005 NPR, the comment submitted second is delineated with the number "2." All comments are available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, D.C. 20580.

<sup>3</sup> 70 FR 2580 (Jan. 14, 2005). The comments responsive to the January 2005 NPR have been filed

In the April 2005 NPR, the Commission asked members of the public to comment on all aspects of the Rule and additionally posed twenty-one specific questions. The Commission requested comment on the general costs and benefits of the Rule, each specific provision of the Rule, prominent issues that have arisen since the inception of the Rule, and particular issues that Congress statutorily directed the Commission to evaluate. The April 2005 NPR also restated the questions pertaining to the sliding scale approach to obtaining verifiable parental consent that were posed in the January 2005 NPR, to give the public further opportunity to comment on that issue.

Commenters generally favored retaining the Rule without modification. In addition, although some commenters did not favor making the sliding scale approach permanent, they did not provide the Commission with sufficient data upon which to base a determination to eliminate or revise the sliding scale approach.

This document first describes the background and requirements of the Rule. It then summarizes the comments received regarding the costs and benefits of the Rule and whether it should be retained, eliminated, or modified. It finally explains the Commission's determination to retain the Rule without modification.<sup>4</sup>

## II. Description and Background of the Children's Online Privacy Protection Rule

On October 21, 1998, Congress enacted COPPA (15 U.S.C. 6501–6508), which prohibits certain unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personal information from children on the Internet.<sup>5</sup> Pursuant to COPPA's requirements, the Commission issued its final Rule implementing COPPA on November 3, 1999.<sup>6</sup>

The Rule imposes requirements on operators of Web sites or online services directed to children under 13 years of age or that have actual knowledge that they are collecting personal information online from children under 13 years of age (collectively, "operators").<sup>7</sup> Among other things, the Rule requires operators

to provide notice to parents and to obtain "verifiable parental consent" prior to collecting, using, or disclosing personal information from children under 13 years of age.<sup>8</sup> "Verifiable parental consent" means that the consent method must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.<sup>9</sup>

When the Commission issued the Rule in 1999, it adopted a sliding scale approach to obtaining verifiable parental consent.<sup>10</sup> Under such an approach, more reliable measures are required for parental consent if an operator intends to disclose a child's information to third parties or the public than if the operator only uses the information internally. The Commission adopted the sliding scale approach to address concerns that it was not yet feasible to require more technologically advanced methods of consent for internal uses of information. To reflect the expectation that this assessment could change, the sliding scale was scheduled to sunset in 2002. When public comment in 2002 indicated that changes in the technology had not occurred, the Commission extended the sliding scale approach three more years.<sup>11</sup> In January 2005, the Commission sought public comment on whether to make the sliding scale approach permanent.<sup>12</sup> Based on the comments received, the Commission determined that it would be appropriate to evaluate the sliding scale approach in the broader context of the current Rule review. Pending the outcome of the instant review, the Commission amended the Rule to extend the sliding scale approach.<sup>13</sup>

In addition to requiring operators to obtain verifiable parental consent before collecting, using, or disclosing personal information from children, the Rule requires operators to post a notice of their information practices online, provide parents with access to their children's information, and keep that information confidential and secure.<sup>14</sup> It also prohibits operators from conditioning children's participation in an activity on the children providing more personal information than is

reasonably necessary to participate in that activity.<sup>15</sup> Further, the Rule provides a safe harbor for operators following Commission-approved self-regulatory guidelines, and instructions on how to get such guidelines approved.<sup>16</sup>

Both the Act and the Rule require that the Commission initiate a review of the Rule, including requesting data on certain issues, within five years of the Rule's effective date, *i.e.*, April 21, 2005.<sup>17</sup> The Commission initiated its review on that date.<sup>18</sup> The review also has been conducted pursuant to the Commission's systematic program of periodically reviewing its rules and guides.

## III. Discussion of Comments and the Retention of the Rule Without Modification

### A. Summary of Comments

The Commission received 25 comments in response to its April 2005 NPR on the overall Rule and 91 comments in response to its January 2005 NPR on the sliding scale approach to obtaining verifiable parental consent, for a total of 116 comments.<sup>19</sup> The commenters included trade associations, Web site operators, privacy and educational organizations, COPPA safe harbor programs, and consumers.

Of the 116 comments received, 68 were non-form letter comments from various entities and individuals. Approximately two-thirds of these 68 comments solely addressed the sliding scale approach.<sup>20</sup> About one-third of

<sup>15</sup> 16 CFR 312.7.

<sup>16</sup> 16 CFR 312.10.

<sup>17</sup> 15 U.S.C. 6507; 16 CFR 312.11.

<sup>18</sup> 70 FR 21107. The NPR also may be found online at <http://www.ftc.gov/opa/2005/04/coppacomments.htm>.

<sup>19</sup> The comments are discussed in subsections B and C of this Part. In addition, complete lists of the commenters and their comments appear at <http://www.ftc.gov/os/publiccomments.htm>.

<sup>20</sup> Dori Acampora; ADVO, Inc.; American Association of Advertising Agencies, *et al.* ("AAAA"); Lou Apa; Susan Barrett; Belinda Brewer; American Library Association ("ALA"); Center for Digital Democracy ("CDD"); Children's Advertising Review Unit ("CARU"); Children's Media Policy Coalition ("CMPC"); Consortium for School Networking ("CoSN"); Council of American Survey Research Organizations, Inc. ("CASRO"); Council for Marketing and Opinion Research ("CMOR"); Credit Union National Association ("CUNA"); William Demers; Gale DeVoar Sr.; Direct Marketing Association, Inc. ("DMA"); Christina Dukes; Electronic Privacy Information Center ("EPIC"); Gestweb S.p.a.; Illinois Credit Union League ("ICUL"); IT Law Group ("ITLG"); Gary Kelly; Liana Laughlin; Masterfoods USA; Mattel, Inc.; Adrie Mehdiqani *et al.*; Jim Minor; Motion Picture Association of America ("MPAA"); National Cable & Telecommunications Association ("NCTA"); Navy Federal Credit Union ("NFCU"); Alta Price; Privo, Inc.; Procter & Gamble ("P&G"); Schwab Learning; Terri Seaman; Software & Information Industry Association ("SIIA");

on the Commission's record as Document Nos. 514511–00001, *et seq.*, and may be found online at <http://www.ftc.gov/os/comments/COPPA%20Rule%20Amend/Index.htm>.

<sup>4</sup> Because the Commission is not modifying the Rule, this document does not contain analyses under the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

<sup>5</sup> 15 U.S.C. 6501–6508.

<sup>6</sup> 64 FR 59888 (Nov. 3, 1999).

<sup>7</sup> 16 CFR Part 312.

<sup>8</sup> 16 CFR 312.4(c) and 312.5.

<sup>9</sup> 16 CFR 312.5(b)(1).

<sup>10</sup> The Commission adopted the sliding scale as part of the Rule in 1999 after soliciting public comments, <http://www.ftc.gov/privacy/comments/index.html>, and conducting a public workshop, <http://www.ftc.gov/privacy/choilpritranscript.pdf>, on consent methods.

<sup>11</sup> 67 FR 18818 (Apr. 17, 2002).

<sup>12</sup> 70 FR 2580.

<sup>13</sup> 70 FR 21107.

<sup>14</sup> 16 CFR 312.4(b), 312.6, and 312.8.

them addressed other aspects of the Rule, in some cases also addressing the sliding scale approach.<sup>21</sup>

Forty-eight commenters submitted a form letter opposing letting operators obtain verifiable parental consent through a reply to an e-mail alone, because this could allow children to forge their parents' consent. The form letter states, in pertinent part, that "Merely receiving an email from a parent's email address does not qualify as permission since it is possible for parents to not even be aware that an exchange has taken place and therefore allows companies to market to children without parental permission."<sup>22</sup> In its original COPPA rulemaking, the Commission agreed, concluding "that e-mail alone does not satisfy the COPPA because it is easily subject to circumvention by children."<sup>23</sup>

Therefore, the Commission adopted the requirement in the Rule that operators must take an additional step to verify that it is, in fact, the parent sending the e-mail, a consent method commonly known as "e-mail plus."<sup>24</sup> Specifically, the operator must send the parent by e-mail, letter, or telephone call a confirmation of his or her consent.<sup>25</sup>

No commenter stated that the Rule should be eliminated. To the contrary, almost all commenters advocated retaining the Rule in its current form<sup>26</sup> or adding to its requirements.<sup>27</sup> Two commenters suggested excepting certain kinds of Web sites from the Rule's requirements,<sup>28</sup> and one of the Rule's safe harbor programs suggested extending the protected status granted to safe harbor program participants.<sup>29</sup> Some commenters requested

clarification on particular aspects of the Rule.<sup>30</sup>

On the specific issue of the sliding scale approach, unique commenters generally supported retaining it, with 34 unique comments submitted in favor of making it permanent<sup>31</sup> and nine unique comments submitted in favor of extending it for some period of time.<sup>32</sup> Forty-eight form-letter comments opposed allowing receipt from a parent's e-mail address to qualify as permission but, as explained above, the Rule already requires more. Eleven unique commenters were against making permanent or extending the sliding scale approach<sup>33</sup> and four did not take a clear position.<sup>34</sup>

### B. General Comments on the Rule

The Commission's April 2005 NPR asked several questions about the implementation and necessity of the Rule as a whole. The NPR contained several standard Commission regulatory review questions about the costs and benefits of the Rule. The NPR also sought comments on three specific issues that Congress in the Act directed the Commission to evaluate.

#### 1. The Costs and Benefits of the Rule

The Commission asked several general questions in the April 2005 NPR pertaining to the necessity and effectiveness of the Rule. The questions requested comment on how the Rule has affected children's online privacy and safety, whether the Rule is still needed, and how the Rule has affected consumers and operators. The Commission also requested comment on the Rule's effect on small businesses and whether the Rule is in conflict with other existing laws.

Commenters uniformly stated that the Rule has succeeded in providing greater protection to children's personal information online, that there is a continuing need for the Rule, and that the Rule should be retained.<sup>35</sup> For example, in explaining the Rule's success in protecting children's privacy

and safety online, one commenter stated that "COPPA has been very successful in improving the data collection practices and curtailing unscrupulous interactive marketing practices of commercial Web sites,"<sup>36</sup> while another said that "all indications are that COPPA and its implementing rules provide an important tool in protecting the privacy and safety of children using the Internet."<sup>37</sup> Another commenter stated that the Rule has increased consumer awareness of privacy issues across the board while encouraging operators to respond creatively to the challenge of protecting children online.<sup>38</sup>

As to the continuing need for the COPPA Rule, numerous commenters emphasized that the Rule provides operators with a clear set of standards to follow and that operators have received few, if any, complaints from parents about the standards and how they are implemented.<sup>39</sup> One commenter described how the Rule's definite standards have fostered consumer and business confidence in the Internet.<sup>40</sup> Moreover, operators stated that they have no complaints about the costs of complying with the Rule's requirements.<sup>41</sup>

The Commission did not receive any comments specifically addressing the Rule's costs and benefits for small businesses or the Rule's overlap with other laws or regulations.

The Commission concludes that no modifications to the Rule are necessary on the basis of general comments submitted on the Rule and its costs and benefits.

#### 2. COPPA-Mandated Issues

When Congress enacted COPPA, it included a provision requiring the Commission to evaluate and report on the implementation of the Rule five years after its effective date. Congress directed the Commission to evaluate three particular issues: (1) How the Rule has affected practices relating to the

TRUSTe; John Surr; United States Internet Service Provider Association ("US ISPA"); John Villamil *et al.*; Anton Vogel *et al.*; Scot Wallace-Zeid; Carrie Williams.

<sup>21</sup> Parry Aftab, *et al.*; ALA 2; Robert Chapin; CoSN 2; CUNA 2; Robert Custer; DMA 2; Edita Domentech, *et al.*; EPIC 2; Entertainment Software Rating Board ("ESRB"); Eileen Fernandez-Parker; Joseph Hodges; William Kreps; Mattel 2; Microsoft Corporation; MPAA 2; NFCU 2; Nickelodeon; Chris O'Neal; Peter Renguin; Scholastic Inc.; Time Warner Inc.; TRUSTe 2; Washington Legal Foundation ("WLF").

<sup>22</sup> See, e.g., Barbara Abbate.

<sup>23</sup> 64 FR at 59902.

<sup>24</sup> *Id.* Under the sliding scale approach, if an operator wants to collect personal information from children and disclose it to third parties or the public, the Rule requires the operator to obtain verifiable parental consent through one of the more reliable means described in Section 312.5(b)(2) of the Rule. 16 CFR 312.5(b)(2).

<sup>25</sup> *Id.*

<sup>26</sup> E.g., ALA 2; CoSN 2; DMA 2; Mattel 2; MPAA 2; Nickelodeon; O'Neal; Scholastic; Time Warner.

<sup>27</sup> CUNA 2; EPIC 2; Fernandez-Parker; Domenech; Kreps; NFCU 2; Renguin.

<sup>28</sup> Aftab; Custer.

<sup>29</sup> TRUSTe 2.

<sup>30</sup> Chapin; ESRB; EPIC 2; Microsoft; Privo; Renguin.

<sup>31</sup> ADVO; Aftab; AAAA; Apa; Brewer; ALA 1, 2; CARU; CoSN 1, 2; CUNA 1, 2; DeVoar; DMA 1, 2; ESRB; ICUL; ITLG; Mattel 1, 2; Masterfoods; MPAA 1, 2; NCTA; NFCU 1, 2; Nickelodeon; P&G; Scholastic; SHIA; Time Warner; TRUSTe; U.S. ISPA; WLF.

<sup>32</sup> CDD; CMPC; CASRO; CMOR; EPIC 1, 2; Mehdikdani; Villamil; Vogel.

<sup>33</sup> Acampora; Barrett; Demers; Dukes; Laughlin; Minor; Price; Privo; Schwab Learning; Seleman; Williams.

<sup>34</sup> Gestweb; Kelly; Surr; Wallace-Zeid.

<sup>35</sup> E.g., Aftab at 2; ALA 2 at 1; CoSN 2 at 1; CUNA 2 at 1-2; DMA 2 at 1-2; EPIC 2 at 1, 3; MPAA 2 at 2, 5; NFCU 2 at 1; Nickelodeon at 1; O'Neal; Scholastic at 2-3; Time Warner at 1.

<sup>36</sup> Aftab at 2.

<sup>37</sup> EPIC 2 at 1.

<sup>38</sup> Chapin at 1.

<sup>39</sup> DMA 2 at 2; MPAA 2 at 2, 5; Nickelodeon at 1; Scholastic at 2-3; Time Warner at 1.

<sup>40</sup> MPAA 2 at 3-4.

<sup>41</sup> CoSN 2 at 1; NFCU 2 at 1; Nickelodeon at 1; Scholastic at 2-3; Time Warner at 1. Indeed, one commenter detailed the ways in which changing the Rule's sliding scale approach would impose substantial costs on operators. MPAA at 4-5. The commenter, a large trade association representing numerous Web site operators, stated that these costs would include not only up-front labor and other quantifiable financial costs, but also unquantifiable costs associated with operators becoming unwilling to invest in new technology due to an uncertain regulatory climate and consumers becoming unwilling to trust an uncertain system. *Id.*

collection and disclosure of information relating to children online; (2) how the Rule has affected children's access to information of their choice online; and (3) how the Rule has affected the availability of Web sites or online services directed to children.<sup>42</sup> Accordingly, the Commission specifically included questions about these issues in the April 2005 NPR.<sup>43</sup>

Some commenters submitted views on the three issues, although none provided the Commission with related empirical data. Regarding the question of whether and, if so, how the Rule has affected practices relating to the collection, use, and disclosure of information relating to children online, three commenters (two operators of major Web sites and their trade association) provided specific and concrete examples of how the Rule has affected their own information practices concerning children.<sup>44</sup> These commenters stated that the primary response of operators has been to limit the personal information they collect from children (by either not collecting any personal information or collecting only e-mail addresses) while developing innovative ways to offer the interactive online experiences children want. The commenters each described a wide variety of activities they offer at their Web sites that let children interact with the sites but require little or no information collection or disclosure.<sup>45</sup>

These commenters also stated that the Rule's exceptions to prior verifiable parental consent for e-mail addresses are useful for providing children with safe online interactivity while preserving their Web sites' viability.<sup>46</sup> The Rule sets forth five exceptions to its requirement that operators obtain verifiable parental consent before collecting a child's personal information. These exceptions allow operators to collect a child's online contact information (*i.e.*, an e-mail address)<sup>47</sup> without obtaining prior parental consent and use that information only for certain specified purposes.<sup>48</sup> In each instance, the Rule

prohibits the operator from using the information for any other purpose.

The commenters highlighted two of the exceptions as particularly useful in providing interactive content to children. The first of these exceptions lets operators collect a child's e-mail address to respond once to a child's specific request, such as to answer a question (*e.g.*, homework help) or to provide other information (*e.g.*, when a new product will be on sale).<sup>49</sup> The operator does not need to provide notice to the parents or obtain parental consent, so long as it deletes the child's e-mail address upon responding. The second noted exception lets an operator collect the e-mail addresses of the child and his or her parent so that the operator can respond more than once to a child's specific request, such as to subscribe the child to an electronic newsletter.<sup>50</sup> Here, the operator must provide notice to the parent before contacting the child a second time and give the parent an opportunity to opt out of the repeated contact. Commenters stated that these two exceptions help them to provide safe, interactive, and fun children's content.<sup>51</sup>

The second statutorily mandated question was whether and, if so, how the Rule has affected children's ability to access information online. Most commenters stated that the Rule's requirements have struck an appropriate balance between protecting children's personal information online and preserving their ability to access content.<sup>52</sup> One commenter stated that the Rule has "unfairly limited student access to educational sites."<sup>53</sup> In contrast, another commenter noted that, in her experience as a teacher, children have been able to access online educational content without revealing their personal information and that her students "have not faced a problem because of COPPA."<sup>54</sup> In addition, in the educational context, teachers often

can act on behalf of parents to provide consent for purposes of COPPA.<sup>55</sup>

The final statutorily mandated question concerned the Rule's effect on the availability of Web sites directed to children. Many commenters indicated that they have been successful in operating popular and viable children's Web sites in the five years since the Rule's effective date.<sup>56</sup> One commenter, however, suggested that the Rule's requirements could have caused at least a few smaller children's Web sites to fail.<sup>57</sup> However, this commenter also acknowledged that, given the failure of innumerable Web sites for multiple reasons during the dot-com bust of 2000, it would be difficult to single out the Rule as the cause. No commenters submitted empirical data showing the Rule's direct impact on the availability of Web sites directed to children. Accordingly, the record does not indicate that the cost of complying with COPPA has decreased the number of children's Web sites.<sup>58</sup>

The Commission concludes that no modifications to the Rule are necessary on the basis of the comments submitted in response to the three COPPA-mandated questions.

### *C. Comments Pertaining to Specific Rule Provisions*<sup>59</sup>

#### 1. Section 312.2: Definitions

Section 312.2 defines various terms used in the Rule.<sup>60</sup> The Commission

<sup>55</sup> Most schools require parents to agree to the school's Internet "Acceptable Use Policy" ("AUP") before a child can visit the Internet at school. Such AUPs can and often do authorize teachers to act on behalf of parents to provide verifiable parental consent for purposes of COPPA. In this way, if children must provide personal information to access certain content, the teacher can provide the requisite consent. The Commission has posted COPPA guidance for teachers and parents at <http://www.ftc.gov/bcp/conline/pubs/online/teachers.htm>.

<sup>56</sup> DMA 2 at 2; MPA 2 at 8; Nickelodeon at 11; Scholastic at 2.

<sup>57</sup> Aftab at 1.

<sup>58</sup> One commenter suggested that the Commission regularly evaluate the status of children's privacy online to ensure that the Rule continues to provide children with the best protection. EPIC 2 at 3. Under the FTC's systematic program of periodically reviewing its rules and guides, the Rule will be evaluated comprehensively, approximately every ten years.

<sup>59</sup> The Commission received no comments on certain provisions of the Rule, including Section 312.1 (describing the Rule's scope); Section 312.3 (generally describing the Rule's requirements); Section 312.9 (providing that a violation of the Rule shall be treated as a violation of a rule prohibiting an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57(a)(1)(B)); Section 312.11 (mandating the instant regulatory review); and Section 312.12 (providing that each Rule provision is separate and severable from the others). The Commission has determined that no modifications to these provisions are necessary.

<sup>60</sup> 16 CFR 312.2.

<sup>42</sup> 15 U.S.C. 6507.

<sup>43</sup> 70 FR at 21109.

<sup>44</sup> DMA 2 at 2; Nickelodeon at 3-4; Time Warner at 2.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* Some exceptions also allow the operator to collect the child's name, the parent's name, or the parent's online contact information.

<sup>48</sup> 16 CFR 312.5(c). For example, an operator can collect and use a child's e-mail address without prior parental consent to obtain verifiable parental consent, to protect the safety of a child visitor, or to respond to judicial process. 16 CFR 312.5(c)(1), 312.5(c)(4), and 312.5(c)(5)(ii).

<sup>49</sup> 16 CFR 312.5(c)(2).

<sup>50</sup> 16 CFR 312.5(c)(3).

<sup>51</sup> DMA 2 at 2; Nickelodeon at 3-4; Time Warner at 2.

<sup>52</sup> DMA 2 at 1-2; Fernandez-Parker; Nickelodeon at 1; Time Warner at 3.

<sup>53</sup> Custer. The commenter suggested that the Commission exempt educational sites from the Rule. The Commission notes that the Rule already exempts certain nonprofit entities, which would include many educational sites. 16 CFR 312.2 ("Operator means any person who operates a website \* \* \* where such website or online service is operated for commercial purposes[.] \* \* \* This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).").

<sup>54</sup> Fernandez-Parker.

requested comment on whether the definitions contained in this section are effective, clear, and appropriate, and whether any improvements or additions should be made. In particular, the Commission asked whether the Rule correctly articulates the factors to consider in determining whether a Web site is directed to children and whether the term “actual knowledge” is sufficiently clear.<sup>61</sup>

No comments were submitted on the general effectiveness of the Rule’s definitions section, but the Commission received some comments concerning the terms “website or online service directed to children” and “actual knowledge.” The term “website or online service directed to children” is defined specifically in COPPA and the Rule itself,<sup>62</sup> while “actual knowledge” is discussed in the Rule’s Statement of Basis and Purpose and later Commission guidance.<sup>63</sup> Overall, most commenters stated that the terms are sufficiently clear,<sup>64</sup> although two suggested that the Commission continue to refine the terms through enforcement actions or other guidance.<sup>65</sup>

#### a. “Website or Online Service Directed to Children”

The Rule specifically defines the term “website or online service directed to children” as “a commercial website or online service, or portion thereof, that is targeted to children.”<sup>66</sup> The Rule further provides that, in determining whether a Web site or online service is “targeted to children,” the Commission will consider several factors. These factors include subject matter; visual and audio content; age of models; language or other characteristics; advertising appearing on or promoting the site or service; competent and reliable empirical evidence of audience composition; evidence regarding the intended audience; and whether the site uses animated characters or child-oriented activities or incentives.<sup>67</sup> The Rule’s Statement of Basis and Purpose states that the Commission, in making

its determination, will consider “the overall character of the site—and not just the presence or absence of one or more factors.”<sup>68</sup> Commenters representing numerous Web site operators stated that the language of the Rule and discussion in the Rule’s Statement of Basis and Purpose provide effective and clear guidance for determining whether a Web site is directed to children.<sup>69</sup>

Two commenters suggested that the Commission clarify, through additional guidance, when a Web site is considered to be directed to children under the Rule. The first commenter suggested adding several design elements to the Rule’s list of factors the Commission will consider, including color, non-textual content, interactivity, navigational tools, and advertisements.<sup>70</sup> The Commission believes that the existing factors set forth in the Rule already encompass these suggested additions. For example, the Rule’s definition expressly provides that the Commission will consider advertising appearing on or promoting the Web site or service.<sup>71</sup> The Rule also provides that the Commission will consider a site’s visual and audio content, language and other characteristics of the site, and any child-oriented activities or incentives.<sup>72</sup> The Commission therefore concludes it is unnecessary to modify the Rule’s definition of a Web site or online service directed to children.

A second commenter suggested it might be instructive to incorporate into the Rule the analysis that Commission staff set forth in a recent letter denying a petition for law enforcement action filed concerning the Amazon Web site, <http://www.amazon.com>.<sup>73</sup> The letter, published on the petitioner’s Web site,<sup>74</sup> analyzes the Amazon Web site using the factors set forth in the Rule for determining whether a Web site is directed to children. The commenter suggested that incorporating the analysis into the Rule would clarify how the Commission determines whether other Web sites are directed to children. The letter does provide one example of how the Commission staff has applied the Rule’s factors in analyzing whether a particular Web site was directed to children. However, the Commission does not believe that the general factors

in the Rule need to be modified in light of the FTC staff’s application of these factors in that specific instance.

#### b. “Actual Knowledge”

The Commission also asked whether the term “actual knowledge” is sufficiently clear. The Rule’s requirements apply to operators of Web sites other than those directed to children (sometimes referred to as “general audience Web sites”) if such operators have “actual knowledge” that they are collecting or maintaining personal information from children.<sup>75</sup> The Rule’s Statement of Basis and Purpose explains that a general audience Web site operator has the requisite actual knowledge if it “learns of a child’s age or grade from the child’s registration or a concerned parent \* \* \*.”<sup>76</sup> It may have the requisite knowledge if it asks age, grade, or other age-identifying questions.<sup>77</sup> Subsequent to the Rule’s issuance, the Commission staff posted guidance on the FTC Web site clarifying that a general audience Web site operator does not obtain actual knowledge of a child’s age “[i]f a child posts personal information on a general audience site, but doesn’t reveal his or her age \* \* \*.”<sup>78</sup> In addition, the guidance provides that the operator would not have actual knowledge if a child posts his or her age in a chat room on the site, but no one at the operator sees or is alerted to the post.<sup>79</sup>

Most commenters stated that the Rule’s Statement of Basis and Purpose and subsequent guidance have made the term “actual knowledge” sufficiently clear and no modification to the Rule is necessary.<sup>80</sup> For example, one commenter states “the Commission’s guidance clarifying that asking for age or date of birth information or similar questions through which the Web site would learn the ages of specific visitors[] provides clear criteria for Web

<sup>75</sup> 16 CFR 312.3.

<sup>76</sup> 64 FR 59892.

<sup>77</sup> *Id.*

<sup>78</sup> COPPA FAQs, question 38, available at <http://www.ftc.gov/privacy/coppafaqs.htm#teen>.

<sup>79</sup> *Id.* The Commission also released a business alert in 2004 reiterating its guidance on actual knowledge, in conjunction with filing complaints and consent decrees against two general audience Web site operators that allegedly had actual knowledge that they were collecting personal information from children. See February 18, 2004 FTC news release at <http://www.ftc.gov/opa/2004/02/bonziung.htm> and FTC Business Alert entitled *The Children’s Online Privacy Protection Rule: Not Just for Kids Sites* at <http://www.ftc.gov/bcp/online/pubs/alerts/coppabizart.htm>.

<sup>80</sup> *E.g.*, DMA 2 at 3–4; Nickelodeon at 9–10; Time Warner at 6–7.

<sup>61</sup> 70 FR at 21109.

<sup>62</sup> 15 U.S.C. 6502; 16 CFR 312.2. See also discussion of factors to be considered in determining whether a Web site is directed to children at 64 FR 59893.

<sup>63</sup> 64 FR 59892; *Frequently Asked Questions about the Children’s Online Privacy Protection Rule: Volume One* (“COPPA FAQs”), questions 38 and 39, available at <http://www.ftc.gov/privacy/coppafaqs.htm#teen>; and *The Children’s Online Privacy Protection Rule: Not Just for Kids’ Sites*, available at <http://www.ftc.gov/bcp/online/pubs/alerts/coppabizart.htm>.

<sup>64</sup> DMA 2 at 2–4; EPIC 2 at 3–5; Nickelodeon at 9–10; Time Warner at 4, 6.

<sup>65</sup> EPIC 2 at 5; ESRB at 2–3.

<sup>66</sup> 16 CFR 312.2.

<sup>67</sup> 64 FR 59912–13.

<sup>68</sup> 64 FR 59893.

<sup>69</sup> DMA 2 at 2; Nickelodeon at 9; Time Warner at 4–5.

<sup>70</sup> EPIC 2 at 4.

<sup>71</sup> 16 CFR 312.2.

<sup>72</sup> *Id.*

<sup>73</sup> ESRB at 2.

<sup>74</sup> See [http://www.epic.org/privacy/amazon/ftc\\_amazon.pdf](http://www.epic.org/privacy/amazon/ftc_amazon.pdf) (last accessed 10/12/05).

sites to determine their obligations.”<sup>81</sup> One commenter did suggest, however, that the Commission continue to clarify the term in the context of additional enforcement actions.<sup>82</sup> The Commission concludes that no modifications to the Rule are necessary on the basis of these comments.

#### c. Age Screening and Age Falsification

General audience Web sites or those directed to teenagers may attract a substantial number of children under the age of 13. Although such Web sites are not directed at children under 13, operators of such sites must comply with the Rule to the extent that they have “actual knowledge” that visitors are under 13.

Some operators of such Web sites choose to screen visitors to determine whether they are under 13. This practice, popularly referred to as “age-screening,” started with Web sites directed to teenagers and is now used by many general audience Web sites that may appeal to children. Some general audience Web sites appear to use age-screening to reject children’s registration requests, thus providing children with an incentive to falsify their age to gain access. The FTC staff has issued guidance regarding how operators of teen-directed Web sites can obtain age information from their visitors without encouraging age falsification.<sup>83</sup>

The Commission asked if there was evidence that a substantial number of children were falsifying age information in response to age-screening on general audience Web sites and, if so, whether the Rule should be modified to address this problem. The Commission received five comments concerning age-screening. Two commenters stated that some children falsify their age to register on Web sites that screen for age, but provided no empirical information as to how frequently this occurs.<sup>84</sup> Other commenters stated that age falsification is not a problem in practice, especially when Web sites follow Commission staff guidance and request age information in a neutral manner, then set session cookies to prevent children from later changing their age.<sup>85</sup> One commenter suggested that attempting to regulate online age falsification would be unrealistic, because there is no way to prevent certain children from falsifying their age.<sup>86</sup> Instead, commenters

stressed that following Commission staff guidance on age-screening remains a reasonable practice for teen or general audience site operators seeking to comply with the Rule.<sup>87</sup> The Commission has concluded that no changes to the Rule are needed in response to operators’ age-screening practices.

#### d. Other Definitions

Few comments were submitted about the definitions of other terms used in the Rule. Two commenters suggested that the term “internal use” is not adequately defined.<sup>88</sup> The Rule does not define the term “internal use,” but it does define “disclosure” to include releasing personal information collected from a child, except to a person providing internal support for the operations of the Web site.<sup>89</sup> The Rule also explicitly provides that persons providing internal support cannot use the information for any other purpose.<sup>90</sup> The Rule’s Statement of Basis and Purpose further explains that “support for the internal operations of the Web site” can include providing technical support, servers, or services such as chat and e-mail.<sup>91</sup>

The commenters that asked that “internal use” of information be defined specifically sought clarification as to whether sharing information among corporate affiliates constitutes an internal use or a disclosure. The Rule’s Statement of Basis and Purpose explains that determining whether an operator’s sharing of information with another entity is an internal use or a disclosure depends on the receiving entity’s relationship to the information. Sharing information with another entity can constitute an internal use of the information only if it is solely to facilitate internal support services for the operator and the entity does not use the information for any other purpose.<sup>92</sup>

<sup>87</sup> DMA 2 at 4; Time Warner at 6. One commenter reported that age-screening in the shopping area of its general audience Web site was preventing adults who enter an age under 13 from completing their purchase. Mattel at 2–3. As discussed in the text, age-screening is designed for general audience Web sites or portions of Web sites that may appeal to children. The shopping areas of Web sites are unlikely to attract children because making a purchase online generally requires a credit card, which most children do not have. The Commission therefore has not advocated that operators of general audience Web sites, like the commenter, ask age-screening questions on the shopping areas of their sites.

<sup>88</sup> Privo at 5; EPIC at 2.

<sup>89</sup> 16 CFR 312.2.

<sup>90</sup> *Id.*

<sup>91</sup> See 64 FR 59890–91.

<sup>92</sup> *Id.* at 59890, 59891. The Rule’s Statement of Basis and Purpose incorporates by reference a set of factors that can be used to help define an entity’s relationship to collected information, including

Sharing for any other use, whether or not the other entity is a corporate affiliate, constitutes a disclosure.<sup>93</sup> The Commission concludes that no modification to the Rule is necessary.

Another commenter suggested that the Commission expand the Rule’s definition of “operator” to include individuals operating noncommercial Web sites and nonprofit entities operating Web sites.<sup>94</sup> COPPA expressly applies only to operators of Web sites and online services “operated for commercial purposes” and excludes “any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).”<sup>95</sup> The Rule includes the statutory language of COPPA,<sup>96</sup> so the Commission cannot modify the definition.

Finally, one commenter sought clarification of certain statutory terms set forth in COPPA, such as “online contact information,” “personal information,” “retrievable form,” and “recontact.”<sup>97</sup> To provide businesses and consumers with additional guidance, the Commission has provided more specific articulations of some of COPPA’s statutory terms in the Rule and the Rule’s Statement of Basis and Purpose. For example, the commenter asked the Commission to clarify whether certain types of information not specifically listed in COPPA’s definition of “personal information,” such as IP addresses, unique identifiers, birthdates, or photographs, do constitute “personal information.” The Rule’s definition of “personal information” includes “a persistent identifier \* \* \* associated with individually identifiable information” as well as a photograph when combined with other information that permits contacting the individual.<sup>98</sup> The Commission concludes that no

ownership, control, payment, use, and maintenance of the information, as well as any pre-existing contractual relationships. *Id.* at 59891, citing 64 FR 22750, 22752 (Apr. 27, 1999). See also COPPA FAQs, question 47, at <http://www.ftc.gov/privacy/coppafaqs.htm>.

<sup>93</sup> *Id.*

<sup>94</sup> Reguin.

<sup>95</sup> 15 U.S.C. 6502(2).

<sup>96</sup> 16 CFR 312.2. The Commission staff has provided guidance encouraging all operators to practice fair information principles with their visitors. <http://www.ftc.gov/privacy/coppafaqs.htm#teen>, and many nonprofit Web sites do voluntarily comply with COPPA and the Rule because they want to protect children’s safety and privacy. In addition, Federal policy requires all federal Web sites to provide their child visitors with COPPA protections. *Memorandum for the Heads of Executive Departments and Agencies*, M–00–13 (June 22, 2000), available at <http://www.whitehouse.gov/omb/memoranda/m00-13.html>.

<sup>97</sup> Chapin.

<sup>98</sup> 16 CFR 312.2.

<sup>81</sup> Nickelodeon at 10.

<sup>82</sup> EPIC 2 at 5.

<sup>83</sup> COPPA FAQs, question 39, available at <http://www.ftc.gov/privacy/coppafaqs.htm#teen>.

<sup>84</sup> Aftab at 5; WLF at 5.

<sup>85</sup> DMA 2 at 4; Time Warner at 6.

<sup>86</sup> WLF at 5.

additional clarification of the particular terms identified by this commenter is necessary.

For the reasons discussed above, the Commission concludes that no modifications to the Rule's current definitions are necessary.

## 2. Section 312.4: Notice

Section 312.4 of the Rule requires operators to provide notice of their information practices to parents. These notices must inform parents about their information practices, including what information they collect from children online, how they use the information, and their disclosure practices for such information. The Commission requested comment on whether the notice requirement is effective, if its benefits outweigh its costs, and what changes, if any, should be made to it.

Two commenters submitted comments on the Rule's notice provision. The first commenter noted the importance of providing parents with contact information for the operator, so they can discuss and attempt to resolve any concerns with the operator.<sup>99</sup> The commenter did not seek any changes to the Rule's notice provision.

The second commenter stated that it was unclear whether the Rule requires a general audience Web site operator with actual knowledge that it has collected personal information from a child to post a privacy notice on its site.<sup>100</sup> Section 312.4(b) of the Rule sets forth the requirements for posting a privacy notice on a Web site, including which operators must post a privacy notice online.<sup>101</sup> According to the Rule, "an operator of a Web site or online service directed to children must post a link to a notice of its information practices with regard to children \* \* \*"<sup>102</sup> In addition, "[a]n operator of a general audience website or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children \* \* \*."<sup>103</sup> The Rule therefore does not otherwise require that operators post privacy notices, including general audience site operators that have actual knowledge that they have collected personal information from children. For the above reasons, the Commission concludes that no modification to the Rule's notice requirement is necessary.

## 3. Section 312.5: Verifiable Parental Consent

### a. General Issues

Section 312.5 of the Rule requires operators to obtain verifiable parental consent before collecting, using, or disclosing any personal information from children, including making any material change to information practices to which the parent previously consented. The Commission requested comment on whether the consent requirement is effective, if its benefits outweigh its costs, and what changes, if any, should be made to the requirement. The Commission further asked whether it is reasonable for an operator to use a credit card to verify a parent's identity. The Commission also offered an additional opportunity for the public to comment on the Rule's sliding scale approach to obtaining verifiable parental consent.

### 1. Parental Opt-Out From Disclosure to Third Parties

One commenter asked how operators that provide online communication services such as e-mail accounts, bulletin boards, and chat rooms can comply with Section 312.5(a)(2) of the Rule.<sup>104</sup> This section mandates that parents must be given the option to allow an operator to collect a child's personal information (such as by registering a child for an e-mail or chat account) but not disclose the information collected to third parties.<sup>105</sup> The commenter noted that the Rule defines "disclosure" to include "making personal information collected \* \* \* publicly available in identifiable form," such as through an e-mail account or chat room.<sup>106</sup> Specifically, the commenter contended that "a parent cannot realistically consent only to the use of his or her child's personal information and not to the disclosure of such information by these [online communications] services."<sup>107</sup>

Commission staff guidance addresses this point. "The Rule only requires parental choice as to *disclosures to third parties*. You don't have to offer parents choice regarding the collection of personal information necessary for chat or a message board; but prior parental consent is still required before permitting children to participate in chat rooms or message boards that enable them to make their personal

information publicly available."<sup>108</sup> For example, when an e-mail provider obtains verifiable parent consent for registering a child for an e-mail account, the operator must let the parent opt out from any disclosures, by the operator, of information collected during the registration process. The Commission concludes that no modification to the Rule is required.

### 2. Using a Credit Card To Obtain Verifiable Parental Consent

The Rule sets forth a nonexclusive list of approved methods to obtain verifiable parental consent, including the use of a credit card in connection with a transaction.<sup>109</sup> In light of reports that companies are marketing credit cards to minors,<sup>110</sup> the Commission specifically requested comment on the continued use of credit cards as a means of obtaining verifiable parental consent.

The majority of commenters on this issue stated that even if a small percentage of children may possess credit cards, using a credit card with a transaction is a reasonable and trustworthy method to obtain verifiable parental consent.<sup>111</sup> No information was submitted demonstrating to what extent credit cards are issued to children under 13.<sup>112</sup> Commenters, however, emphasized that granting credit requires the formation of a legally enforceable contract between the creditor and the debtor, which has resulted in credit cards being issued almost exclusively to adults.<sup>113</sup> Moreover, even if credit cards are being issued to children under 13, the same principles of contract law would require the credit cards to be linked to a supervisory adult's account.<sup>114</sup> Through this link, parents can set controls on and monitor the account, ensuring that the children cannot use the credit cards without permission.<sup>115</sup>

In addition, the Rule's requirement that the credit card be used in connection with a transaction provides

<sup>108</sup> COPPA FAQs, question 37, available at <http://www.ftc.gov/privacy/coppafaqs.htm#consent>. See also 64 FR at 59899, note 166.

<sup>109</sup> 16 CFR 312.5(b).

<sup>110</sup> See, e.g., articles at <http://www.bankrate.com/brm/news/cc/20000508.asp>; [http://www.commercialalert.org/blog/archives/2005/02/marketing\\_credi.html](http://www.commercialalert.org/blog/archives/2005/02/marketing_credi.html); <http://www.fool.com/news/commentary/2004/commentary04092804.htm> (all last accessed 12/07/05).

<sup>111</sup> DMA 2 at 4, 5; ESRB at 2; Mattel 2 at 5; MPAA 2 at 6-8; Nickelodeon at 10-11; Scholastic at 2; Time Warner at 2.

<sup>112</sup> DMA 2 at 4; ESRB at 2; Mattel 2 at 5; MPAA 2 at 6; Scholastic at 2; Time Warner at 7.

<sup>113</sup> DMA 2 at 4; MPAA 2 at 7-8; Nickelodeon at 10; Scholastic at 2; Time Warner at 7-8.

<sup>114</sup> DMA 2 at 4; MPAA 2 at 6; Nickelodeon at 10; Time Warner at 7.

<sup>115</sup> CUNA 2 at 2; NFCU 2 at 1.

<sup>99</sup> CUNA 2 at 1-2.

<sup>100</sup> Microsoft at 2-3.

<sup>101</sup> 16 CFR 312.4.

<sup>102</sup> 16 CFR 312.4(b).

<sup>103</sup> *Id.*

<sup>104</sup> Microsoft at 4.

<sup>105</sup> 16 CFR 312.2.

<sup>106</sup> Microsoft at 4, *citing* 16 CFR 312.2.

<sup>107</sup> *Id.*

extra reliability because parents obtain a transaction record that gives them additional notice of the consent provided.<sup>116</sup> Parents thus are notified of the purported consent, and can withdraw it if improperly given.<sup>117</sup> The Commission is satisfied that no change in circumstances has invalidated using a credit card with a transaction to obtain verifiable parental consent.<sup>118</sup>

One commenter requested clarification on whether the Rule would permit using a credit card to obtain verifiable parental consent without a concomitant transaction.<sup>119</sup> The Rule provides: "Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent."<sup>120</sup> Some methods can confirm that the credit card number provided is consistent with numbers that issuers assign to their credit cards, but this does not provide reasonable assurance that the number provided is for an actual credit card. Other methods can confirm that the credit card number is the number of an actual credit card, but does not provide reasonable assurance that the card belongs to the child's parent. The Commission therefore concludes that these methods are not reasonably calculated to ensure that it was the parent who provided consent. In addition, unless the operator conducts a transaction in connection with the consent, no record is formed notifying the parent of the purported consent and offering an opportunity to revisit that consent.<sup>121</sup> The Commission concludes that no modification is warranted to the Rule provision treating the use of a credit card in connection with a transaction as one method of obtaining verifiable parental consent.<sup>122</sup>

### 3. The E-Mail Exceptions to Prior Parental Consent

The Commission next requested comment on the Rule's exceptions to prior parental consent (the "e-mail

exceptions" to prior parental consent). In limited circumstances, COPPA and Section 312.5(c) of the Rule allow operators to collect the online contact information of the child, and sometimes parent, before obtaining verifiable parental consent.<sup>123</sup> Such circumstances include when the operator seeks to obtain parental consent, wants to respond once to a child's specific request (such as a homework help question), or wants to respond multiple times to a child's specific request (such as an electronic newsletter).<sup>124</sup>

Two commenters stated that the e-mail exceptions are useful in allowing operators to continue to provide interactive content to children online. One stated: "The ability to use COPPA's 'e-mail exceptions' to parental consent has enabled us to offer meaningful children's content and preserve the interactivity of the medium, while still protecting privacy."<sup>125</sup> The commenter noted that the e-mail exceptions enable not only online activities popular with children, such as contests, online newsletters, and electronic postcards, but also sending direct notices and requests for consent to parents.<sup>126</sup>

Another commenter suggested that the Rule should prohibit operators from collecting any information from children, even just an e-mail address, without parental consent. However, the commenter neither provided any basis for eliminating the e-mail exceptions nor offered any alternative way to provide direct notice and obtain parental consent.<sup>127</sup> The Commission concludes for these reasons that no modification to the e-mail exceptions to prior parental consent is necessary.

#### b. The Sliding Scale Approach To Obtaining Verifiable Parental Consent

In its April 2005 FRN, the Commission gave the public an additional opportunity to comment on the Rule's sliding scale approach to obtaining verifiable parental consent. The Rule provides that "[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent."<sup>128</sup> Prior to issuing the Rule, the Commission studied extensively the state of available parental consent technologies.<sup>129</sup> In July 1999, the

Commission held a workshop on parental consent, which revealed that more reliable electronic methods of verification were not widely available or affordable.<sup>130</sup>

In determining to adopt the sliding scale approach in 1999, the Commission balanced the costs imposed by the method of obtaining parental consent and the risks associated with the intended uses of information.<sup>131</sup> Because of the limited availability and affordability of the more reliable methods of obtaining consent—including electronic methods of verification—the Commission found that these methods should be required only when obtaining consent for uses of information posing the greatest risks to children, such as chat, e-mail accounts, and message boards.<sup>132</sup> Accordingly, the Commission implemented the sliding scale approach, noting that it would "provide[] operators with cost-effective options until more reliable electronic methods became available and affordable, while providing parents with the means to protect their children."<sup>133</sup>

The sliding scale approach allows an operator, when collecting personal information only for its internal use, to obtain verifiable parental consent through an e-mail from the parent, so long as the e-mail is coupled with additional steps. Such additional steps include: obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call, or sending a delayed confirmatory e-mail to the parent after receiving consent.<sup>134</sup> The purpose of the additional steps is to provide greater assurance that the person providing the consent is, in fact, the parent.

In contrast, for uses of personal information that involve disclosing the information to the public or third parties, the Rule requires operators to use more reliable methods of obtaining verifiable parental consent. These methods include: using a print-and-send form that can be faxed or mailed back to the Web site operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key

<sup>130</sup> See FTC news release announcing workshop and transcript of workshop, available at <http://www.ftc.gov/opa/1999/06/kidswork.htm> and <http://www.ftc.gov/privacy/chonlpritranscript.pdf>.

<sup>131</sup> 64 FR 59901-02.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* CARU, a Commission-approved COPPA safe harbor program, expressed concern that operators may not understand that an additional step is required.

<sup>116</sup> MPAA 2 at 6.

<sup>117</sup> DMA 2 at 5; MPAA 2 at 7.

<sup>118</sup> The Commission expresses no view about the legal ramifications of using a credit card transaction as a proxy for age generally, a tangential issue raised by some commenters. Mattel 2 at 5; MPAA at 7-8; Nickelodeon at 10-11; Scholastic at 2; Time Warner at 8.

<sup>119</sup> ESRB at 2.

<sup>120</sup> 16 CFR 312.5(b)(1).

<sup>121</sup> DMA 2 at 5.

<sup>122</sup> Previous FTC staff guidance suggested that operators might not always be prohibited from using a credit card without a transaction to obtain consent. Such guidance will be clarified to reflect the Commission's determination that such a method currently does not constitute verifiable parental consent. See COPPA FAQs, question 34, at <http://www.ftc.gov/privacy/coppafaqs.htm#consent>.

<sup>123</sup> 15 U.S.C. 6503(b)(2); 16 CFR 312.5(c).

<sup>124</sup> *Id.*

<sup>125</sup> Nickelodeon at 1.

<sup>126</sup> *Id.* at 5.

<sup>127</sup> Domentech at 6.

<sup>128</sup> 16 CFR 312.5(b)(1).

<sup>129</sup> See, e.g., public comments received on initial rulemaking (1999), available at <http://www.ftc.gov/privacy/comments/index.html>.

technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.<sup>135</sup> As noted in the Rule's Statement of Basis and Purpose, these more reliable methods of obtaining parental consent are justified because "the record shows that disclosures to third parties are among the most sensitive and potentially risky uses of children's personal information."<sup>136</sup>

When it issued the Rule, the Commission anticipated that the sliding scale approach would be necessary only in the short term because more reliable methods of obtaining verifiable parental consent would become widely available and affordable.<sup>137</sup> Accordingly, the approach originally was set to expire two years after the Rule went into effect.<sup>138</sup> However, when public comment in 2002 revealed that the expected progress in available technology had not occurred, the Commission extended the approach three more years.<sup>139</sup>

With the sliding scale approach set to expire on April 21, 2005, the Commission again sought comment on it in its January 2005 NPR.<sup>140</sup> The NPR noted that the expected progress in available technology apparently still had not transpired and requested comment on a proposed amendment making the sliding scale approach a permanent feature of the Rule. The Commission also requested comment on: (1) The current and anticipated availability and affordability of more secure electronic mechanisms or infomediaries for obtaining parental consent; (2) the effect of the sliding scale approach on the incentive to develop and deploy more secure electronic mechanisms; (3) the effect of the sliding scale approach on operators' incentives to disclose children's personal information to third parties or the public; and (4) any evidence the sliding scale approach is being misused or not working effectively.

The vast majority of the commenters responding to the NPR stated that the development and deployment of secure electronic verification technologies did not appear to be on the horizon. However, because some commenters questioned the effectiveness of and need for the sliding scale approach, the Commission decided it would be beneficial to accept additional comments during the regulatory review

comment period. To allow for such additional comments, the Commission eliminated the sliding scale approach's sunset date from the Rule, thereby extending the approach.<sup>141</sup>

Having reviewed the comments submitted in response to the January 2005 NPR and the April 2005 NPR, the Commission concludes that more secure electronic mechanisms and infomediary services for obtaining verifiable parental consent are not yet widely available at a reasonable cost. The Commission therefore has decided to extend the sliding scale approach indefinitely, while continuing to monitor technological developments. As discussed below, the Commission believes that this flexible approach will allow parents and operators to continue to rely on a familiar and efficient tool and allow the Rule to reflect changes in technology.

#### 1. The Availability and Cost of More Secure Methods of Verification

##### a. Electronic Verification Technology

Most of the commenters that specifically addressed the sliding scale approach stated that secure electronic mechanisms have not developed to the point where they are widely available and affordable.<sup>142</sup> In addition, the anticipated date for the development and deployment of such technologies on a widespread and affordable basis cannot be predicted with any reasonable certainty.<sup>143</sup> For example, the Software & Information Industry Association, the principal and worldwide trade association of the software code and digital content industry, stated that:

In reviewing developments over the last several years, there are no clear signals that the anticipated verification technology—technology that must be low-cost, widely deployed and acceptable to consumer end users—is likely to be economically and widely available in the consumer market in the foreseeable future.<sup>144</sup>

The comments received suggest that extending the sliding scale approach will not discourage technological innovation or undermine the global development of secure electronic verification technologies.<sup>145</sup> One commenter noted that the sliding scale

approach does not prevent companies from using secure electronic technologies now or in the future.<sup>146</sup> Although three commenters suggested that extending the sliding scale approach may discourage the development of secure verification technologies, none explained how or to what extent children's privacy and parental consent issues would have such an effect.<sup>147</sup>

Several commenters discussed the state of electronic verification technology in detail and noted the lack of widely available, cost effective, and consumer friendly verification technologies.<sup>148</sup> In particular, commenters discussed how digital signatures, digital certificates, public key infrastructure, P3P, and other electronic technologies have not developed as anticipated.<sup>149</sup> For example, the Motion Picture Association of America ("MPAA") said that "the range of digital signature technologies are either too costly for consumers (e.g., biometric verification systems), not able to confirm the identity of users (e.g., P3P), or not widely deployed (e.g., encryption key systems)."<sup>150</sup> The MPAA further stated that encryption key technology is only effective at confirming which computer has transmitted consent and cannot independently identify whether the user is a parent or a child.<sup>151</sup> No commenters presented evidence that the state of these technologies—or their usefulness in obtaining parental consent—has improved since the inception of the Rule.

The United States Internet Service Provider Association, which represents major Internet service providers and network providers, explained that widespread public key infrastructure solutions have not developed due to the lack of an appropriate legal regime: "there is no easily identifiable certification authority that will take on the liability for verifying identities in an open, public system."<sup>152</sup> The group also stated that reliable public key solutions are difficult to achieve because "certification standards are insufficiently developed and precise to assure reliable interoperability of the various subtly different implementations of a given standard

<sup>135</sup> 16 CFR 312.5(b)(2).

<sup>136</sup> 64 FR 59899.

<sup>137</sup> 64 FR 59902.

<sup>138</sup> 16 CFR 312.5(b)(2).

<sup>139</sup> 67 FR 18818.

<sup>140</sup> 70 FR 2580.

<sup>141</sup> 70 FR at 21106.

<sup>142</sup> ADVO at 1; Aftab at 5; AAAA at 2; CARU at 2; CASRO at 3–5; CMOR; CUNA at 2; CUNA 2 at 2; DMA at 4; DMA 2 at 6; EPIC at 2; EPIC 2 at 3; ITLG at 1; Masterfoods; Mattel at 1; Mattel 2 at 4; MPAA at 6; NCTA at 2; NFCU at 1; NCFU 2 at 1–2; Nickelodeon at 8; P&G; SIA at 1; Scholastic at 2; Time Warner 3–4; TRUSTe at 2; U.S. ISPA at 1; WLF at 6–7.

<sup>143</sup> CASRO at 5–6; DMA at 4; MPAA at 2; SIA at 3; Time Warner at 3–4; U.S. ISPA at 3.

<sup>144</sup> SIA at 3.

<sup>145</sup> CARU at 2; Mattel at 1.

<sup>146</sup> MPAA at 6.

<sup>147</sup> CASRO at 6; Mehdkhani at 3; Privo at 7.

<sup>148</sup> Aftab at 5; CASRO at 3–5; Mattel 2 at 4; MPAA at 5–6; SIA at 3; Time Warner at 3–4; U.S. ISPA at 2–3.

<sup>149</sup> *Id.*

<sup>150</sup> MPAA at 5.

<sup>151</sup> *Id.* at 5–6.

<sup>152</sup> US ISPA at 3.

\* \* \* that inevitably appear in the open Internet environment.”<sup>153</sup>

The Platform for Privacy Preferences Project (“P3P”), developed by the World Wide Web Consortium, is a technology that enables Web sites to express their privacy practices in a standard, machine-readable format. P3P-enabled browsers can “read” privacy practices automatically and compare them to a consumer’s own set of privacy preferences. The technology is designed to give consumers a simple, automated way to gain more control over the use of their personal information on Web sites they visit.<sup>154</sup> While P3P technology can offer individuals more control over how their personal information is used or disclosed online, it is not employed widely by consumers.<sup>155</sup> Even if it were widely used, the automated P3P platform would not facilitate the notice and consent required by COPPA. To give verifiable parental consent under COPPA, a parent must be informed about specific information and then provide an appropriate form of verifiable parental consent. P3P cannot ensure either that a parent has been informed or that the person providing consent is the child’s parent. Moreover, parents’ privacy preferences for themselves might not be the same as for their children.

Other commenters agreed that digital signature, digital certificate, and other digital verification technologies are not currently viable options for obtaining parental consent because they have not developed sufficiently and are not widely accessible to consumers.<sup>156</sup> One commenter also noted that the cost of these technologies may be prohibitive for both businesses and consumers to use in obtaining parental consent.<sup>157</sup>

Finally, commenters also noted that, to the extent these electronic verification technologies have improved, the advances have been in business-to-business, not business-to-consumer, applications.<sup>158</sup> For example, digital signature and digital certificate technologies, which can provide reliable electronic verification of a signer’s identity, are sometimes employed in commercial transactions, but have not advanced to the point of being a viable alternative for obtaining verifiable

parental consent.<sup>159</sup> Public key infrastructure solutions, which provide a means for encrypting and decrypting information, also seem to be marketed almost exclusively for business-to-business applications.<sup>160</sup>

#### b. The Availability and Cost of Infomediary Services

Commenters likewise submitted information about whether infomediary services are widely available and affordable. Infomediary services act as middlemen in obtaining verifiable parental consent for Web sites and can offer options such as driver’s license and social security number verification. Several commenters noted that infomediary services to facilitate obtaining verifiable parental consent are not widely available and affordable.<sup>161</sup>

One commenter, Privo Inc., an infomediary service recently approved as a COPPA safe harbor program, stated that such services are already widely available at a reasonable cost, but cited only one example, itself.<sup>162</sup> Privo’s comment did not indicate how many clients have used its service, although another commenter stated that it has used Privo’s service.<sup>163</sup> This commenter expressed support for Privo’s registration process; however, it did not contend that infomediary services are otherwise widely available.<sup>164</sup>

The comments received did not demonstrate that infomediary services are affordable or would be widely used. Privo’s comment did not provide any information about the start-up and monthly costs for operators that use its service, although it stated that it “currently does not charge more than \$1 per verification, and often much less.”<sup>165</sup> Other commenters, in contrast, stated that the costs of obtaining verifiable parental consent through more verifiable means, like infomediary services, are higher than what many small and medium-size operators can afford to pay.<sup>166</sup> Moreover, one commenter stated that parents are willing to grant consent to an operator with a recognizable brand name, but would be unlikely to “embrace infomediary technology” because it involves granting consent to an entity with which the parents have little or no

experience.<sup>167</sup> Consequently, the Commission finds that more secure electronic verification technologies and infomediary services to facilitate obtaining parental consent do not appear to be, currently or foreseeably, widely available at a reasonable cost.<sup>168</sup>

#### 2. The Effectiveness of the Sliding Scale Approach

The Commission concludes that, over the course of five years, the sliding scale approach has proven to be an effective method for protecting children’s privacy without hindering the development of children’s online content.<sup>169</sup> Several commenters noted that there have been few complaints by parents about the sliding scale approach.<sup>170</sup> Although some commenters suggested that the e-mail plus mechanism, permitted for internal use of information collected from children, is unreliable, they did not provide any examples where children’s privacy has been violated.<sup>171</sup> One commenter was concerned that operators may not understand that an additional follow-up step is required in addition to the consent e-mail itself.<sup>172</sup>

Some comments received in response to the January 2005 NPR suggested that making the sliding scale approach permanent may foster the development of appropriate children’s online content.<sup>173</sup> These commenters noted that the sliding scale approach enables Web sites to provide interactive content for children without requiring operators to institute more costly parental consent mechanisms that could have the unintended effect of reducing children’s

<sup>167</sup> Mattel 2 at 4.

<sup>168</sup> One commenter stated that more research is required to better understand the role of infomediaries but did not explain what specifically needs to be studied. CDD at 2.

<sup>169</sup> Comments that support the Commission’s conclusion include: ADVO at 1; AAAA at 1; ALA; Brewer; CARU at 2; DMA at 2; Mattel 2 at 4; MPAA at 2; NCTA at 1; P&G; Scholastic at 2; SIA at 3; Time Warner at 3–4; US ISPA at 3; WLF at 4, 6.

<sup>170</sup> ALA; CARU at 2; CASRO at 7; CoSN; DMA at 4; Mattel 2 at 2; Mattel 2 at 4; MPAA at 3; NCTA at 2; Scholastic at 2; WLF at 7. These comments are consistent with the FTC staff’s enforcement experience.

<sup>171</sup> E.g., Acampora; Privo at 2, 4–5; Villamil at 3; Vogel at 1–2. Some commenters appear to be under the misimpression that the Rule permits operators to obtain consent through a single e-mail, without more. E.g., Abbate and 47 other commenters who submitted form letters.

<sup>172</sup> CARU at 2. The commenter did not suggest any particular language that might further clarify the language, which identifies such steps as “sending a confirmatory e-mail to the parent following receipt of consent; or obtaining a postal address or telephone number from the parent and confirming the parent’s consent by letter or telephone call.” 16 CFR 312.5(b)(2).

<sup>173</sup> ADVO at 1; AAAA at 1; CoSN 2 at 1; DMA at 4–5; MPAA at 4; Nickelodeon at 1–2, 8; SIA at 3.

<sup>153</sup> *Id.*

<sup>154</sup> See World Wide Web Consortium Recommendation for the Platform for Privacy Preferences 1.0 (P3P1.0) Specification, available at <http://www.w3.org/TR/P3P/#Introduction>.

<sup>155</sup> CASRO at 4–5; MPAA at 5.

<sup>156</sup> CARU at 2; Mattel 1; Mehdikdani at 1; NCTA at 2.

<sup>157</sup> MPAA at 6.

<sup>158</sup> CASRO at 4–5; MPAA at 5; US ISPA at 2.

<sup>159</sup> CASRO at 4; MPAA at 5.

<sup>160</sup> MPAA at 5; U.S. ISPA at 3.

<sup>161</sup> CASRO at 5; ITLG at 1; P&G.

<sup>162</sup> Privo at 6. Privo did note that it has “processed hundreds of thousands of online registrations requiring verifiable parental consent.”

<sup>163</sup> Schwab Learning at 1.

<sup>164</sup> *Id.*

<sup>165</sup> Privo at 6.

<sup>166</sup> CARU at 2; DMA at 5; ITLG at 1; MPAA at 3–4; see also P&G; SIA at 3.

content on the Internet.<sup>174</sup> The commenters suggested that making the sliding scale approach permanent may encourage companies to make the types of investments in children's content that they may have hesitated to make in the past given the temporary nature of the sliding scale approach.<sup>175</sup>

Nearly all commenters agreed that use of the sliding scale approach is justified because collecting children's personal information only for internal use continues to present a low risk to children.<sup>176</sup> Even when an operator obtains consent through the e-mail plus mechanism, such information is protected because the operator must comply with the Rule's mandate to "establish and maintain reasonable procedures to protect the confidentiality, security, and integrity" of that information.<sup>177</sup> In addition, commenters noted that disclosing children's personal information continues to pose a greater risk to children than keeping it internal.<sup>178</sup> Some commenters stated that the low cost of the e-mail plus mechanism will encourage operators to not disclose children's information to third parties,<sup>179</sup> which furthers one of COPPA's stated goals of protecting children's online safety.<sup>180</sup> Two commenters even suggested that, given the lesser risks posed by operators' internal uses of information, the Commission should eliminate the prior parental consent requirement for such operators and require them only to provide parents with direct notice and an opportunity to opt-out of the maintenance and use of their child's information.<sup>181</sup>

The Commission concludes that the effectiveness of the sliding scale approach warrants its continued use without modification.

### 3. The Commission's Decision To Extend the Sliding Scale on an Indefinite Basis

Several commenters argued that the sliding scale approach should be made permanent rather than extending it for

<sup>174</sup> ADVO at 1; AAAA at 1; DMA at 4–5; MPAA at 4; SIIA at 3.

<sup>175</sup> *Id.*; Nickelodeon at 8.

<sup>176</sup> ADVO at 1; AAAA at 1; ALA; Brewer; CARU at 2; CoSN; CUNA at 1–2; ICUL; Mattel at 1; NFCU at 1; P&G; SIIA at 4; US ISPA at 3. *But cf.* Privo at 5; Villamil at 1, 3; Vogel at 1, 2 (stating that internal use and disclosure are equally risky).

<sup>177</sup> 16 CFR 312.8.

<sup>178</sup> ADVO at 1; AAAA at 1; Brewer; CARU at 2; CoSN; CUNA at 1–2; DMA at 2–3; ICUL; Mattel at 1; NFCU at 1; P&G; SIIA at 4; US ISPA at 3.

<sup>179</sup> ADVO at 1; ALA 2 at 2; CASRO at 6; CUNA at 2; NFCU at 1; TRUSTe at 2.

<sup>180</sup> ADVO at 1; CUNA at 2; NFCU at 1.

<sup>181</sup> CARU at 2; Mattel at 2.

a finite period of time. They stressed the benefits of greater regulatory certainty, including providing a consistent standard that operators can rely on in deciding how to structure their activities and encouraging investments in children's content with some assurance about the law's requirements for parental consent mechanisms.<sup>182</sup> Some commenters additionally noted that many operators have made significant investments in implementing the sliding scale and that abandoning the regime without an equally viable, cost-effective alternative may adversely affect these companies, particularly the small ones.<sup>183</sup>

Based on the public comments received, and its own experience in administering the Rule, the Commission concludes that the risk to children's privacy from an operator collecting personal information only for its internal use remains relatively low. The Commission also determines that more secure electronic technologies and infomediary services that might be used to obtain parental consent for internal use of personal information from children are not widely available at a reasonable cost. Further, the Commission concludes that the sliding scale approach has worked well and its continued use may foster the development of children's online content.

In light of the unpredictability of technological advancement and the benefits of decreasing regulatory uncertainty, the Commission has determined to retain the sliding scale indefinitely while it continues to evaluate developments. As one commenter noted, nothing precludes the Commission from revisiting the issue at an appropriate point in the future.<sup>184</sup> If warranted by future developments, the Commission will seek comment on amending the Rule to change the sliding scale mechanism.

### 4. Section 312.6: Parental Access

Section 312.6 of the Rule requires operators to give a parent, upon request: (1) A description of the types of personal information collected from children (e.g., "We collect full name and e-mail address from children"); (2) the opportunity for the parent to refuse to permit the further use or collection of personal information from his or her child and direct the deletion of the information; and (3) a means of

<sup>182</sup> DMA at 5; MPAA at 2; NCTA at 2; P&G; SIIA at 3.

<sup>183</sup> CASRO at 6; CARU at 2; ITLG at 1; Mattel at 1; MPAA at 3; NCTA at 2.

<sup>184</sup> CUNA at 2.

reviewing any actual personal information collected from his or her child (e.g., "We have collected the following information from your child: Mary Smith, msmith@domain.com"). The Commission asked if these requirements are effective, if their benefits outweigh their costs, and what changes, if any, should be made.

The Commission received one comment related to a parent's right to direct the operator to delete the child's personal information.<sup>185</sup> The commenter indicated that operators may want to retain children's personal information in certain situations, ranging from private contractual obligations to active law enforcement investigations, irrespective of a parent's direction to delete the information.<sup>186</sup> The commenter then suggested that the Commission should draft a list of exceptions to the Rule's deletion requirement to address these situations.<sup>187</sup>

COPPA mandates, and the Rule requires, that operators satisfy three requests when made by parents upon "proper identification."<sup>188</sup> First, operators must provide parents with a description of the types of information collected from children.<sup>189</sup> Second, operators must provide parents with "the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form" of their child's personal information.<sup>190</sup> Third, operators must provide parents with the actual information collected from their child.<sup>191</sup> Without a change in the Act, the Commission cannot adopt the exceptions from the parental deletion requirement the commenter advocated.<sup>192</sup> The Commission also is not aware of information sufficient to justify recommending that Congress amend the Act to create such exceptions.

The commenter also requested that the Commission clarify why operators must verify the identity of a purported parent before disclosing his or her child's personal information, but not verify the identity of a purported parent

<sup>185</sup> 16 CFR 312.6(a)(2).

<sup>186</sup> Microsoft at 3.

<sup>187</sup> *Id.*

<sup>188</sup> 15 U.S.C. 6503(b)(1)(B).

<sup>189</sup> 15 U.S.C. 6503(b)(1)(B)(i).

<sup>190</sup> 15 U.S.C. 6503(b)(1)(B)(ii).

<sup>191</sup> 15 U.S.C. 6503(b)(1)(B)(iii).

<sup>192</sup> The Rule does give operators the right to collect, without parental consent, the name and online contact information of a child "to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety." 16 CFR 312.5(c)(5)(iv).

before deleting the information.<sup>193</sup> In drafting the Rule, the Commission carefully considered what level of identification would be appropriate for these two requirements. Erroneously disclosing a child's actual personal information to a purported parent poses a high risk to that child's privacy because the purported parent receives the actual personal information of the child.<sup>194</sup> In contrast, erroneously deleting a child's actual personal information poses a lower risk because the purported parent never receives the information.<sup>195</sup> The Commission thus concluded that the former, but not the latter, situation warrants verifying the purported parent's identity.<sup>196</sup> After reconsideration, the Commission concludes that no modification to this requirement is warranted.

#### 5. Section 312.7: Prohibition Against Conditioning a Child's Participation on the Collection of More Personal Information Than Is Necessary

Section 312.7 of the Rule prohibits operators from conditioning a child's participation in an activity on disclosing more personal information than is reasonably necessary to participate in that activity. The Commission asked whether this prohibition is effective, if its benefits outweigh its costs, and what changes, if any, should be made to it. The Commission received one comment addressing this provision of the Rule. The commenter raised no concerns and cited this provision as one way in which the Rule has "succeeded in providing more privacy protections and safeguards for both children and their parents."<sup>197</sup> The Commission concludes that no changes to this provision are warranted.

#### 6. Section 312.8: Confidentiality, Security, and Integrity of Personal Information Collected From a Child

Section 312.8 of the Rule requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from a child. The Commission asked whether this requirement is effective, if its benefits outweigh its costs, and what changes, if any, should be made to it. The FTC also specifically asked if the term "reasonable procedure" is sufficiently clear. The Commission received no comments addressing this

provision of the Rule. The FTC concludes that no modifications to this requirement are necessary.

#### 7. Section 312.10: Safe Harbors

Section 312.10 of the Rule provides that an operator will be deemed in compliance if the operator complies with Commission-approved self-regulatory guidelines. The Commission asked if this "safe harbor" approach is effective, if its benefits outweigh its costs, and what changes, if any, should be made to it. In addressing the Rule's safe harbor provision, commenters uniformly lauded the part played by COPPA safe harbors in making successful the Commission's effort to protect children's online safety and privacy.<sup>198</sup> In addition, one commenter stated that the COPPA safe harbors "are an important educational resource on children's privacy issues, and serve to heighten awareness of children's privacy issues more generally."<sup>199</sup> Another commenter said, "the Safe Harbor program demonstrates the benefits of a self-regulatory scheme and mechanism for industry to maintain high standards with limited government intervention."<sup>200</sup>

One commenter, a COPPA safe harbor, suggested that the Commission encourage greater participation in COPPA safe harbor programs by amending the Rule to provide that "membership in good standing in a Commission-approved safe harbor program is an affirmative defense to an enforcement action" under COPPA.<sup>201</sup> As this commenter recognized, the Rule already provides that operators "in compliance" with an approved safe harbor program "will be deemed to be in compliance" with the Rule and the Commission will consider an operator's participation in a safe harbor program in determining whether to open an investigation or file an enforcement action, and what remedies to seek.<sup>202</sup> The commenter did not provide any evidence demonstrating that these current incentives to participate in safe harbor programs are inadequate. The Commission thus concludes that no changes to the safe harbor provision are necessary.

#### IV. Conclusion

For the foregoing reasons, the Commission has determined to retain the Children's Online Privacy Protection Rule without modification.

<sup>198</sup> DMA 2 at 5; ESRB at 3-4; Mattel 2 at 5-6; TRUSTe at 1-3.

<sup>199</sup> DMA 2 at 5.

<sup>200</sup> Mattel 2 at 5-6.

<sup>201</sup> TRUSTe at 3.

<sup>202</sup> 16 CFR 312.10(a) and 312.10(b)(4).

#### List of Subjects in 16 CFR Part 312

Communications, Computer technology, Consumer protection, Infants and Children, Privacy, Reporting and recordkeeping requirements, Safety, Science and technology, Trade practices, Youth.

By direction of the Commission.

Donald S. Clark,

Secretary.

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#### PENSION BENEFIT GUARANTY CORPORATION

##### 29 CFR Parts 4022 and 4044

#### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in April 2006. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** Effective April 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use

<sup>193</sup> In conducting this verification, operators are required to use the same methods that they must use to obtain verifiable parental consent. 16 CFR 312.6(a)(3)(i).

<sup>194</sup> 64 FR at 59904.

<sup>195</sup> *Id.* at 59904-05.

<sup>196</sup> 16 CFR 312.6(a)(1) and (2).

<sup>197</sup> CUNA 2 at 2.

to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during April 2006, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during April 2006, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during April 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.60 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for March 2006) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after

January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at <http://www.pbgc.gov/docs/05-23554.pdf>. Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for March 2006.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during April 2006, the PBGC finds that good cause exists for making the assumptions set forth in this

amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 150, as set forth below, is added to the table.

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i <sub>1</sub>	i <sub>2</sub>	i <sub>3</sub>	n <sub>1</sub>	n <sub>2</sub>
*	*	*	*	*	*	*	*	*
150	4-1-06	5-1-06	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 150, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i <sub>1</sub>	i <sub>2</sub>	i <sub>3</sub>	n <sub>1</sub>	n <sub>2</sub>
*	*	*	*	*	*	*	*	*
150	4-1-06	5-1-06	2.75	4.00	4.00	4.00	7	8

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for April 2006, as set forth below, is added to the table.

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation occurring in the month—	The values of $i_t$ are:					
	$i_t$	for t =	$i_t$	for t =	$i_t$	for t =
April 2006 .....	.0560	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of March 2006.

**Vincent K. Snowbarger,**

*Deputy Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 06–2458 Filed 3–14–06; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506–AA64**

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Commercial Bank of Syria, Including Its Subsidiary, Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern**

**AGENCY:** Financial Crimes Enforcement Network, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Financial Crimes Enforcement Network is issuing a final rule imposing a special measure against Commercial Bank of Syria as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

**DATES:** This final rule is effective on April 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Statutory Provisions*

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (USA PATRIOT Act). Title III of the USA PATRIOT Act

amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103.<sup>1</sup> The authority of the Secretary of the Treasury (“the Secretary”) to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.<sup>2</sup> The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.<sup>3</sup>

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Secretary the authority, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of “primary money laundering concern,”

<sup>1</sup> The statute generally referred to as the “Bank Secrecy Act,” Titles I and II of Public Law 91–508, as amended, is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332. In pertinent part, regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103.

<sup>2</sup> Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

<sup>3</sup> Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (“USA PATRIOT”) Act of 2001, Public Law 107–56 (October 26, 2001).

to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before we may find that reasonable grounds exist for concluding that a jurisdiction, institution, class of transactions, or type of account is of primary money laundering concern. The statute also provides similar procedures, including factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give us the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money-laundering threats and allow us to take steps to protect the U.S. financial system. Through the imposition of various special measures, we can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required by the Bank Secrecy Act to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, when finding that a foreign financial institution is of primary money laundering concern, the Secretary is required by section 311 to consider “such information as [we] determine to

be relevant, including the following potentially relevant factors:"

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the Bank Secrecy Act continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If we determine that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, we must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, or jointly, in any combination, and in any sequence.<sup>4</sup> In the imposition of special measures, we follow procedures similar to those for finding a foreign financial institution to be of primary money laundering concern, but we also engage in additional consultations and consider additional factors. Section 311 requires us to consult with other appropriate Federal agencies and parties<sup>5</sup> and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage,

<sup>4</sup> Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

<sup>5</sup> Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration, and, in our sole discretion, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions upon the opening or maintaining of a correspondent account by any domestic financial institution or domestic financial agency for the foreign financial institution of primary money laundering concern.

including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on U.S. national security and foreign policy.<sup>6</sup>

In this final rule, we are imposing the fifth special measure (31 U.S.C. 5318A(b) (5)) against Commercial Bank of Syria. The fifth special measure prohibits or imposes conditions upon the opening or maintaining of correspondent or payable-through accounts for or on behalf of the foreign financial institution of primary money laundering concern. This special measure may be imposed only through the issuance of a regulation.

#### B. Commercial Bank of Syria

Commercial Bank of Syria is based in Damascus, Syria, and maintains approximately 50 branches and employs about 4,500 persons. All of the branches are located in Syria. It was established in Syria in 1967 as the single, government-owned bank specializing in servicing foreign trade and commercial banking, including foreign exchange transactions. Commercial Bank of Syria maintains correspondent accounts with banks in countries all over the world, but we are not aware of any correspondent accounts with U.S. financial institutions.<sup>7</sup>

Commercial Bank of Syria has one subsidiary, Syrian Lebanese Commercial Bank, located in Beirut, Lebanon. The subsidiary offers banking services, with the emphasis on providing import/export facilities to individuals in Lebanon and Syria. Syrian Lebanese Commercial Bank has two branches in Beirut and two representative offices, one in Aleppo and another in Damascus, Syria. We are not aware of any correspondent accounts maintained by the Syrian Lebanese Commercial Bank with U.S. financial institutions.<sup>8</sup>

<sup>6</sup> Classified information used in support of a section 311 finding of primary money laundering concern and imposition of special measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Public Law 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

<sup>7</sup> Several U.S. banks terminated their correspondent accounts with the Commercial Bank of Syria after we found the foreign bank to be of primary money laundering concern and proposed imposing the fifth special measure.

<sup>8</sup> For purposes of this document and unless the context dictates otherwise, references to

In February 2006, Syria reportedly switched all of its foreign currency transactions to euros from U.S. dollars to avoid possible settlement problems involving dollar payment systems, apparently in anticipation of possible future U.S. Government action. Most of the government's foreign currency transactions are conducted through Commercial Bank of Syria. Commercial Bank of Syria reportedly has also stopped dealing in U.S. dollars for international transactions, such as imports, exports, and letters of credit.

## II. The 2004 Finding and Subsequent Developments

### A. The 2004 Finding

In May 2004, the Secretary, through the Director of the Financial Crimes Enforcement Network, found that reasonable grounds exist for concluding that Commercial Bank of Syria, a Syrian government-owned bank, is a financial institution of primary money laundering concern. This finding was published in the notice of proposed rulemaking, which proposed prohibiting U.S. financial institutions from, directly or indirectly, opening and maintaining correspondent accounts for Commercial Bank of Syria, and any of its branches, offices, and subsidiaries, pursuant to the authority under 31 U.S.C. 5318A.<sup>9</sup> The notice of proposed rulemaking outlined the various factors supporting the finding and proposed prohibition. In finding Commercial Bank of Syria to be of primary money laundering concern, we determined that:

- Commercial Bank of Syria was used by criminals to facilitate or promote money laundering. In particular, we determined Commercial Bank of Syria had been used as a conduit for the laundering of proceeds generated from the illicit sale of Iraqi oil and had been used by terrorists or persons associated with terrorist organizations.<sup>10</sup>
- Any legitimate business use of Commercial Bank of Syria was significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.
- The finding and proposed special measure would prevent suspect account holders at Commercial Bank of Syria from accessing the U.S. financial system to facilitate money laundering and would bring criminal conduct occurring at or through Commercial

Commercial Bank of Syria include Syrian Lebanese Commercial Bank, and any other branch, office, or subsidiary of Commercial Bank of Syria or Syrian Lebanese Commercial Bank.

<sup>9</sup> 69 FR 28098 (May 18, 2004).

<sup>10</sup> For a more detailed analysis of the finding of primary money laundering concern, see the notice of proposed rulemaking.

Bank of Syria to the attention of the international financial community and thus serve the purposes of the Bank Secrecy Act.

We also stated in our finding that Commercial Bank of Syria is licensed in Syria, a jurisdiction with very limited money laundering controls. Finally, in the notice of proposed rulemaking containing our finding, we further stated that Commercial Bank of Syria, as a financial entity under the control of a designated State Sponsor of Terrorism, provides cause for real concern about terrorist financing and money laundering activities.

#### B. Subsequent Developments

Commercial Bank of Syria and Syria did not dispute any of these grounds for our May 2004 finding of Commercial Bank of Syria as a primary money laundering concern. Following this finding, however, Commercial Bank of Syria and Syrian government financial authorities did engage in initial discussions with the U.S. Department of the Treasury to learn more about the bases for the finding and to consider developing effective money laundering controls.

Pursuant to this engagement, Syria has taken certain steps to develop an anti-money laundering regime, although these steps are not sufficient to address our concerns about money laundering and terrorist financing issues within Commercial Bank of Syria. In response to international pressure to improve its anti-money laundering regime, Syria passed Decree 33 in May 2005, which strengthened an existing Anti-Money Laundering Commission (the "Commission")<sup>11</sup> and laid the foundation for the development of a financial intelligence unit.<sup>12</sup> Under this law, all banks and non-bank financial institutions are required to keep records on transactions exceeding an amount specified by the Commission and also on transactions where it is suspected that money laundering or terrorist financing is involved. In September 2005, the Commission informed banks that they must use *know your customer*

<sup>11</sup> The Anti-Money Laundering Commission, created by legislation passed in 2003, is the financial intelligence unit for Syria and is charged with overseeing all issues related to money laundering and terrorist financing, including unveiling bank secrecy; establishing memoranda of understandings with counterpart financial intelligence units; conducting money laundering and terrorist financing inquiries; and freezing suspected accounts.

<sup>12</sup> Financial intelligence units are specialized governmental agencies created to combat money laundering and terrorist financing. The Egmont Group is an international body comprised of Financial Intelligence Units from 101 member countries. See <http://www.egmontgroup.org>.

procedures to follow up on their customers every three years and that they must maintain records on closed accounts for five years. Recent legislation has also provided the Central Bank of Syria, the entity that issues the national currency, new authority to oversee the banking sector and to investigate financial crimes. Finally, Syria is working on integrating its anti-money laundering efforts with other countries in the Middle East and North Africa Financial Action Task Force ("MENA FATF").<sup>13</sup> Syria will host a team of assessors from the MENA FATF in early 2006, which will assess its progress in developing and implementing an effective anti-money laundering regime.

Despite these recent enhancements, there remain significant jurisdictional anti-money laundering vulnerabilities that have not been addressed by necessary legislation or other governmental action. Some of these vulnerabilities include the lack of regulation for hawaladars,<sup>14</sup> the failure to address cash smuggling and other criminal movement across the country's porous borders and the rampant corruption among Syria's political and business elite. In addition, Syrian law does not establish terrorist financing as a predicate offense for money laundering. Furthermore, Syria's free trade zones<sup>15</sup> provide significant opportunities for laundering the proceeds of criminal activities because the Syrian General Directorate of Customs does not have effective oversight procedures to monitor goods that move through the zones. Finally, Syria faces serious ongoing challenges in implementing its anti-money laundering regime. Syria has failed to issue implementing rules for Decree 33, making adequate implementation and enforcement of the law questionable. Syria does not appear to have taken any significant regulatory, law enforcement or prosecutorial action with respect to any money laundering or terrorist financing activity in Syria, despite the terrorist financing and money laundering concerns associated with

<sup>13</sup> In November 2004, the governments of 14 countries decided to establish a Financial Action Task Force regional style body for the Middle East and North Africa. The body is known as the Middle East and North Africa Financial Action Task Force, or MENA FATF, and is headquartered in the Kingdom of Bahrain. See <http://www.menafatf.org>.

<sup>14</sup> Hawala is an alternative or parallel trust-based remittance system. It exists and operates outside of, or parallel to 'traditional' banking or financial channels. The person who operates a hawala is commonly referred to as a hawaladar.

<sup>15</sup> An area of a country specifically set apart or an adjacent port where there is an exemption of duty rights for foreign goods.

Commercial Bank of Syria as identified in our May 2004 finding.

These jurisdictional money laundering and terrorist financing vulnerabilities are exacerbated by Syria's ongoing support for terrorist activity. Syria has been designated by the U.S. Government as a State Sponsor of Terrorism since 1979.<sup>16</sup> As of 2006, the Syrian Government continued to provide material support to Lebanese Hezbollah and Palestinian terrorist groups. HAMAS, Palestinian Islamic Jihad (PIJ), and the Popular Front for the Liberation of Palestine (PFLP), among others, continue to maintain offices in Damascus, from which their members direct public relations and fundraising activities and provide guidance to terrorist operatives and fundraisers in the West Bank, Gaza, and across the region. For example, according to a significant volume of information available to the U.S. Government, PIJ leadership in Damascus, Syria controls all PIJ officials, activists and terrorists in the West Bank and Gaza. Syria-based PIJ leadership was implicated in the February 2005 terrorist attack in Tel Aviv, Israel that killed five and wounded over 50.

As late as 2005, Syrian Military Intelligence (SMI) official Assef Shawkat met with terrorist leaders Hassan Nasrallah of Hezbollah, Ahmed Jibril of Popular Front for the Liberation of Palestine, and Abdullah Ramadan Shallah of Palestinian Islamic Jihad, in addition to Hamas officials, to discuss coordination and cooperation with the Syrian government. Shawkat managed a branch of SMI charged with overseeing liaison relations with major terrorist groups resident in Damascus.<sup>17</sup> In January 2006, the Syrian Government facilitated a meeting in Damascus between Iranian government officials

<sup>16</sup> Syria is designated as a state sponsor of terrorism, under section 6(j) of the Export Administration Act ("EAA") of 1979, 50 U.S.C. App. 2405. Section 321 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Public Law 104-132, makes it a criminal offense for U.S. persons, except as provided in regulations issued by the Secretary of the Treasury in consultation with the Secretary of State, knowingly to engage in a financial transaction with the government of any country designated under section 6(j) of the EAA as supporting international terrorism. For the purpose of implementing section 321 of AEDPA, regulations issued and administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury effectively prohibit U.S. persons from engaging in financial transactions with the government of Syria that constitute unlicensed donations to U.S. persons or are such financial transactions that the U.S. person knows or has reasonable cause to believe pose a risk of furthering terrorist acts in the United States. See 31 CFR parts 596, 504, 542.102.

<sup>17</sup> In January 2006, Assef Shawkat was named a Specially Designated National by the U.S. Government under Executive Order 13338.

and several designated terrorist leaders, including, Abdullah Ramadan Shallah, Ahmed Jibril, Hassan Nasrallah, and Khaled Mishal of Hamas. The Syrian Government also continues to permit Iran to use Damascus as a transshipment point for re-supplying Lebanese Hizballah in Lebanon.

These ongoing terrorist activities supported by Syria as a designated State Sponsor of Terrorism, coupled with the continuing jurisdictional vulnerabilities associated with Syria's weak money laundering and terrorist financing controls, continue to be directly relevant to our 2004 finding that Commercial Bank of Syria is of primary money laundering concern. As stated above, Commercial Bank of Syria is a Syrian government-owned and controlled bank. As such, Commercial Bank of Syria presents a direct and ongoing opportunity for the Syrian government to continue to support and finance terrorist activity. This risk, in addition to the uncontested and ongoing money laundering and terrorist financing concerns associated with Commercial Bank of Syria as described in our May 2004 finding, further substantiates our belief that Commercial Bank of Syria is of primary money laundering concern. Accordingly, our finding remains that Commercial Bank of Syria is a financial institution of primary money laundering concern.

### III. Imposition of the Fifth Special Measure

Consistent with the finding that Commercial Bank of Syria is a financial institution of primary money laundering concern, and based upon additional consultations with required Federal agencies and departments and consideration of additional relevant factors, including the comments received for the proposed rule, we are imposing the special measure authorized by 31 U.S.C. 5318A(b)(5) with regard to Commercial Bank of Syria.<sup>18</sup> That special measure authorizes the prohibition of, or the imposition of conditions upon, the opening or maintaining of correspondent or payable-through accounts<sup>19</sup> by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern. A discussion of the

additional section 311 factors relevant to the imposition of this particular special measure follows.

#### 1. *Similar Actions Have Not Been or May Not Be Taken by Other Nations or Multilateral Groups Against Commercial Bank of Syria*

At this time, other countries have not taken any action similar to the imposition of the fifth special measure of section 311, that which prohibits U.S. financial institutions and financial agencies from opening or maintaining a correspondent account for or on behalf of Commercial Bank of Syria or that requires those institutions and agencies to guard against indirect use by Commercial Bank of Syria. Especially in response to Syria's recent conversion from U.S. dollars to euros for foreign currency transactions, we encourage other countries to take similar action based on our finding that Commercial Bank of Syria is a financial institution of primary money laundering concern.

#### 2. *The Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States*

The fifth special measure imposed by this rule prohibits covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, Commercial Bank of Syria. As a corollary to this measure, covered financial institutions also are required to take reasonable steps to apply due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to Commercial Bank of Syria. The burden associated with these requirements is not expected to be significant, given that we are not aware of any U.S. financial institutions that maintain correspondent accounts directly for Commercial Bank of Syria. Moreover, there is a minimal burden involved in transmitting a one-time notice to all correspondent accountholders concerning the prohibition on providing services to Commercial Bank of Syria indirectly.

In addition, U.S. financial institutions generally apply some degree of due diligence in screening their transactions and accounts, often through the use of commercially available software, such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control of the Department of the Treasury. As explained in more detail in the section-by-section analysis below,

financial institutions should be able to adapt their existing screening procedures to comply with this special measure. Thus, the due diligence that is required by this rule is not expected to impose a significant additional burden upon covered financial institutions.

#### 3. *The Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of the Commercial Bank of Syria*

Commercial Bank of Syria is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Furthermore, since the issuance of the notice of proposed rulemaking in 2004, we have become aware of additional financial institutions that have been established in Syria to engage in international transactions. Thus, the imposition of the fifth special measure against Commercial Bank of Syria will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In addition, we believe that any legitimate use of Commercial Bank of Syria is significantly outweighed by its reported use to promote or facilitate money laundering and terrorist financing.

#### 4. *The Action Enhances the United States' National Security and Complements the United States' Foreign Policy*

The exclusion from the U.S. financial system of banks that serve as conduits for significant money laundering activity and that participate in other financial crime enhances national security by making it more difficult for criminals to access the substantial resources and services of the U.S. financial system. In addition, the imposition of the fifth special measure against Commercial Bank of Syria complements the U.S. Government's overall foreign policy strategy of making entry into the U.S. financial system more difficult for high-risk financial institutions located in jurisdictions with weak or poorly enforced anti-money laundering controls.

### IV. Notice of Proposed Rulemaking and Comments

We have not become aware of any information inconsistent with our determination that there are reasonable grounds to find that Commercial Bank of Syria is a financial institution of a primary money laundering concern. In response to the 2004 notice of proposed

<sup>18</sup> *Supra* footnote 4.

<sup>19</sup> For purposes of the rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank (31 U.S.C. 5318A(e)(1)(B) as implemented in 31 CFR 103.175(d)(1)(ii)).

rulemaking, we did not receive any comments from Commercial Bank of Syria or any other entity disputing that the imposition of the fifth special measure was warranted. We did receive two comment letters, both from domestic associations representing segments of the U.S. financial industry, which supported the finding and special measure, but sought clarification regarding particular obligations of domestic institutions, as detailed below.

One trade association comment stated that the relative unavailability of certain banking services in Syria through institutions other than Commercial Bank of Syria, particularly with respect to foreign currency transactions, would cause undue burden on legitimate U.S. business activities in Syria, as well as on Syrian diplomatic activities in the United States. In response to this comment, we note that during the past year, private banks have been established in Syria to conduct foreign transactions. Accordingly, Commercial Bank of Syria is no longer the only financial institution in Syria that can engage in international transactions, and legitimate U.S. businesses may continue transacting with other institutions.

In the notice of proposed rulemaking, we specifically solicited comment on the impact of the fifth special measure on legitimate business involving Commercial Bank of Syria, and we understand that this measure may require legitimate businesses to make alternative banking arrangements. Since the issuance of the notice of proposed rulemaking, however, the privately owned Syrian banking sector has expanded significantly, increasing the availability of alternative banking services as mentioned above.

One trade association comment letter requested clarification of the proposed rule with regard to standby letters of credit.<sup>20</sup> The commenter stated that a U.S. business might have contracts in Syria guaranteed by renewable standby letters of credit issued by a U.S. bank. The commenter sought clarification as to whether this rulemaking would require the U.S. bank to terminate the letter of credit, which would then require payment by the U.S. bank to Commercial Bank of Syria.

As described by the commenter, the issuance of a standby letter of credit by

a covered financial institution does not create a correspondent account relationship as defined in 31 CFR 103.175(d)(1)(ii) between the covered financial institution and Commercial Bank of Syria. The commenter described a scenario in which a U.S. business seeks a standby letter of credit in favor of Commercial Bank of Syria so that Commercial Bank of Syria is ultimately not at risk should the U.S. business fail to perform on a services contract. In such a situation, no formal banking or business relationship is established between the covered financial institution and Commercial Bank of Syria. Thus, this final rule—which only applies to correspondent account relationships—does not require the termination of standby letters of credit described by the commenter.

The first trade association commenter requested clarification on whether a final rule could require a covered financial institution to reject a funds transfer involving Commercial Bank of Syria. The fifth special measure imposed in this rule prohibits covered financial institutions from opening or maintaining correspondent accounts for or on behalf of Commercial Bank of Syria. As explained in detail below, a covered financial institution must take reasonable steps to identify indirect use of its correspondent accounts by Commercial Bank of Syria through other foreign banks. Institutions that detect such indirect access, such as identifying a funds transfer involving Commercial Bank of Syria, must take all appropriate steps to prevent such indirect access, including, if necessary, the termination of the correspondent account.

The same commenter also sought guidance on whether there is an expectation for banks to file suspicious activity reports merely because a transaction with a connection to Commercial Bank of Syria was attempted or completed. A covered financial institution is not required to automatically and without inquiry file a suspicious activity report based solely on the fact that a transaction involves Commercial Bank of Syria. However, a covered financial institution must file a suspicious activity report if it becomes aware, after further investigation, that the triggers for filing such a report and the applicable thresholds have been met.<sup>21</sup>

The second trade association comment, addressing the requirement that a covered institution provide notice to its foreign correspondents regarding

this rule, is addressed in the section-by-section analysis below.

## V. Section-by-Section Analysis

The final rule prohibits covered financial institutions from opening or maintaining any correspondent account for, or on behalf of, Commercial Bank of Syria. Covered financial institutions are required to apply due diligence to their correspondent accounts to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include two elements. First, a covered financial institution must notify its correspondent account holders that the account may not be used to provide Commercial Bank of Syria with access to the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution must take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria, based on risk factors such as the type of services offered by, and geographic locations of, its correspondents.

### A. 103.188(a)—Definitions

#### 1. Commercial Bank of Syria

Section 103.188(a)(1) of the rule defines Commercial Bank of Syria to include all branches, offices, and subsidiaries of Commercial Bank of Syria operating in Syria or in any other jurisdiction. The one known subsidiary of Commercial Bank of Syria, Syrian Lebanese Commercial Bank, and any of its branches or offices, is included in the definition. We will provide information regarding the existence or establishment of any other subsidiaries as it becomes available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a subsidiary, branch, or office of Commercial Bank of Syria.

#### 2. Correspondent Account

Section 103.188(a)(2) defines the term “correspondent account” by reference to the definition contained in 31 CFR 103.175(d)(1)(ii). Section 103.175(d)(1)(ii) defines a correspondent account to mean an account established for a foreign bank to

<sup>20</sup> A standby letter of credit is a credit instrument issued by a bank that represents an obligation by the issuing bank on a designated third party (the beneficiary), that is contingent on the failure of the bank's customer to perform under the terms of a contract with the beneficiary. A standby letter of credit is most often used as a credit enhancement, with the understanding that, in most cases, it will never be drawn against or funded. *Barron's Dictionary of Banking Terms* (Fourth Edition).

<sup>21</sup> Suspicious Activity Reporting rules are promulgated at 31 CFR 103.17–103.21.

receive deposits from, or make payments or other disbursements on behalf of, the foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank, established to provide regular services, dealings, and other financial transactions including a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (mutual funds), we are using the same definition of "account" for purposes of this rule as that established in the final rule implementing section 312 of the USA PATRIOT Act.<sup>22</sup>

### 3. Covered Financial Institution

Section 103.188(a)(3) of the rule defines covered financial institution by reference to 31 CFR 103.175(f)(1). Thus a covered financial institution includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A federally insured credit union;
- A savings association;
- A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);
- A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;
- A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;
- A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and
- A mutual fund, which means an investment company (as defined in

section 3(a)(1) of the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-3(a)(1)) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

In the notice of proposed rulemaking, we defined "covered financial institution" by reference to 31 CFR 103.175(f)(2), the operative definition of that term for purposes of the rules implementing sections 313 and 319 of the USA Patriot Act, and also included in the definition futures commission merchants, introducing brokers, and mutual funds. The definition of "covered financial institution" we are adopting for purposes of this final rule is substantially the same.

#### B. 103.188(b)—Requirements for Covered Financial Institutions

For purposes of complying with the rule's prohibition on the opening or maintaining of correspondent accounts for, or on behalf of, Commercial Bank of Syria, we expect a covered financial institution to take steps analogous to those that a reasonable and prudent financial institution would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

##### 1. Prohibition on Direct Use of Correspondent Accounts

Section 103.188(b)(1) of the rule prohibits all covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Commercial Bank of Syria. The prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, Commercial Bank of Syria.

##### 2. Due Diligence of Correspondent Accounts To Prohibit Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for Commercial Bank of Syria, section 103.188(b)(2) requires a covered financial institution to apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include notifying correspondent account holders that the account may not be used to provide Commercial Bank of Syria with access to the covered financial institution. For

example, a covered financial institution may satisfy this requirement by transmitting the following notice to all of its correspondent account holders:

*Notice:* Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.188, we are prohibited from opening or maintaining a correspondent account for, or on behalf of, Commercial Bank of Syria or any of its subsidiaries (including Syrian Lebanese Commercial Bank). The regulations also require us to notify you that your correspondent account with our financial institution may not be used to provide Commercial Bank of Syria or any of its subsidiaries with access to our financial institution. If we become aware that Commercial Bank of Syria or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to help ensure that Commercial Bank of Syria is denied access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Commercial Bank of Syria. However, we do not require or expect a covered financial institution to obtain a certification from its correspondent account holders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to a covered financial institution's correspondent account holders, informing those holders that the accounts may not be used to provide Commercial Bank of Syria with indirect access to the covered financial institution, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders.

In its comment letter, one trade association requested that we consider permitting other methods of providing notice to correspondent account holders or allowing sufficient flexibility so that covered financial institutions can use systems already established under other provisions of the USA PATRIOT Act to provide notice. As we stated in the notice of proposed rulemaking, a covered financial institution is not obligated to use any specific form or method in notifying its correspondent account holders of the special measure. We suggested the provision of written notice containing certain language as only one example of how a covered financial institution could comply with its obligation to notify its

<sup>22</sup> See 71 FR 496, 512-13 (January 4, 2006), codified at 31 CFR 103.175(d)(2)(ii)-(iv).

correspondents. The trade association further suggested that we specifically consider means such as including the notice within the certificates used by financial institutions to comply with the rules issued under sections 313 and 319 of the USA PATRIOT Act. While there may be circumstances where this would be appropriate, we note that those certificates are renewable every three years, and that relying solely on the certification process for notice purposes would not be reasonable where a re-certification would not be made within a reasonable time following the issuance of this final rule. Furthermore, we are not requiring that covered financial institutions obtain a certification regarding compliance with the final rule from each correspondent accountholder.

This rule also requires a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution is expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that, on its face, lists Commercial Bank of Syria as the originator's or beneficiary's financial institution, or otherwise references Commercial Bank of Syria in a manner detectable under the financial institution's normal business screening procedures. We acknowledge that not all institutions are capable of screening every field in a funds transfer message, and that the risk-based controls of some institutions may not require such comprehensive screening. Alternatively, other institutions may perform more thorough screening as part of their risk-based determination to perform "additional due diligence," as described below. An appropriate screening mechanism could be the mechanism currently used by a covered financial institution to comply with various legal requirements, such as the commercially available software used to comply with the sanctions programs administered by the Office of Foreign Assets Control.

Notifying its correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria in the manner discussed above are the minimum due diligence requirements under this final rule. Beyond these minimum steps, a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the

indirect use of its correspondent accounts by Commercial Bank of Syria, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

A covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to Commercial Bank of Syria must take all appropriate steps to prevent such indirect access, including, when necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. We have added language in the final rule clarifying that should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will not be available to Commercial Bank of Syria, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under this rule if it determines that the account will not be used to provide banking services indirectly to Commercial Bank of Syria.

### 3. Reporting Not Required

Section 103.188(b)(3) of the rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution, however, must document its compliance with the requirement that it notify its correspondent account holders that the accounts may not be used to provide Commercial Bank of Syria with access to the covered financial institution.

### VI. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Commercial Bank of Syria no longer holds correspondent accounts in the United States. The U.S. correspondent accounts that the bank previously held, as well as the U.S. correspondent accounts of foreign banks that still maintain a correspondent relationship with Commercial Bank of Syria, were with large banks. Thus, the prohibition on establishing or

maintaining such correspondent accounts will not have a significant impact on a substantial number of small entities. In addition, all covered financial institutions currently must exercise some degree of due diligence in order to comply with various legal requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by the Office of Foreign Assets Control, can be modified to monitor for the use of correspondent accounts by Commercial Bank of Syria. Thus, the due diligence that is required by this rule—*i.e.*, the one-time transmittal of notice to correspondent account holders and screening of transactions to identify any indirect use of a correspondent account—is not expected to impose a significant additional economic burden upon small U.S. financial institutions.

### VII. Paperwork Reduction Act of 1995

The collection of information contained in the final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and assigned OMB Control Number 1506-0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The only requirements in the final rule that are subject to the Paperwork Reduction Act are the requirements that a covered financial institution notify its correspondent account holders that the correspondent accounts maintained on their behalf may not be used to provide Commercial Bank of Syria with access to the covered financial institution and the requirement that a covered financial institution document its compliance with its obligation to notify its correspondents. The estimated annual average burden associated with this collection of information is one hour per affected financial institution. We received no comments on this information collection burden estimate.

Comments concerning the accuracy of this information collection estimate and suggestions for reducing this burden should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by the Internet to [Alexander.T.Hunt@omb.eop.gov](mailto:Alexander.T.Hunt@omb.eop.gov)), with a copy to the Financial Crimes Enforcement Network by paper mail to

FinCEN, P.O. Box 39, Vienna, VA 22183, "ATTN: Section 311—Imposition of Special Measure Against Commercial Bank of Syria" or by electronic mail to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption "ATTN: Section 311—Imposition of Special Measure Against Commercial Bank of Syria" in the body of the text.

#### VIII. Executive Order 12866

This rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, and Foreign banking.

#### Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

#### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 is revised to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Subpart I of part 103 is amended by adding new § 103.188 as follows:

#### § 103.188 Special measures against Commercial Bank of Syria.

(a) *Definitions.* For purposes of this section:

(1) *Commercial Bank of Syria* means any branch, office, or subsidiary of Commercial Bank of Syria operating in Syria or in any other jurisdiction, including Syrian Lebanese Commercial Bank.

(2) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(3) *Covered financial institution* includes:

- (i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));
- (ii) A commercial bank;
- (iii) An agency or branch of a foreign bank in the United States;
- (iv) A federally insured credit union;
- (v) A savings association;
- (vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is open or maintained in the United States for, or on behalf of, Commercial Bank of Syria.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include:

(A) Notifying correspondent account holders that the correspondent account may not be used to provide Commercial Bank of Syria with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when

deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Commercial Bank of Syria shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Commercial Bank of Syria.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: March 9, 2006.

**Robert Werner,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 06–2455 Filed 3–14–06; 8:45 am]

BILLING CODE 4810–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01–06–020]

#### Drawbridge Operation Regulations; Connecticut River, Old Lyme, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing

the operation of the AMTRAK Old Saybrook-Old Lyme Bridge across the Connecticut River at mile 3.4, between Old Saybrook and Old Lyme, Connecticut. This temporary deviation requires the bridge to operate on a fixed opening schedule from March 8, 2006 through April 15, 2006, and also allows the bridge to remain in the closed position for 72 hours, from 6 a.m. on Saturday, March 11, 2006 through 6 a.m. on Tuesday, March 14, 2006. The draw shall open on signal for commercial vessels, except during the 72 hour bridge closure period, after at least a four-hour advance notice is given. This deviation is necessary to facilitate urgent bridge maintenance.

**DATES:** This deviation is effective from March 8, 2006 through April 15, 2006.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The AMTRAK Old Saybrook-Old Lyme Bridge, across the Connecticut River at mile 3.4, has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at mean low water. The existing regulations are listed at 33 CFR 117.205(b).

On February 3, 2006, the Coast Guard issued a temporary deviation from the drawbridge operation regulations governing the operation of the AMTRAK Old Saybrook-Old Lyme Bridge to facilitate scheduled electrical and mechanical bridge maintenance.

On February 24, 2006, during the course of the above scheduled bridge maintenance the bridge owner discovered additional necessary vital repairs, faulty bridge electrical cables, and a worn pinion bearing that must be replaced as soon as possible to assure the continued safe and reliable operation of the bridge.

As a result of the above information, the owner of the bridge, National Railroad Passenger Corporation (AMTRAK), has requested a temporary deviation to facilitate urgent bridge repairs, replacement of the bridge electrical cables and the pinion bearing.

In order to perform the above repairs the bridge must open on a fixed

schedule in order to facilitate the electrical cable repair and must remain in the closed position for 72 hours to replace the worn pinion bearing.

Under this temporary deviation the AMTRAK Old Saybrook-Old Lyme Bridge across the Connecticut River at mile 3.4, shall open on signal Monday through Friday at 8:15 a.m., 12:15 p.m., and 2:15 p.m., and on Saturday and Sunday at 8 a.m., 10 a.m., 1 p.m., 2:15 p.m., and 4 p.m.

In addition, the draw need not open for the passage of vessel traffic for 72 hours, from 6 a.m. on Saturday, March 11, 2006 through 6 a.m. on Tuesday, March 14, 2006.

The draw shall open on signal for commercial vessels, except during the 72 hour closed period, if at least a four-hour advance notice is given by calling the number posted at the bridge.

The operation of the CONRAIL Middletown-Portland Bridge at mile 32.0, across the Connecticut River, which is also listed under 33 CFR 117.205(b), will not be effected by this temporary deviation.

In accordance with 33 CFR 117.35(b), these vital, unscheduled repairs should be performed without delay in order to return the bridge to normal operation as soon as possible.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 6, 2006.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. 06-2445 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-15-P**

## POSTAL SERVICE

### 39 CFR Part 111

#### New Marking Requirement for Bound Printed Matter Machinable Parcels

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts a new marking requirement for Bound Printed Matter (BPM) machinable parcels consisting of multiple pieces secured with transparent shrinkwrap. The new marking will enable our automated equipment to recognize that these BPM machinable parcels are intended for a single address. Under the new standards, mailers must use a firm optional endorsement line or apply a pressure-sensitive firm Label F. The new standards do not apply to BPM flats or irregular parcels.

**DATES:** *Effective Date:* July 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, 202-268-7266.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Postal Service published a proposal in the **Federal Register** on December 27, 2005 (70 FR 76435), to require a firm optional endorsement line or a pressure-sensitive firm Label F on Bound Printed Matter machinable parcels consisting of multiple pieces secured with transparent shrinkwrap.

##### Summary of Comments

We received two comments on the proposal, both from commercial mailers. Neither mailer opposed our proposal.

One mailer suggested we clarify that the new marking requirement does not apply to all Bound Printed Matter (BPM) parcels. The new firm optional endorsement line (OEL) or pressure-sensitive label F requirement applies only to BPM machinable parcels consisting of multiple pieces secured with transparent shrinkwrap. A BPM parcel prepared with a cardboard box, for example, does not require a firm OEL or Label F.

The other mailer recommended the requirement include Standard Mail machinable parcels consisting of multiple pieces secured with transparent shrinkwrap. We believe the volume of Standard Mail parcels with these characteristics is so low that it does not warrant a new marking requirement. Therefore, we will not extend the change to Standard Mail.

We also received an informal request about the proposal via e-mail. The request asked whether the new standards will allow, as an option, the use of the firm OEL on a BPM parcel consisting of a single phone book enclosed in transparent shrinkwrap. While not required, mailers may use a firm OEL on BPM parcels consisting of a single piece, since in some cases the OEL can assist with the automated processing of single pieces in transparent shrinkwrap.

Several customers have asked us if they may label according to the new standards immediately. The effective date of these changes is July 6, 2006, but mailers are encouraged to comply as soon as possible.

##### Summary of Changes

When a BPM machinable parcel consists of multiple pieces for a single address secured with transparent shrinkwrap, mailers must label the parcel using one of the following options:

- A firm optional endorsement line, followed by the 5-digit destination ZIP Code of the parcel.
- A blue, pressure-sensitive, barcoded Label F on the address side of the parcel.

We provide the new standards, and how they are applied for Bound Printed Matter, below.

We adopt the following amendments to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

#### PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

#### 400 Discount Mail Parcels

\* \* \* \* \*

#### 402 Elements on the Face of a Mailpiece

\* \* \* \* \*

#### 2.0 PLACEMENT AND CONTENT OF MARKINGS

\* \* \* \* \*

#### 2.2 Parcel Post, Bound Printed Matter, Media Mail, and Library Mail Markings

\* \* \* \* \*

[Renumber 2.2.5 and 2.2.6 as 2.2.6 and 2.2.7. Add new 2.2.5, as follows:]

#### 2.2.5 Address and Firm Designation on Bound Printed Matter Machinable Parcels

When a Bound Printed Matter machinable parcel consists of multiple pieces for a single address secured with transparent shrinkwrap, the delivery address information and barcoded pressure-sensitive Label F or firm optional endorsement line must be visible and readable by the naked eye. Mailers must label the parcel using one of the following options:

a. A firm optional endorsement line under 708.7.0, followed by the 5-digit destination ZIP Code of the parcel.

b. A blue, pressure-sensitive, barcoded Label F on the address side of the parcel.

\* \* \* \* \*

#### 700 Special Standards

\* \* \* \* \*

#### 708 Technical Specifications

\* \* \* \* \*

#### 7.0 OPTIONAL ENDORSEMENT LINES (OELs)

\* \* \* \* \*

#### 7.1 OEL Use

\* \* \* \* \*

#### Exhibit 7.1.1 OEL Formats

[Revise Exhibit 7.1.1 by adding an OEL example for BPM parcels, as follows:]

Sortation level	OEL Example
Firm—BPM machinable parcels	***** Firm 12345.
* * * * *	

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 06–2454 Filed 3–14–06; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 174

[EPA–HQ–OPP–2006–0174; FRL–7766–6]

#### Modified Cry3A Protein and the Genetic Material for Its Production in Corn; Extension of a Temporary Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends an existing temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting this extension of the existing temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level

for residues of modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn. The temporary tolerance exemption as extended will expire on October 15, 2007.

**DATES:** This regulation is effective March 15, 2006. Objections and requests for hearings must be received on or before May 15, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0174. All documents in the docket are listed on the <http://www.regulations.gov> Web site. (EDOCKET, EPA's electronic public docket system was replaced on November 25, 2005, by an enhanced federal-wide electronic 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:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: [mendelsohn.mike@epa.gov](mailto:mendelsohn.mike@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 code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 174 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

## II. Background and Statutory Findings

In the **Federal Register** of January 25, 2006 (71 FR 4140) (FRL-7757-6), EPA issued a notice pursuant to section 408(d)(3) of the FFDCFA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4G6808) by Syngenta Seeds, Inc., P.O. Box 12257, 3054 East Cornwallis Road, Research Triangle Park, NC 27709-2257. The petition requested that 40 CFR part 174 be amended by extending by 1 year a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant (40 CFR 174.456). This notice included a summary of the petition prepared by the petitioner Syngenta Seeds, Inc.. One comment was received in response to the notice of filing. The commenter objected to an exemption from the requirement of a tolerance, stated that she does not favor genetically engineered corn, and objected to the lack of long term tests. The Agency understands the commenter's concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Regarding the commenter's concern

regarding a lack of long term tests; when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. “Toxicological Considerations for Protein Components of Biological Pesticide Products,” *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the mCry3A protein is not considered toxic. Pursuant to its authority under the FFDCFA, EPA conducted a comprehensive assessment of the modified Cry3A protein and the genetic material necessary for its production in corn, including a review of acute oral toxicity data on the mCry3A protein, amino acid sequence comparisons to known toxins and allergens, as well as data demonstrating that the mCry3A protein is rapidly degraded by gastric fluid *in vitro*, is not glycosylated, is inactivated when heated to 95 °C for 30 minutes, and is present in low levels in corn tissue, and has concluded that there is a reasonable certainty that no harm will result from dietary exposure to this protein as expressed in genetically modified corn.

Section 408(c)(2)(A)(i) of the FFDCFA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is “safe.” Section 408(c)(2)(A)(ii) of the FFDCFA 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. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require 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....” Additionally, section 408(b)(2)(D) of the FFDCFA requires that 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.”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCFA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure mCry3A protein. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

An acute oral toxicity study was submitted for the mCry3A protein. The acute oral toxicity data submitted support the prediction that the mCry3A protein would be non-toxic to humans. Male and female mice (5 of each) were dosed with 2,377 milligrams/kilograms bodyweight (mg/kg bwt) of mCry3A protein. With the exception of one female in the test group that was euthanized on day 2 (due to adverse clinical signs consistent with a dosing injury), all other mice survived the study, gained weight, had no test material-related clinical signs, and had no test material-related findings at necropsy.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. “Toxicological Considerations for Protein Components of Biological Pesticide Products,” *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Therefore, since no effects were

shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the mCry3A protein is not considered toxic. Further, amino acid sequence comparisons showed no similarity between the mCry3A protein to known toxic proteins available in public protein data bases.

Since mCry3A is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases; may be glycosylated; and present at high concentrations in the food.

Data have been submitted that demonstrate that the mCry3A protein is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid 1 milligrams/milliliter (mg/mL) mCry3A test protein mixed with simulated gastric fluid (pH 1.2, containing 2 mg/mL NaCl, 14 mL 6 N HCl, and 2.7 mg/mL pepsin) resulting in 10 pepsin activity units/ mug protein (complies with year 2000 U.S. Pharmacopoeia recommendations), complete degradation of detectable mCry3A protein occurred within 2 minutes. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with mCry3A, even at the level of eight contiguous amino acids residues. Further, data demonstrate that mCry3A is not glycosylated, is inactivated when heated to 95 °C for 30 minutes, and is present in low levels in corn tissue. Therefore, the potential for the mCry3A protein to be a food allergens is minimal. As noted above, toxic proteins typically act as acute toxins with low dose levels. Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, the mCry3A protein is not considered toxic.

#### IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCFA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all

other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the mCry3A protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However, oral toxicity testing done at a dose in excess of 2 grams/kilogram (gm/kg) showed no adverse effects. Furthermore, the expression of the modified Cry3A protein in corn kernels has been shown to be in the parts per million range, which makes the expected dietary exposure several orders of magnitude lower than the amounts of mCry3A protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would prevent no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the mCry3A protein.

#### V. Cumulative Effects

Pursuant to FFDCFA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity, resulting from the plant-incorporated protectant, we conclude that there are no cumulative effects for the mCry3A protein.

#### VI. Determination of Safety for U.S. Population, Infants and Children

##### A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the mCry3A protein include the characterization of the expressed mCry3A protein in corn, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the mCry3A protein test material derived from microbial cultures was biochemically and functionally similar to the protein produced by the plant-incorporated protectant ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the mCry3A protein would be non-toxic to humans. As mentioned above, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Since no effects were shown to be caused by mCry3A protein, even at relatively high dose levels (2,377 mg/kg bwt), the mCry3A protein is not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

mCry3A protein residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity. However, data submitted demonstrated low levels of mCry3A in corn tissues with less than 2 micrograms mCry3A protein/gram dry weight in kernels and less than 30 micrograms mCry3A protein/gram dry weight of whole corn plant.

Since modified Cry3A is a protein, its potential allergenicity is also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the modified Cry3A protein came from *Bacillus thuringiensis* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, was inactivated by heat and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that modified Cry3A protein will not be an allergen.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers

including infants and children); nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the mCry3A protein, as well as the minimal potential to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material (DNA, RNA), necessary for the production of mCry3A protein has been exempted under the blanket exemption for all nucleic acids (40 CFR 174.475).

#### *B. Infants and Children Risk Conclusions*

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity.

In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety, also referred to as margins of exposure (MOEs), for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different MOE will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the mCry3A protein and the genetic material necessary for their production. Thus, there are no threshold effects of concern to infants and children when the mCry3A protein is used as a plant-incorporated protectant. Accordingly, the Agency concludes that the additional MOE is not necessary to protect infants and children, and that not adding any additional MOE will be safe for infants and children.

#### *C. Overall Safety Conclusion*

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the mCry3A protein and the genetic material necessary for its production. This includes all anticipated dietary

exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor any indication of allergenicity potential for the plant-incorporated protectant.

### **VII. Other Considerations**

#### *A. Endocrine Disruptors*

The pesticidal active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the plant-incorporated protectant at this time.

#### *B. Analytical Method(s)*

A method for extraction and ELISA analysis of mCry3A protein in corn has been submitted and found acceptable by the Agency.

#### *C. Codex Maximum Residue Level*

No Codex maximum residue levels exist for the plant-incorporated protectant *Bacillus thuringiensis* mCry3A protein and the genetic material necessary for its production in corn.

### **VIII. Objections and Hearing Requests**

Under section 408(g) of the FFDCA, as amended by the 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 the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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), as was provided in the old sections 408 and 409 of the 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-2006-0174 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 May 15, 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 issues(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 VIII.A., you should also send a copy of your request to the PIRIB that is included in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA-HQ-OPP-2006-0174, 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](mailto: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 issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **IX. Statutory and Executive Order Reviews**

This final rule establishes a temporary exemption from the tolerance requirement under section 408(d) of the 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 the FFDCa, such as the exemption 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 the 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.

#### **X. 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 174**

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

Dated: March 2, 2006.

#### **Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

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

#### **PART 174—[AMENDED]**

■ 1. The authority citation for part 174 continues to read as follows:

**Authority:** 7 U.S.C. 136-136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.456 is revised to read as follows:

#### **§ 174.456 *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn.**

*Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn is temporarily exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of field corn, sweet corn and popcorn. Genetic material necessary for its production means the genetic material which comprise genetic material encoding the mCry3A protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the mCry3A protein. This temporary exemption from the requirement of a tolerance will permit

the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 67979-EUP-4 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked October 15, 2007; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

[FR Doc. 06-2431 Filed 3-14-06; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2006-0103; FRL-7765-3]

#### Triflumizole; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino-2-propoxyethyl)-1H-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on filberts. Interregional Research Project Number 4 (IR-4) requested this tolerance 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 March 15, 2006. Objections and requests for hearings must be received on or before May 15, 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-2006-0103. All documents in the docket are listed on the <http://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:

Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: [madden.barbara@epa.gov](mailto:madden.barbara@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.**

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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/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.html>.

## II. Background and Statutory Findings

In the **Federal Register** of January 18, 2006 (71 FR 2930) (FRL-7757-1), 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 3E6535) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902. The petition requested that 40 CFR 180.476 be amended by establishing a tolerance for combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino-2-propoxyethyl)-1H-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on filberts at 0.05 parts per million (ppm). That notice included a summary of the petition prepared by Chemtura, the registrant. There were no comments received in response to the notice of filing.

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 tolerance for combined residues of triflumizole, 1-(1-(4-chloro-2-(trifluoromethyl)phenyl)imino-2-propoxyethyl)-1*H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on filbert at 0.05 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. Specific information on the studies received and the nature of the toxic effects caused by triflumizole 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 at <http://www.epa.gov/EPA-PEST/2002/June/Day-12/p14768.htm>

#### 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 <http://www.epa.gov/pesticides/health/human.htm>.

A summary of the toxicological endpoints for triflumizole used for human risk assessment is discussed in Unit VI.A. of the final rule published in the **Federal Register** of April 8, 2005 (70 FR 17908) (FRL-7701-6).

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.476) for the combined residues of triflumizole, 1-(1-(4-chloro-2-(trifluoromethyl)phenyl)imino-2-propoxyethyl)-1*H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on a variety of raw agricultural commodities. In addition, tolerances for livestock commodities have been established for the combined residues of triflumizole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as parent compound, in/on milk; eggs; meat, fat, and meat byproducts (mbyp) of cattle, goats, hogs, horses, and sheep; and in/on meat, and mbyp of poultry. Risk assessments were conducted by EPA to assess dietary exposures from triflumizole 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.

Dietary Exposure Evaluation Model - Food Commodity Intake Database (DEEM-FCID™) (ver. 2.03) analysis evaluated the individual food consumption 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 acute exposure assessments: tolerance level residues and 100 percent crop treated (PCT) information for all registered and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM software with the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A refined, chronic dietary exposure assessment was performed using anticipated residues (ARs) from average field trial residues for apple, grape, pear, cherry, cucumber, strawberry, and milk commodities; registered and proposed tolerance for all other commodities; PCT information for apples, grapes and pear commodities; and 100 PCT information for all other uses.

iii. *Cancer.* Triflumizole is classified as a "Group E" (evidence of non-carcinogenicity in humans) chemical based on adequate studies in two species of animal. Therefore, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue;

Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Apples of 18%, grapes of 13%, pears of 29%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

This method of projecting PCT for a new pesticide use, with or without regard to specific pest(s), produces an upper-end projection that is unlikely, in most cases, to be exceeded in actuality because the dominant pesticide is well-established and accepted by farmers. Factors that bear on whether a projection based on the dominant pesticide could be exceeded are whether the new pesticide is more efficacious or controls a broader spectrum of pests than the dominant pesticide, whether it is more cost-effective than the dominant pesticide, and whether it is likely to be readily accepted by growers and experts. These factors have been considered for this pesticide new use, and they indicate that it is unlikely that actual PCT for this new use will exceed the PCT for the dominant pesticide in the next 5 years.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a

comprehensive dietary exposure analysis and risk assessment for triflumizole 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 triflumizole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the First Index Reservoir Screening Tool and Screening Concentrations in Groundwater models, the estimated environmental concentrations (EECs) of triflumizole for acute exposures are estimated to be 191 parts per billion (ppb) for surface water and 0.12 ppb for ground water. The EECs for chronic exposures are estimated to be 40 ppb for surface water and 0.12 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). Triflumizole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of 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 triflumizole and any other substances, and triflumizole 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 triflumizole 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 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.* There is qualitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats. Developmental toxicity resulted in fetal death as compared to maternal toxicity which included decreases in body weight gain and food consumption and increases in placental, spleen and liver weights at the same dosages. No quantitative or qualitative evidence of increased susceptibility was demonstrated in the prenatal developmental toxicity studies in rabbits or the multi-generation reproduction studies in rats. In the rabbit developmental studies, 24-hour fetal survival was decreased at the highest dose tested. This endpoint is not a recommended guideline parameter and is generally believed to have limited value in the assessment of development toxicity; rather, it is more an indicator of fetal endurance in the absence of critical maternal care, following removal from the uterus. The Agency did not consider this effect to be a measurement of treatment-related effects on fetal viability and, thus, did not consider it to be relevant to the assessment of fetal susceptibility. There was no evidence of quantitative or qualitative susceptibility in the 2-generation reproduction study in rats. In that study, increased gestation length was observed at the study LOAEL. In rats, this alteration in normal reproductive function can result in

equally adverse consequences (i.e., mortality) in both dams and offspring.

3. *Conclusion.* In the Agency's previous triflumizole human health risk assessments (refer to <http://www.epa.gov/EPA-PEST/2002/June/Day-12/p14768.htm>) the following toxicity studies were determined to be data gaps: A 28-day rat inhalation study (OPPTS Harmonized Guideline Number 870.3465), acute rat neurotoxicity study (OPPTS Harmonized Guideline 870.6200), and subchronic rat neurotoxicity study (OPPTS Harmonized Guideline 870.6200). The acute and sub-chronic neurotoxicity studies have been submitted, reviewed by the Agency and determined to be acceptable.

The Agency has re-evaluated the quality of the exposure and hazard data; and, based on these data, concluded that the additional 10X FQPA safety factor should be removed (previously, a 3X FQPA safety factor was retained). The conclusion is based on the following:

- The toxicity database is complete for FQPA assessment.
- There was no quantitative or qualitative evidence of increased susceptibility in the rabbit fetuses following *in utero* exposure or the rat following prenatal and postnatal exposure in the rat reproduction study.

- There was evidence of qualitative susceptibility in the developmental rat study; however, there are no residual uncertainties, and the use of the developmental NOAEL and the endpoint for the acute RfD for females 13 to 50 would be protective of the prenatal toxicity following an acute dietary exposure.

- The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.

- The chronic dietary food exposure assessment utilizes ARs and PCT data verified for several existing uses. For all proposed use, tolerance-level residue and 100% CT is assumed. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.

- The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health-protective, high-end estimates of water concentrations which will not likely be exceeded.

- There are no registered or proposed uses of triflumizole that would result in residential exposure.

*E. Aggregate Risks and Determination of Safety*

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to triflumizole will occupy 6% of the aPAD for the U.S. population, 9% of the aPAD for females 13 years and older, 11% of the aPAD for all infants (<1 year old), and 21% of the aPAD for children 1–2 years old, the subpopulation at greatest exposure. In addition, there is potential for acute dietary exposure to triflumizole in drinking water. To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against EECs. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at <http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf>. After calculating drinking water level of concentration DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	aPAD (mg/kg)	%aPAD/ (Food)	Surface Water EEC/ (ppb)	Ground Water EEC/ (ppb)	Acute DWLOC/ (ppb)
U.S. population	0.25	6	191	0.12	8,300
Females (13 years and older)	0.1	9	191	0.12	2,700
All infants (<1 year)	0.25	11	191	0.12	2,200
Children (1–2 years old)	0.25	21	191	0.12	2,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to triflumizole from food will utilize 5% of the chronic Population adjusted dose (cPAD) for the U.S. population, 4% of the cPAD for all

infants (<1 year old), and 13% of the cPAD for children 1–2 years old, the subpopulation at greatest exposure. There are no residential uses for triflumizole. There is potential for chronic dietary exposure to triflumizole in drinking water. After calculating

DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRIFLUMIZOLE

Population/Subgroup	cPAD/mg/kg/day	%cPAD/ (Food)	Surface Water EEC/ (ppb)	Ground Water EEC/ (ppb)	Chronic DWLOC (ppb)
U.S. population	0.015	5	40	0.12	500
All infants (<1 year)	0.015	4	40	0.12	140
Children (1–2 years old)	0.015	13	40	0.12	130

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triflumizole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Triflumizole has been classified as not likely to be carcinogenic to humans. Therefore, triflumizole is expected to pose at most a negligible cancer risk.

5. *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 triflumizole residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodology gas chromatography/mass spectrometry detector (GC/MSD) method (Morse Method METH-115, Revision #3) 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](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

There are no established Codex, Canadian or Mexican maximum residue limits (MRLs) for triflumizole in/on filberts. Therefore, harmonization is not an issue at this time.

#### V. Conclusion

Therefore, the tolerance is established for combined residues of triflumizole, 1-(1-(4-chloro-2-(trifluoromethyl)phenyl)imino-2-propoxyethyl)-1H-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on filbert at 0.05 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 docket ID number EPA-HQ-OPP-2006-0103 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 May 15, 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 14<sup>th</sup> 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-2006-0103, 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**. 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: March 3, 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 180.476 is amended by alphabetically adding the following commodity to the table in paragraph (a)(1) to read as follows:

**§ 180.476 Triflumizole; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
* * *	* * *
Filbert .....	0.05
* * *	* * *

[FR Doc. 06-2379 Filed 3-14-06; 8:45 am]

BILLING CODE 6560-50-S

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[WT Docket No. 03-66; RM-10586; FCC 04-135]

**Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations, which were published in the **Federal Register** on Friday, December 10, 2004, (69 FR 72020). The Commission published final rules in the *Report and Order*, that renamed the Instructional Television Fixed Service (ITFS) as the Educational Broadband Service (EBS) and renames the Multichannel Multipoint Distribution Service (MMDS) and the Multipoint Distribution Service (MDS) as the Broadband Radio Service (BRS). This document corrects the final regulations by revising Section 1.1307.

**DATES:** Effective January 10, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Brooks, Office of Engineering and Technology, (202) 418-2454 e-mail: [Nancy.Brooks@fcc.gov](mailto:Nancy.Brooks@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The final regulations that are the subject of this correction relate to final rules in the *Report and Order*, which transformed the rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS) the Multichannel Multipoint Distribution Service (MMDS) and the Multipoint Distribution Service (MDS), in the 2500-2690 bands.

**Need for Correction**

As published, the final regulations contain errors, which require immediate correction.

**List of Subjects in 47 CFR Part 1**

Communications common carriers, Communications equipment, Education, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.  
**Marlene H. Dortch,**  
*Secretary.*

■ Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r) 309 and 325(e).

■ 2. Section 1.1307 is amended by revising Table 1 immediately following paragraph (b)(1) to read as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

\* \* \* \* \*  
 (b) \* \* \*  
 (1) \* \* \*

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5) ..... Paging and Radiotelephone Service (subpart E of part 22).	Power > 100 W ERP (164 W EIRP). Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP). Building-mounted antennas: power > 1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22).	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP). Building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24).	(1) Narrowband PCS (subpart D):  Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP). Building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP). (2) Broadband PCS (subpart E): Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP). Building-mounted antennas: total power of all channels > 2000 W ERP (3280 W EIRP).
Satellite Communications Services (part 25).	All included.  In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter.
Miscellaneous Wireless Communications Services (part 27 except subpart M).	(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands: Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP). Building-mounted antennas: total power of all channels > 2000 W ERP (3280 W EIRP). (2) For the 698–746 MHz, 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands: Total power of all channels > 1000 W ERP (1640 W EIRP).
Broadband Radio Service and Educational Broadband Service (subpart M of part 27).	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP.  Building-mounted antennas: power > 1640 W EIRP. BRS and EBS licensees are required to attach a label to subscriber transceiver or transverter antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.
Radio Broadcast Services (part 73) ..... Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services (part 74).	All included. Subparts A, G, L: power > 100 W ERP.
Stations in the Maritime Services (part 80).	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (subpart P of part 90).	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP). Building-mounted antennas: power > 1000 W ERP (1640 W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (subpart S of part 90).	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP).
Amateur Radio Service (part 97) .....	Building-mounted antennas: Total power of all channels > 1000 W ERP (1640 W EIRP). Transmitter output power > levels specified in § 97.13(c)(1) of this chapter.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if:
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101).	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP.  Building-mounted antennas: power > 1640 W EIRP. LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.
70/80/90 GHz Bands (subpart Q of part 101).	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP.  Building-mounted antennas: power > 1640 W EIRP. Licensees are required to attach a label to transceiver antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.

\* \* \* \* \*

[FR Doc. 06–2422 Filed 3–14–06; 8:45 am]  
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 02–6; FCC 04–289]

#### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects an error in the **DATES** section of a **Federal Register** document regarding the Commission modifying its rules to improve the effectiveness of the rural health care universal service support mechanism.

**DATES:** Effective March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Regina Brown and Dana Bradford, Attorneys, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This summary contains a correction to the **DATES** section of a **Federal Register** summary, 70 FR 6365, February 7, 2005. The full text of the Commission's Report and Order, and Order on Reconsideration, in CC Docket No. 02–6, FCC 04–289 released on December 17, 2004 is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

In rule FR Doc. 05–2269 published February 7, 2005, 70 FR 6365 make the following correction.

On page 6365, in the second column, in the **DATES** section, replace “§ 54.621(c)” with “§ 54.619.”

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 06–2332 Filed 3–14–06; 8:45 am]  
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03–123, FCC 05–203]

#### Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved for three years the information collection requirements contained in the *Telecommunications Relay Services (TRS) and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration (*Report and Order*). The *Report and Order* states that the Commission will publish a document in the **Federal Register** announcing the effective date of the rules.

**DATES:** 47 CFR 64.605(a)(2), (c)(2), (e)(2), (f)(2) and (g) published at 70 FR 76208, December 23, 2005 are effective March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dana Jackson or Thomas Chandler,

Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2517 (voice), (202) 418–7898 (TTY).

**SUPPLEMENTARY INFORMATION:** This document announces that, on February 21, 2006, OMB approved for three years the information collection requirements contained in 47 CFR 64.605(a)(2), (c)(2), (e)(2), (f)(2) and (g), published at 70 FR 76208 (December 23, 2005). The OMB Control Number is 3060–1047. If you have any comments on these burden estimates, or how the Commission can improve the collections and reduce the burdens caused thereby, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060–1047, in your correspondence. The Commission will also accept your comments via the Internet if you send them to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov), or call (202) 418–0217. The *Report and Order* also adopted or modified regulations that do not require OMB approval, and states that such regulations become effective 30 days from the date of publication of the *Report and Order*, in the **Federal Register**. See *Report and Order* at paragraph 37, released December 12, 2005. Accordingly, these modified rules became effective on January 23, 2006. A summary of the *Report and Order* was published in the **Federal Register** at 70 FR 76208, December 23, 2005. A copy of the TRS rules, as amended, will appear after that date on the Commission's Web site at: <http://www.fcc.gov/cgb/dro/4regs.html>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to

fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on February 21, 2006, for the collections of information contained in 47 CFR 64.605(a)(2), (c)(2), (e)(2), (f)(2), and (g). The OMB Control Number is 3060-1047. The annual reporting burden for the collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 177 respondents, and average of 2 to 5 hours per response per annum, for a total hour burden of 2,554 hours, and no annual cost.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB 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 OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 06-2247 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-338; MB Docket No. 04-341; RM-10779; RM-11110]

### Radio Broadcasting Services; New Harmony, IN and West Salem, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies a petition filed by Linda A. Davidson, proposing the allotment of Channel 266A at New Harmony, Indiana, as that community's first local service. See 69 FR 54760, published September 10, 2004. This document also grants a counterproposal filed by West Salem Broadcasting by allotting Channel 266A at West Salem, Illinois, as its first local service. Channel 266A can be allotted to

West Salem with a site restriction of 9.7 kilometers (6.0 miles) south of the community, using coordinates 38-25-54 NL and 88-01-17 WL.

**DATES:** Effective April 3, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MB Docket No. 04-341, adopted February 15, 2006, and released February 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., 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 Title 47 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, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding West Salem, Channel 266A.

Federal Communications Commission.

**John A. Karousos,**

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06-2420 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-340; MB Docket No. 05-33; RM-10756]

### Radio Broadcasting Services; Cuney, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants a petition filed by Charles Crawford, requesting the allotment of Channel 259A at Cuney, Texas, as its first local service. See 70 FR 8334, published February 18, 2005. Channel 259A can be allotted at Cuney consistent with the Commission's minimum spacing requirements, provided there is a site restriction of 6.8 kilometers (4.3 miles) southeast of the community, using reference coordinates 31-58-52 NL and 95-22-24 WL.

**DATES:** Effective April 3, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MB Docket No. 05-33, adopted February 15, 2006 and released February 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., 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 Title 47 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, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Cuney, Channel 259A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2421 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-382; MB Docket No. 04-219; RM-10986]

**Radio Broadcasting Services; Evergreen, AL and Shalimar, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition for reconsideration.

**SUMMARY:** This document denies a Petition for Reconsideration filed by Qantum of Fort Walton Beach License Company, LLC directed to the *Report and Order* in this proceeding. See 70 FR 19337, April 13, 2005. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order* in MB Docket No. 04-219 adopted February 15, 2006, and released February 17, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, 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, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2248 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-423; MB Docket No. 05-54, RM-11151]

**Radio Broadcasting Services; Otter Creek, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division grants a Petition for Rule Making filed by Living Proof, Inc., requesting the reservation of vacant Channel 240A at Otter Creek, Florida for noncommercial educational use. See 70 FR 10352, March 3, 2005. The reference coordinates for Channel \*240A at Otter Creek, Florida are 29-16-52 NL and 82-51-42 WL.

**DATES:** Effective April 10, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th 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 No. 05-54, adopted February 22, 2006, and released February 24, 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 12th 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 the *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 Title 47 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 Florida, is amended by removing Channel 240A and by adding Channel \*240A at Otter Creek.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2246 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-339; MB Docket No. 04-274; RM-11016]

**Radio Broadcasting Service; Port Isabel, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Dana J. Puopolo allots Channel 288A at Port Isabel, Texas, as the community's second local service. See 69 FR 46474, published August 3, 2004. Channel 288A can be allotted to Port Isabel in compliance with the Commission's minimum distance separation requirements at reference coordinates 25-59-25 North Latitude and 97-09-59 West Longitude, provided there is a site restriction of 10.0 kilometers (6.3) miles southeast of the community. Mexican concurrence has been obtained. A filing window for Channel 288A at Port Isabel, Texas will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective April 3, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**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 No. 04-274, adopted February 15, 2006, and released February 17, 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).

The Audio Division also amends the FM Table to reflect that Station KNVO-FM was granted a license (BLH-20011226AAP) for a one-step application (BPH-19990304IE) to upgrade from Channel 266A to Channel 266C2 at Port Isabel, Texas. This action constitutes an editorial change in the FM Table of Allotments. Therefore, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b)(A) and (B).

#### 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 citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 266A, and by adding Channel 266C2 and Channel 288A at Port Isabel.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2415 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 06-341; MB Docket No. 05-118; RM-11183; RM-11301; RM-11302]

#### Radio Broadcasting Services; Cuba and Knoxville, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making*, 70 FR 17047 (April 4, 2005) this *Report and Order* grants a proposal to allot Channel 292A to Cuba, Illinois, as a first local aural

transmission service to that community and denies two requests to allot a second FM channel to Knoxville, Illinois. The coordinates for Channel 292A at Cuba, Illinois are 40-25-50 North Latitude and 90-14-05 West Longitude, with a site restriction of 7.9 kilometers (4.9 miles) southwest of Cuba, Illinois.

**DATES:** Effective April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-118, adopted February 15, 2006, and released February 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The new copy 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 document may also be purchased from the Commission's duplicating contractor. 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 Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Cuba, Channel 292A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2326 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 06-343; MB Docket No. 03-12; RM-10627]

#### Radio Broadcasting Services; Charles Town, WV and Stephens City, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition for reconsideration.

**SUMMARY:** In response to a Petition for Reconsideration, this *Memorandum Opinion and Order* affirms the *Report and Order* in this proceeding, 68 FR 62540 (November 5, 2003). The *Report and Order* reallocated Channel 252A, Station WKSI-FM, Charles Town, West Virginia to Stephens City, Virginia, and modified Station WKSI-FM's license to specify Stephens City as its community of license.

**DATES:** Effective April 3, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 03-12, adopted February 15, 2006, and released February 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 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 *Memorandum Opinion 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.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2329 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-337; MB Docket No. 03-238; RM-10820]

**Radio Broadcasting Services; Lancaster, Pickerington, and Westerville, OH****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** At the request of Franklin Communications Inc., licensee of Station WJZA(FM), Lancaster, Ohio, Channel 278A is reallocated from Lancaster, Ohio, to Pickerington, Ohio, as the community's first local transmission service, and the license for Station WJZA(FM) is modified to reflect the new community. 68 FR 67390 (December 2, 2003). An application for construction permit for a minor change of facilities filed by North American Broadcasting Co., licensee of Station WTDA(FM), Westerville Ohio, was considered as a counterproposal and dismissed (File No. BPH-20040108ALM). Channel 278A is reallocated at Pickerington at a site 8.8 kilometers (5.4 miles) northeast of the community at coordinates 39-56-39 NL and 82-41-14 WL.

**DATES:** Effective April 3, 2006.**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03-238, adopted February 15, 2006, and released February 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, 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 Title 47 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, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 278A at Lancaster and adding Pickerington, Channel 278A.

Federal Communications Commission.

**John A. Karousos,***Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2328 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P****FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-426; MB Docket No. 04-215, RM-10993]

**Radio Broadcasting Services; Matagorda, TX****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** At the request of Joseph L. Sandlin, the Audio Division allots Channel 252A at Matagorda, Texas, as the community's first local aural transmission service. See 69 FR 35564 (June 25, 2004). Channel 252A is allotted at Matagorda without a site restriction at coordinates 28-41-25 NL and 95-58-02 WL. A counterproposal filed by Fort Bend Broadcasting Company is dismissed as defective.

**DATES:** Effective, April 10, 2006.**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04-215 adopted February 22, 2006, and released February 24, 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 Title 47 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, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Matagorda, Channel 252A.

Federal Communications Commission.

**John A. Karousos,***Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2499 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P****FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-355; MB Docket No.04-280; RM-11037; RM-11117\*]

**Radio Broadcasting Service; Coupeville and Sequim, WA****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Dana J. Puopolo, allots Channel 266A at Coupeville, Washington, as the community's first local service. See 69 FR 46474. In addition, the Audio Division allots Channel 237A at Sequim, Washington as an alternate channel to a counterproposal filed by Plan 9 Broadcasting for Channel 266A at Sequim. See Public Notice, Report No. 2683, RM-11117\*. Channel 266A can be allotted to Coupeville in compliance with the Commission's minimum distance separation requirements at 48-18-00 North Latitude and 122-42-00 West Longitude with a site restriction of 9.5 (5.9 miles) north of Coupeville.

Channel 237A can be allotted to Sequim in compliance with the Commission's minimum distance separation requirements at 48-07-12 North Latitude and 123-04-20 West Longitude with a site restriction of 4.9 (3.1 miles) northeast of Sequim. Canadian concurrence has been obtained for Channel 266A at Coupeville and 237A at Sequim. A filing window for these channels 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 April 3, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**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 No. 04-280, adopted February 15, 2006, and released February 17, 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 Title 47 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, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Coupeville, Channel 266A and Sequim, Channel 237A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2498 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 06-515]

#### Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993) and *Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21649 (2000).

**DATES:** Effective March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, adopted March 1, 2006, and released March 3, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. 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 not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

#### 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 BROADCASTING 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 Arizona, is amended by removing Channel 261C1 and adding Channel 261C2 at Flagstaff.
- 3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 255C and adding Channel 255C0 at Chester.
- 4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 231C and adding Channel 231C0 at Smyrna.
- 5. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 288A and adding Channel 288C3 at Perry.
- 6. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 293C and adding Channel 293C0 at Arkansas City.
- 7. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 233C and adding Channel 233C0 at Shreveport.
- 8. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 223C and adding Channel 223C1 at Atlanta.
- 9. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 279C and adding Channel 279C0 at Hattiesburg.
- 10. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 227C and Channel 271C and adding Channel 227C0 and Channel 271C0 at Kansas City.
- 11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 286A and adding Channel 286C at Whitefish.
- 12. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 240A and adding Channel 241C3 at Chama.
- 13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 230C2 and adding Channel 230C1 at Portland.

■ 14. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 258A and adding Channel 258B1 at Centre Hall.

■ 15. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 300A and adding Channel 299C2 at Ipswich.

■ 16. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221A and adding Channel 221C3 at Carrizo Springs.

■ 17. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 295C and adding Channel 295C1 at Bremerton.

■ 18. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 279A and adding Channel 279B1 at Fisher.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2490 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-383; MB Docket No. 04-432; RM-11121]

### Radio Broadcasting Services; Grand Portage, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Cook County Broadcasting of Minnesota, allots Channel 274C at Grand Portage, Minnesota, as the community's third local FM service. The Canadian government has concurred in a specially-negotiated, short-spaced allotment limited to 50W ERP and 100 meters HAAT to protect Channel 274A1 in Thunder Bay, Ontario. With those limitations, Channel 274C can be allotted to Grand Portage, Minnesota, in compliance with the Commission's minimum distance separation requirements at city reference coordinates without site restriction. The coordinates for Channel 274C at Grand Portage, Minnesota, are 47-57-50 North Latitude and 89-41-05 West Longitude.

**DATES:** Effective April 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04-433, adopted February 22, 2006, and released February 24, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating 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>. 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* U.S.C. 801(a)(1)(A).

### 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 citation for part 73 continues to read as follows:

*Authority:* 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 274C at Grand Portage.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2488 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-514; MB Docket No. 05-117]

### Radio Broadcasting Services; Bairoil and Sinclair, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, on its motion, substitutes Channel 235A for vacant Channel 265A at Bairoil, Wyoming and substitutes Channel 267C for vacant Channel 262C at Sinclair, Wyoming to resolve existing distance

spacing conflicts. Channel 235A can be allotted to Bairoil, Wyoming in conformity with the Commission's rules without a site restriction at coordinates 42-14-40 NL and 107-33-32 WL. Channel 267C can be allotted to Sinclair, Wyoming consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 9.6 kilometers (6 miles) west of the community at coordinates 41-46-19 NL and 107-13-40 WL. This document also dismisses the counterproposal filed jointly by Michael Radio Group, permittee of Station KGRK(FM), Channel 252A, Glenrock, Wyoming and White Park Broadcasting, Inc., permittee of Station KTED(FM), Channel 265C2, Douglas, Wyoming.

**DATES:** Effective April 17, 2006.

**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 summary of the Commission's *Report and Order*, MB Docket No. 05-117, adopted March 1, 2006, and released March 3, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., 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).

The FM Table of Allotments lists Channel 281A at Bairoil. Channel 281A at Bairoil was inadvertently added to the Table. *See Wamsutter and Bairoil, Wyoming*, 15 FCC Rcd 12759 (MMB 2000).

### 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, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 281A and adding Channel 235A at Bairoil and by removing Channel 262C and adding Channel 267C at Sinclair.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2487 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-344; MB Docket No. 05-240; RM-11261]

**Radio Broadcasting Services; Fernandina Beach and Yulee, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants a petition filed by Tama Radio Licenses of Jacksonville, FL, Inc., licensee of Station WJSJ(FM), Channel 287A, Fernandina Beach, Florida, requesting the reallocation of Channel 287A from Fernandina Beach to Yulee, Florida, as its first local service and modification of the Station WJSJ(FM) license accordingly. See 70 FR 48360. Channel 287A can be allotted to Yulee in conformity with the Commission's rules, provided there is a site restriction of 10.6 kilometers (6.6 miles) southeast of the community, using reference coordinates 30-34-00 NL and 81-31-30 WL. To accommodate the reallocation, this document granted the relocation of transmitter site for co-owned Station WSJF(FM), Channel 288C3, St. Augustine Beach, Florida to reference coordinates 29-46-53 NL and 81-15-25 WL. This site requires a site restriction of 7.0 kilometers (4.3 miles) south of the community.

**DATES:** Effective April 3, 2006.

**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 summary of the Commission's *Report and Order*, MB Docket No. 05-240,

adopted February 15, 2006, and released February 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., 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.

■ The Federal Communications Commission amends 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, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Fernandina Beach, Channel 287A and by adding Yulee, Channel 287A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2486 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 06-421; MB Docket No. 05-296; RM-11289]

**Radio Broadcasting Services; Okeene, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Charles Crawford, allots Channel 268C3 at Okeene, Oklahoma, as the community's first local FM service.

Channel 268C3 can be allotted to Okeene, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 km (11.9 miles) northeast of Okeene. The coordinates for Channel 268C3 at Okeene, Oklahoma, are 36-15-00 North Latitude and 98-11-00 West Longitude. See Supplementary Information *infra*.

**DATES:** Effective April 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-296, adopted February 22, 2006, and released February 24, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating 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.bcpweb.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 U.S.C. 801(a)(1)(A).

**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 citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Okeene, Channel 268C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2485 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Part 192**

[Docket No. PHMSA-1998-4868; Amdt. 192-102]

RIN 2137-AB15

**Gas Gathering Line Definition; Alternative Definition for Onshore Lines and New Safety Standards**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

**SUMMARY:** This action adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations. In addition, it establishes safety rules for certain onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in nonrural areas. Operators will use a new risk-based approach to determine which onshore gathering lines are subject to PHMSA's gas pipeline safety rules and which of these rules the lines must meet. PHMSA intends this action to reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines.

**DATES:** This final rule takes effect April 14, 2006. The Director of the Federal Register approves the incorporation by reference of API RP 80 in this rule as of April 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** DeWitt Burdeaux by phone at 405-954-7220 or by e-mail at [dewitt.burdeaux@dot.gov](mailto:dewitt.burdeaux@dot.gov).

**SUPPLEMENTARY INFORMATION:****I. Background***A. Current Regulation of Onshore Gathering Lines; Definition Problem*

Gas gathering lines are pipelines used to collect natural gas from production facilities and transport it to transmission or distribution lines, which then transports it to the consumer. PHMSA's pipeline safety rules in 49 CFR part 192 apply to the transportation of natural gas and other gas by pipeline. However, onshore gathering lines in rural areas (areas outside cities, towns, villages, or designated residential or commercial areas) are subject only to § 192.612, which prescribes inspection and burial requirements for lines within Gulf of

Mexico inlets (§§ 192.1(b)(4) and (b)(5)). (Note: Lines in these inlets are not covered by this final rule.)

Under § 192.9, gathering lines in nonrural areas must meet the same safety standards for design, construction, testing, operation, and maintenance as gas transmission lines, except the requirements of § 192.150 on passage of an internal inspection device (also known as smart pigs) and subpart O on integrity management. In addition, PHMSA's drug and alcohol testing regulations in 49 CFR part 199 apply to nonrural gas gathering lines.

Section 192.3 currently defines the terms "gathering line," "transmission line," and "distribution line":

"Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main. "Transmission line" means a pipeline, other than a gathering line, that transports gas from a gathering line or storage facility to a gas distribution center or storage facility; operates at a hoop stress of 20 percent or more of a Specified Minimum Yield Strength (SMYS), or transports gas within a storage field. "Distribution line" means a pipeline other than a gathering or transmission line.

Because these definitions are circular and part 192 does not define "production facility," operators and government inspectors have had difficulty distinguishing regulated gathering lines from unregulated production facilities and unregulated gathering lines from regulated transmission and distribution lines. Also, the complexity of many gathering systems has increased the difficulty of distinguishing gathering lines.

*B. Past Attempts To Resolve the Definition Problem and Determine the Need To Regulate Rural Gathering Lines*

In 1974, DOT tried to correct the problem of distinguishing gathering lines by proposing to revise the gathering line definition (39 FR 34569; Sept. 26, 1974). However, the proposal was later withdrawn because comments indicated many terms and phrases were unclear (43 FR 42773; Sept. 21, 1978). Afterward, the problem lingered until 1986, when the National Association of Pipeline Safety Representatives (NAPSR), a nonprofit association of State pipeline safety officials, surveyed its members and reported numerous and continuing disagreements with operators over gathering lines. Driven by the NAPSR survey, in 1991 DOT again proposed to revise the gathering line definition (56 FR 48505; Sept. 25, 1991). However, the public response was generally unfavorable, so DOT delayed any further action until it collected and considered more information.

Part 192 does not regulate the safety of most rural gathering lines because, until 1992, the pipeline safety law (49 U.S.C. Chapter 601) restricted DOT's authority over onshore gathering lines to lines in nonrural locations.<sup>1</sup> In 1992, Congress gave DOT specific authority to define gas gathering lines for purposes of safety regulation, and to regulate a class of rural gathering lines called "regulated gathering lines" (49 U.S.C. 60101(a)(21) and 60101(b)). The new authority directed DOT to consider functional and operational characteristics in defining gathering lines. Further direction was to consider such factors as location, length of line, operating pressure, throughput, and gas composition in deciding which rural lines warrant regulation. This authority also expressly allows PHMSA to depart from the concepts of gathering under the Natural Gas Act (15 U.S.C. 717 *et seq.*)

In 1999, in furtherance of the still open 1991 gathering line proceeding and Congress' action on gathering lines, DOT opened a Web site for public discussion of the definition problem and the need to regulate rural gathering lines (Docket No. PHMSA-1998-4868; 64 FR 12147; Mar. 11, 1999). The comments mainly focused on the comprehensive work by the American Petroleum Institute (API), later published as API Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines" (API RP 80). API RP 80 defines onshore gas gathering lines through a series of definitions, descriptions, and diagrams intended to represent the varied and complex nature of production and gathering in the U.S. Although industry commenters spoke favorably about the API RP 80 gathering line definition, NAPSR objected to the use of certain "furthestmost downstream" endpoints to mark the beginning and end of gathering. NAPSR's concern was if the definition were included in part 192, operators would have an incentive to establish or move the endpoints further downstream to reduce the amount of regulated pipelines. While considering its next step, DOT published an Advisory Bulletin to remind operators it was still regulating gathering lines according to court precedents and its prior interpretations (67 FR 64447; October 18, 2002).

Then in 2003, DOT held public meetings in Austin, Texas (68 FR 62555; November 5, 2003) and Anchorage, Alaska (68 FR 67129; December 1, 2003)

<sup>1</sup> In 1990 Congress gave DOT limited authority over gathering lines in Gulf of Mexico inlets (*see* Pub. L. 101-599).

to attract more comments on the best way to define gas gathering lines and what, if any, safety rules may be needed for rural gathering lines. At the meetings, DOT gave the history of the gas gathering issue and proffered a "sliding corridor" concept as a possible basis for deciding which lines should be regulated. Under this concept, previously used in a pipeline safety enforcement case, operators would slide along their gathering lines an imaginary corridor with dimensions 1000 feet long and the width would be based on the stress level. Wherever the corridor contained five or more dwellings, the gathering line would be subject to safety rules, the intensity of which would increase with the stress level. Transcripts of both meetings are in the docket (PHMSA-1998-4868-120 and 122).

As a follow-up to these two meetings, DOT published a notice extending the time for comments and clarifying its intentions about defining and regulating gathering lines (69 FR 5305; February 4, 2004). DOT said definitions of production and gathering should not overlap State regulations on production and should be capable of consistent application by regulators and operators. Also, the notice explained the need for comments on an appropriate approach to identify rural lines warranting regulation. After the 2003 public meetings, DOT met several times with State agency officials, industry representatives, and others to obtain views on gathering line risks and the need for safety rules. Notes of these informal meetings are in Docket No. PHMSA-1998-4868.

#### *C. Public Comments Resulting From the Public Meetings*

Twenty-three comments were submitted as a result of the public meetings and clarification notice. Three industry commenters expressed satisfaction with the current part 192 gathering line definition and prior DOT interpretations. But most commenters, including a coalition of trade associations, urged adoption of API RP 80 as the basis for determining onshore gas gathering lines. These commenters believed it would result in few, if any, reclassifications of pipelines from production to gathering or gathering to transmission. However, NAPSRS opposed the unqualified use of API RP 80 because of its use of the term "furthestmost downstream" to identify the beginning and possible ends of gathering. NAPSRS suggested several limitations to prevent manipulating the term "furthestmost downstream" to

change production to gathering or gathering to transmission.

On the need to regulate rural lines, some trade associations contended rural gathering lines generally pose a low risk to public safety, citing an incident survey the Gas Processors Association (GPA), a trade association representing gatherers and processors, conducted in December 2003. These trade associations and the U.S. Department of Energy (DOE) suggested that DOT should first identify and analyze the risks involved and then target regulations to specific problems. Cook Inlet Keeper, a nonprofit organization dedicated to protecting Alaska's Cook Inlet Watershed and North Slope Borough, the northernmost county of Alaska, advocated regulation of all unregulated lines threatening people and the environment. Cook Inlet Keeper also submitted data on releases from unregulated pipelines in Alaska.

GPA presented the survey at a meeting of PHMSA's gas pipeline safety advisory committee on February 5, 2004 (Docket No. PHMSA-1998-4470-120). The survey asked 40 operators of rural gas gathering lines about incidents impacting the public during a 5-year period (1999-2003). The survey showed 58 incidents occurred on 171,768 miles of pipeline, about 96 percent of GPA members' gathering lines. The incidents resulted in three injuries and one death as well as evacuations, minor property damage (\$5,000-\$25,000), and major property damage (over \$25,000). Corrosion caused most of the incidents, followed by third-party excavation, which produced the most severe consequences (including the death and two of the injuries). No other cause occurred more than twice. In comparison to transmission incidents reported to DOT over the same period, transmission lines impacted the public from three to six times more often, even though the reporting threshold for property damage was 10 times as high as the survey's threshold. GPA attributed the lower impact of rural gathering lines to operators' safety practices and to operating conditions generally involving sparsely populated areas, low pressures, and small pipe sizes.

Concerning the approach to regulation, the coalition suggested an overall plan covering rural and nonrural lines under which the intensity of regulation would increase with risk determined by operating parameters and population density. Under the current plan, regulated nonrural gathering lines posing a lower risk would be subject to fewer safety rules than they are now. ONEOK, Inc., an operator of gas

gathering lines, suggested a similar but more detailed tiered approach. Delta County, Colorado preferred the "sliding corridor" approach discussed at the public meetings. Two industry commenters favored a hands-off approach that would leave the regulation of rural gathering to State agencies already regulating oil and gas production.

Several trade associations were concerned about the impact of any new DOT regulations on rural gathering lines. DOE and the Independent Petroleum Association of America were particularly concerned that increased costs could cause producers to shut in marginally profitable wells. They pointed out that since marginal wells account for about 10 percent of U.S. gas production, additional costs could reduce gas supplies.

#### *D. Alternatives To Resolve the Definition Problem*

Considering the previous attempts in 1974 and again in 1991 to resolve the definition problem were controversial, we concluded a single definition wholly consistent with industry's complex practices probably could not be developed. So we looked closer at API RP 80. Its development by a wide range of experienced personnel, its attention to detail, and its backing by commenters led us to believe it could, if used appropriately, distinguish gathering lines under part 192 without the controversy attendant to the earlier proposals. In reaching this conclusion, we did not intend persons to use API RP 80 for non-safety purposes, such as to identify gathering under the Natural Gas Act. By its own terms, API RP 80 applies only in the context of pipeline safety: "[T]he definitions presented herein are not designed to address issues—nor are they intended for application—in any regulatory context other than gas pipeline safety pursuant to the Federal Pipeline Safety Act" (section 2.6.2.4 of API RP 80).

We considered the following ways API RP 80 could serve to determine onshore gas gathering under part 192:

1. Use API RP 80 as guidance to determine the beginning and end of onshore gathering under the present part 192 definition. The advantages of this alternative were some operators would likely support it and rulemaking would not be necessary. On the other hand, this alternative would probably not be sufficient to satisfy the congressional directive to define gas gathering and it would provide a shaky basis for regulating rural gathering lines. In addition, NAPSRS's comments suggested many State pipeline safety

agencies would be unlikely to accept some API RP 80 provisions even as guidance.

2. Adopt API RP 80 as the basis for determining onshore gas gathering lines. This alternative had wide industry support, would likely minimize the difficulty of distinguishing gathering lines, and would likely result in few pipeline reclassifications. However, API RP 80's many supplemental definitions, descriptions, and diagrams, although helpful, could be difficult to apply uniformly. Also, as NAPSRS contended, the "furthermost downstream" provisions of API RP 80 could result in manipulation of endpoints to avoid pipeline regulation. If that happened, State pipeline safety agencies could lose control over many miles of pipeline they now regulate, and public safety could be compromised.

3. Adopt API RP 80, but with limitations to remove opportunities for manipulation. The main advantage of this alternative was it would balance industry's desire to use API RP 80 with NAPSRS's desire for definite endpoints. The disadvantage was limitations could make API RP 80 more difficult to apply. In addition, any limitation could renew industry's claims of line reclassifications. As discussed further in section II of this preamble, we chose this alternative for the proposed definition of "onshore gathering line."

#### *E. Need for DOT Rules on the Safety of Onshore Rural Gathering Lines*

PHMSA has authority under 49 U.S.C. 60102(a) to issue safety standards for gas pipeline transportation. In 1992, Congress granted DOT specific authority to define gas gathering for purposes of safety regulations. Congress also recognized that some rural gathering lines might present unacceptable risks and authorized DOT to regulate lines whose risk warranted regulation. In its report on H.R. 1489, a bill leading to the 1992 change in the law, the House Committee on Energy and Commerce said "DOT should find out whether any gathering lines present a risk to people or the environment, and if so how large a risk and what measures should be taken to mitigate the risk." (H.R. Report No. 102-247, Part 1, 102nd Cong., 1st Sess. 23 (1991)).

As discussed above, because DOT lacked information about whether the risks of rural lines warranted regulation, it held a Web discussion and then two public meetings to get input from the public on the need to regulate these lines. GPA submitted the most detailed information based on a survey of its members. Although the survey results showed rural gathering lines presented

a lower risk to the public than transmission lines, the impacts to the public and property during the survey period were not insignificant. Many people living or working near rural lines suffered adverse consequences. Also, the potential for future harm was apparent, because the survey confirmed the leading threats to rural gathering lines: corrosion and excavation damage, matched the leading threats to regulated gas pipelines.

Not all rural gathering lines present as low a risk as the lines in GPA's survey. Some rural lines are near pockets of housing or operate at high pressures threatening housing further away. In fact, high-pressure gathering lines in populated areas can present the same risk as regulated transmission lines.

In consideration of the known and foreseeable risks presented by rural gathering lines, we decided it was no longer appropriate to maintain the almost total exemption of rural lines from part 192. But in changing the present exemption, we also decided to focus on lines posing significant risk, or lines located where a release of gas could have serious consequences.

#### *F. Approach To Regulating Onshore Gathering Lines*

We believe the potential for harm of some onshore gathering lines is too low to warrant DOT regulation. These lines generally have small diameters and operate at low pressures in remote or secluded areas.

For other lines, we agree with commenters that the level of regulation should increase as risk increases by operating pressure and proximity to people. Under this approach, the highest risk lines would have the most regulation. This approach is consistent with the statutory directive on determining which rural gathering lines warrant regulation.

In deciding what safety rules to apply according to risk, we favored the tiered models two commenters suggested. Tiers are a reasonable way to pair safety regulations with lines posing different levels of risk. However, considering the need for practicality in both compliance and enforcement, we created a model with only two tiers. This approach is discussed in more detail in section II of this preamble.

Currently, part 192 regulates nonrural gathering lines and transmission lines similarly, except § 192.150 pig passage and subpart O apply only to transmission lines. Nevertheless, PHMSA's incident data indicate gathering and transmission lines do not pose the same overall level of risk to the public. This data shows that

transmission line incidents have had a greater impact on the public than gathering line incidents. We therefore believe a significant factor in many nonrural gathering line segments is that they operate at low pressures away from highly populated areas. So safety rules intended for all transmission lines are probably not appropriate for all gathering lines.

A related problem with the current part 192 approach to regulation of nonrural lines involves line segments inside sparsely populated areas of cities or towns. Often a city or town will extend its boundaries to incorporate these rural-like areas. For instance, a low-pressure gathering line in such areas may be distant from any populated site but because it lies within city or town boundaries it becomes subject to part 192 and must meet transmission line rules.

We believe a risk-based approach is the most suitable for applying part 192 rules to onshore gathering lines whether the lines are in rural or nonrural areas. Regulation of an onshore gathering line should not depend on subdivision or local government boundaries as it does now, but on the risk the line poses to the public based on its pressure and proximity to people. For example, the proximity of a line to dwellings is a much more precise measure of risk than the rural-nonrural approach currently in use. For nonrural lines, this change to a risk-based approach would maintain the current level of regulation where justified by risk. At the same time, it would lighten the present regulatory burden on less risky lines.

## **II. Proposed Rules**

To get public comments on its latest approach to defining and regulating the safety of onshore gas gathering lines, on October 3, 2005, PHMSA published a supplementary notice of proposed rulemaking (SNPRM) (70 FR 57536). The SNPRM was a continuation of the rulemaking proceeding started by the 1991 notice of proposed rulemaking (NPRM).

The SNPRM sought comments on proposed new definitions of the terms "onshore gathering line" and "regulated onshore gathering line." These definitions would provide the basis for determining which gas pipelines would be subject to part 192 rules for regulated onshore gathering lines. Any onshore gathering line not covered by the proposed definition of "regulated onshore gathering line" would not be subject to part 192. The SNPRM also sought comments on proposed risk-based safety rules for regulated onshore gathering lines. A description of the

proposed definitions and safety rules follows.

*A. Proposed Definition of "Onshore Gathering Line"*

We wanted to define "onshore gathering line" in a way that not only reasonably matched current classifications but also addressed NAPSR's concerns. So we proposed to allow operators to use API RP 80 to determine "onshore gathering lines." But use of API RP 80 would be subject to the following five limitations on the beginning of gathering and the possible endpoints of gathering under section 2.2(a) of API RP 80:

1. Under section 2.2(a)(1), the beginning of an onshore gathering line is the furthestmost downstream point in a production operation. We proposed to restrict this point to piping or equipment used solely in the process of extracting natural gas from the earth for the first time and preparing it for transportation or delivery. The purpose of the limitation was to ensure certain dual-use equipment, capable of use in either production or transportation, would be part of gathering when not used solely in the process of extracting and preparing gas for transportation.

2. Under section 2.2(a)(1)(A), the first possible endpoint is the inlet of the furthestmost downstream natural gas processing plant, other than a natural gas processing plant located on a transmission line. We proposed this endpoint may not be a natural gas processing plant located further downstream than the first downstream natural gas processing plant unless the operator can demonstrate, based on sound engineering reasons, gathering should extend beyond the first plant. Past DOT interpretations and State agency enforcement actions have recognized the first downstream natural gas processing plant as the customary end of gathering. (See PHMSA's Web site for interpretations and enforcement actions: <http://www.phmsa.dot.gov/>.)

3. Under section 2.2(a)(1)(B), the second possible endpoint is the outlet of the furthestmost downstream gathering line gas treatment facility. We proposed this endpoint would apply only if no other endpoint under sections 2.2(a)(1)(A), (C), (D) or (E) existed.

4. Under section 2.2(a)(1)(C), the third possible endpoint is the furthestmost downstream point where gas produced in the same production field or separate production fields are commingled. This endpoint recognizes a gathering line may receive gas from several production fields. But because it does not restrict the distance between fields, gathering could potentially continue endlessly,

causing reclassifications from transmission to gathering along the way. To set a reasonable limit, we proposed that separate production fields from which gas is commingled must be within 50 miles of each other. We specifically invited comments on whether a maximum distance is needed.

5. Under section 2.2(a)(1)(D), the fourth possible endpoint is the outlet of the furthestmost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline. For consistency with our past interpretations and current enforcement policy, we proposed to limit this endpoint to the outlet of a compressor used to deliver gas to another pipeline.

We did not propose a limitation on the fifth possible endpoint under section 2.2(a)(1)(E). This endpoint is the connection to another pipeline downstream of the furthestmost downstream endpoint under sections 2.2(a)(1)(A) through (D), or in the absence of such an endpoint, the furthestmost downstream production operation. The endpoint applies to connecting lines described as "incidental gathering" under section 2.2.1.2.6 of API RP 80. An example of a connecting line is a pipeline that runs from the outlet of a natural gas processing plant to a transmission line. PHMSA considers "incidental gathering" to include only lines that directly connect a transmission line to one of the endpoints (A) through (D), as limited by this final rule. Lines that connect a transmission line to one of these endpoints by way of another facility are not considered "incidental gathering."

*B. Proposed Definition of "Regulated Onshore Gathering Line"*

We proposed to amend § 192.3 to define "regulated onshore gathering lines" by either of two risk categories, Type A and Type B, based on operating stress and location. Type A would include lines whose maximum allowable operating pressure (MAOP) results in a hoop stress of 20 percent or more of SMYS, and non-metallic lines whose MAOP is more than 125 per square inch gauge (psig). The location would be Class 3 and 4 locations, as defined in § 192.5, and other areas the operator determines using potential impact circles with five or more dwellings or a sliding corridor 440 yards by 1000 feet with either 5 or more dwellings per 1000 feet or 25 or more dwellings per mile, whichever results in

more regulated lines. Type A lines in a Class 1 or Class 2 location would also include additional lengths of line upstream and downstream to serve as a shield against potential harm to nearby dwellings.

Type B lines would include metallic lines whose MAOP produces a hoop stress of less than 20 percent of SMYS, and non-metallic lines whose MAOP is 125 psig or less. The location would be Class 3 and 4 locations and other areas determined by a sliding corridor 300 feet by 1000 feet with 5 or more dwellings per 1000 feet. Lines within a Class 1 or Class 2 location would include additional lengths of line as a shield against potential harm to nearby dwellings.

*C. Proposed Safety Requirements*

We proposed to revise § 192.9 to include safety requirements for all gathering lines subject to part 192. Paragraph (b) would simply restate the present part 192 requirements applicable to offshore gathering lines.

Under paragraph (c), Type A regulated onshore gathering lines would have to meet part 192 requirements applicable to transmission lines, except requirements concerning the passage of smart pigs (§ 192.150) and integrity management (subpart O). Because of the higher stress at which Type A lines operate and their ability to harm more of the public, we considered Type A lines to warrant safety requirements equivalent to transmission line requirements. Currently regulated gathering lines are subject to these requirements.

Paragraph (d) contains the proposed requirements for Type B regulated onshore gathering lines. These lines, although located near the public and housing, operate at a lower stress than Type A lines and pose a lower-risk. So for Type B lines, we proposed safety requirements focused just on the main threats to these lines—corrosion and excavation damage. First, new lines and existing lines replaced, relocated, or otherwise changed would have to be designed, installed, constructed, initially inspected, and initially tested according to part 192 requirements. Second, operators of Type B lines would have to control corrosion according to applicable subpart I requirements; carry out a damage prevention program under § 192.614; establish MAOP under § 192.619; install and maintain line markers under § 192.707 according to transmission line requirements; and establish a public education program as required by § 192.616.

To allow time for line identification and preparation for compliance, we

proposed extended compliance deadlines in paragraph (e) for operation and maintenance requirements. Similarly, we proposed to amend § 192.13 to allow 1 year after the final rule takes effect before new, replaced, relocated, or otherwise changed lines would have to meet design and construction requirements. Also in paragraph (e), we proposed to allow operators 1 year to bring unregulated lines into compliance if they become regulated because of changes in population.

In addition, we proposed to ease the transition to regulated status of newly regulated lines and lines subsequently regulated due to population increases by revising the MAOP requirements of §§ 192.619(a)(3) and (c). The proposal would allow operation of a line at the highest actual operating pressure to which it was subjected during the 5 years before the final rule is published or the line becomes regulated.

As part of the corrosion control requirements, we proposed to apply those subpart I requirements specifically applicable to pipelines installed before August 1, 1971, to regulated onshore gathering lines in existence when the final rule takes effect and not previously subject to subpart I (lines in rural locations). Other subpart I requirements specifically applicable to pipelines installed after July 31, 1971, would not apply to these existing lines unless they substantially meet the requirements.

#### D. Related Proposals

We proposed to amend § 192.1(b)(4) to exclude from part 192 onshore gathering lines operating under vacuum, or at less than atmospheric pressure. We reasoned that regulation was not necessary because these lines pose little risk since they cannot release natural gas to the atmosphere. An additional amendment to this section clarifies the present rulemaking on onshore gathering lines does not affect gathering lines in inlets of the Gulf of Mexico.

### III. Advisory Committee Recommendations

The Technical Pipeline Safety Standards Committee (TPSSC), a statutorily mandated advisory committee, advises PHMSA on proposed safety standards and other policies concerning gas pipelines. The committee has an authorized membership of 15 persons with membership evenly divided between government, industry, and the public. Each member is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards.

The TPSSC considered the SNPRM at a teleconference on January 19, 2006. During the conference, we discussed the public comments summarized in section IV of this preamble and the draft Regulatory Evaluation of costs and benefits. After careful consideration, the TPSSC voted unanimously to find the SNPRM and supporting Regulatory Evaluation technically feasible, reasonable, practicable, and cost-effective, subject to resolution of the comments in the manner we discussed. A transcript of the teleconference is available in Docket No. PHMSA-98-4470.

#### IV. Disposition of Comments on Proposed Rules

We received written comments on the SNPRM from 19 sources: American Gas Association (AGA), Clark Resource Council and Powder River Basin Resource Council, Columbia Gas Transmission Corporation (Columbia), Cook Inlet Keeper, Dominion Delivery (Dominion), Duke Energy Field Services (Duke), Equitable Resources (Equitable), Independent Petroleum Association of America (IPAA), National Association of Pipeline Safety Representatives (NAPSR), National Fuel Gas Supply Corporation (NFGSC), Oil and Gas Industry Onshore Gas Gathering Regulation Coalition (Coalition), Oklahoma Corporation Commission (OCC), Oklahoma Independent Petroleum Association (OIPA), Pipeline Safety Trust (PST), Public Service Commission of West Virginia (PSCWV), Public Utilities Commission of Ohio, Robert A. Honig, Susan Franzheim, and West Texas Gas, Inc. (West).

In the SNPRM, we discussed the impact our proposed gathering line definition might have on economic decisions of the Federal Energy Regulatory Commission (FERC). Although we concluded the definition was unlikely to influence FERC's decisions, we suggested an alternative approach that would not define gathering lines, just which gathering lines would be regulated for safety. We specifically invited comments on the potential impact of the proposed definition on FERC decisions, on ways to avoid difficulties of the alternative approach, and on advantages and disadvantages of either approach. No one who submitted comments on the SNPRM addressed any of these issues either directly or indirectly. We continue to believe that the approach we adopt in this final rule will not have implications on FERC practice. This approach does not rely on the Natural Gas Act for determining if a pipeline is a gathering line.

Commenters generally favored the proposed definitions and tiered safety requirements subject to changes discussed in the outline below. However, West was against regulation of rural gathering lines, saying it was not needed because strong economic and liability-avoidance incentives encourage safe operations, and States can act if needed. West also said the Regulatory Evaluation was based on unsubstantiated assumptions, particularly with respect to the impact of lost reserves due to premature abandonment of stripper wells.

We disagree with West on the need for DOT regulation of rural gas gathering lines. Although operators have economic and legal incentives to operate these lines safely and States can take regulatory action, we think DOT regulation is still needed. As explained above in section I of this preamble, this need derives from the Congress' concern about the safety of higher-risk rural gathering, public comments favoring regulation where warranted by risk, and the incident data industry submitted showing rural gathering lines experience the same leading causes of accidents as lines PHMSA now regulates. Thus, the present exemption of rural gathering lines from nearly all safety rules in part 192 is no longer appropriate. We took West's comment on the draft Regulatory Evaluation into account in preparing a final evaluation.

#### A. Limitations on Using API RP 80 Definition of "Gathering Line"

As explained in the SNPRM, we proposed to adopt API RP 80 as the basis for determining onshore gathering lines and which of these lines would be subject to part 192 (70 FR 57540). Under this proposal, to determine if a pipeline is an onshore gathering line, operators would use API RP 80 in its entirety, including the definition of "gathering line" in section 2.2, the definition of "production operation" in section 2.3,<sup>2</sup> the supplemental terms in section 2.4, and the Decision Trees, and Representative Applications.

However, we recognized the definition of "gathering line" in section 2.2 of API RP 80 is susceptible to manipulation because it uses the term "furthestmost downstream" to identify

<sup>2</sup> As defined in section 2.3 of API RP 80, "production operation" means piping and equipment used for production and preparation for transportation or delivery of hydrocarbon gas and/or liquids and includes the following processes: (a) Extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement of hydrocarbon gas and/or liquids; and (b) associated production compression, gas lift, gas injection, or fuel gas supply.

facilities marking the beginning and end of a gathering line. By installing certain dual-use equipment (equipment used in either production or pipeline transportation, such as separators or dehydrators) further downstream from normal production, operators could arguably extend production and reduce the amount of regulated gathering. Similarly, the “furthestmost downstream” feature would allow operators to manipulate gathering endpoints marking the changeover to transmission, resulting in inconsistencies with prior DOT interpretations. So we proposed the following five limitations on use of the definition.

#### 1. Limitation on Furthestmost Point of Production

Under section 2.2(a)(1) of API RP 80, gathering begins at the furthestmost downstream point in a “production operation.” We proposed the following limitation on this aspect of the definition:

The beginning of a gathering line may not be further downstream than piping or equipment used solely in the process of extracting natural gas from the earth for the first time and preparing it for transportation or delivery.

The purpose was to classify dual-use equipment as transportation equipment if it is not used in the process of producing and preparing gas for transportation. In other words, once produced gas enters pipeline transportation, any dual-use equipment installed further downstream would be transportation equipment and not production equipment.

##### a. Comments

Coalition thought the limitation would expand gathering to include facilities, such as centralized separation, that API RP 80 describes as “production operations.” It offered the following alternative wording to preclude production manipulation:

The beginning of a gathering line \* \* \* shall not be artificially circumvented by:

(1) The installation of one or more pieces of equipment at an extreme downstream location not normally associated with a production operation; or

(2) Natural gas injection into, and subsequent withdrawal from, a gas storage cavern or field.

Similarly, IPAA found the proposal confusing and said it would impact potentially thousands of producers across the country. It urged us to adopt a clear production definition, and suggested the following:

“Production Operation” means any piping and equipment that qualify as a production

operation under section 2.3 of API RP–80, with the following limitations: (1) Facilities operated in connection with natural gas storage operations shall be excluded; and (2) separation and dehydration facilities located contrary to the prudent operating standards commonly applicable in the industry to the particular geographic location and solely for the purpose of avoiding regulation as a gathering line under Title 49 of the Code of Federal Regulations, part 192, shall be excluded.

OCC, OIPA, NAPS, and PST found the proposed limitation ambiguous. They too recommended alternative solutions. OCC and OIPA asked us to clarify the reference to the API RP 80 definition of “production operations.” NAPS and PST recommended adding the phrase “for the first time” at the end of the proposed limitation.

##### b. PHMSA Response

We think the text of the proposed rule (70 FR 47546) was the cause of the commenters’ concerns. Nowhere does the proposed text say operators must use API RP 80 in its entirety to determine onshore gathering lines, even though in the SNPRM preamble we proposed such use subject to certain limitations on section 2.2. This omission created uncertainty about use of the API RP 80 definition of “production operations.” In addition, commenters may have thought the phrasing of the proposed limitation would narrow the meaning of “production operations” in API RP 80. However, we merely intended the limitation to clarify the classification of dual-use equipment positioned downstream from production operations.

To resolve this misunderstanding, the final rule does not add a definition of “onshore gathering line” to § 192.3 as proposed. Instead, we created a new § 192.8, titled “How are onshore gathering lines and regulated onshore gathering lines determined?” Paragraph (a) of this new section allows operators to determine onshore gathering lines according to API RP 80, subject to certain limitations. Thus, operators must use API RP 80 in its entirety to determine onshore gathering lines, not just section 2.2 as the proposed definition of “onshore gathering line” implied.

In addition, in final § 192.8(a)(1), we changed the proposed limitation on the furthestmost point of production to focus on the classification of dual-use equipment. The limitation now provides the beginning of gathering may not extend beyond the furthestmost downstream point in a production operation. This furthestmost point does not include equipment capable of use in

either production or transportation, such as separators or dehydrators, unless the equipment is involved in the processes of “production and preparation for transportation or delivery of hydrocarbon gas” within the meaning of “production operation” under section 2.3 of API RP 80. This change removes any inference that the limitation narrows the meaning of “production operation” under section 2.3 of API RP 80.

We did not adopt commenters’ suggestions to exclude from production “equipment at an extreme downstream location not normally associated with a production operation” or “facilities located contrary to the prudent operating standards” because these terms are not precise enough for a safety rule. However, we think the situations they depict are relevant to deciding if equipment falls within the meaning of “production operation” under API RP 80. Also, we did not think additional use of the term “for the first time,” as two commenters suggested, would lessen the confusion the proposed limitation created. Finally, we did not see any need to exclude from production any equipment used in connection with a natural gas storage cavern or field because section 2.4.4 of API RP 80 indicates the term “storage” in the definition of “production operation” does not include underground storage of natural gas.

#### 2. Limitation on Furthestmost Gas Processing Plant Endpoint

Under section 2.2(a)(1)(A) of API RP 80, gathering ends at the inlet of the furthestmost downstream natural gas processing plant not on a transmission line. We proposed the following limitation:

Under section 2.2(a)(1)(A) of API RP 80, the endpoint may not extend beyond the first downstream natural gas processing plant, unless the operator can demonstrate, using sound engineering principles, that gathering extends to a further downstream plant.

The purpose of the limitation was to maintain consistency with prior DOT interpretations and State agency enforcement actions on gathering.

##### a. Comments

Coalition and Duke were concerned about the impact the closing of a gas processing plant could have on gathering line classifications. They asked us to clarify that the endpoint of gathering would not change if a plant closes temporarily for maintenance or market reasons.

West objected to placing the burden on operators to prove the need for further downstream processing. It

thought the government should have the burden of proving further downstream processing is not needed. In addition, West thought we should allow economic reasons as proof.

#### b. PHMSA Response

We have not experienced a situation in which the closing of a gas processing plant affected a gathering line classification. Although closings of a few weeks for maintenance reasons would not trigger a classification change, longer closings could occur for a variety of reasons and the duration could be uncertain. So we decided not to make a general statement on how temporary plant closures would affect the end of gathering. Instead, when requested, we will determine the impact of closings on an individual basis as the need to do so arises. We expect certified State agencies with safety jurisdiction over gathering lines under 49 U.S.C. 60105 will do likewise.

Regarding West's burden of proof issue, it is not unusual for part 192 safety rules to include exceptions applicable only if operators can demonstrate certain conditions exist. For example, under § 192.479(c), operators do not have to protect aboveground pipelines from atmospheric corrosion if they demonstrate the corrosion will have certain characteristics. We require operators to demonstrate grounds for exceptions when they are the best source of information on which the exception is based. In the case of gathering lines, we think operators are the best source of information to demonstrate why further downstream processing is necessary to complete the gathering process.

As for the proof required in the demonstration, no doubt economics would be a factor in any decision involving further downstream processing. However, many of our prior interpretations have based the end of gathering on the first downstream processing plant. Maintaining consistency with this policy as far as possible is desirable for both government and industry. For this reason, we think any future variation should be based on the fundamental qualities of gas processing, which is best determined by engineering analyses rather than economic conditions, which are transitory. Therefore, the proposed limitation is unchanged in the final rule.

#### 3. Limitation on Furthestmost Treatment Facility Endpoint

Under section 2.2(a)(1)(B) of API RP 80, gathering ends at the outlet of the furthestmost downstream gathering line

gas treatment facility. We proposed the following limitation:

The endpoint under section 2.2(a)(1)(B) of API RP 80 applies only if no other endpoint identified under section 2.2(a)(1)(A) [processing], (a)(1)(C) [commingling], or (a)(1)(D) [compression] exists.

We intended this limitation to preclude manipulation of the transition from gathering to transmission by installing equipment used in gas treatment.

#### a. Comments

Coalition, supported by Duke, said the proposed limitation would make the furthestmost treatment endpoint unusable, because processing, commingling, or compression is almost always upstream of a treatment facility. These commenters insisted gathering should continue downstream to a gas treatment facility endpoint no matter if compression, commingling, or processing occurs upstream. Coalition offered an alternative approach to preclude treatment manipulation:

(1) Use the following wording: "The end of a gathering line \* \* \* shall not be defined by the installation of one or more pieces of gas treating equipment at an extreme downstream location that is not justified by sound engineering and economic principles independent of the pipeline's regulatory classification." (2) Explain in the final rule preamble that this endpoint refers to a "gas treating plant" or similar facility and is not intended to be a simple piece of equipment like a separator or dehydrator (other than as can be shown, using sound engineering and economic principles, to be needed at that location to meet transmission pipeline specifications).

#### b. PHMSA Response

Section 2.2.1.2.2 of API RP 80 explains the meaning of a gas treatment facility under section 2.2(a)(1)(B). This provision describes gathering gas treatment (other than treatment in gas processing or compression) as involving significant stand-alone facilities (e.g., a sulfur recovery or large dehydration facility). We think this explanation is sufficient to preclude possible manipulation of the treatment endpoint by installing a simple piece of treatment-related equipment, such as a separator or dehydrator. Thus, Coalition's alternative is not necessary and the proposed limitation is withdrawn.

#### 4. Limitation on Furthestmost Commingling Endpoint

Under section 2.2(a)(1)(C) of API RP 80, gathering ends at the furthestmost downstream point where gas produced in the same production field or separate production fields is commingled. We proposed the following limitation:

If the endpoint is determined by the commingling of gas from separate production fields, the fields may not be more than 50 miles from each other.

With no limit on the distance between separate production fields, a gathering line could continue endlessly, causing reclassification of pipelines from transmission to gathering.

#### a. Comments

Coalition, Duke, and West said the proposed limitation was not flexible enough to account for future acquisitions and use of maturing fields. Duke said its existing commingled fields were less than 50 miles apart. Although Coalition thought some commingled fields were 125 miles apart, it did not cite an actual example. Coalition and Duke recommended allowing case-by-case regulatory approvals of longer distances based on sound engineering and economic reasons.

#### b. PHMSA Response

Because, Duke, the largest gas gathering line operator in the U.S., said the proposed 50-mile limit would be adequate for its current systems, the proposed 50-mile limit is unchanged in the final rule. We did not adopt Coalition's request to change the limit to 125 miles because it did not provide any examples of an existing system where the 50-mile limit would be too restrictive. However, to provide flexibility, the final rule allows operators to petition PHMSA, under the procedures in 49 CFR § 190.9, to find a longer limit is justified in a particular case.

#### 5. Limitation on Furthestmost Compressor Endpoint

Under section 2.2(a)(1)(D) of API RP 80, gathering ends at the outlet of the furthestmost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline. We proposed the following limitation:

The endpoint may not extend beyond the furthestmost downstream compressor used to increase gathering line pressure for delivery to another pipeline.

This limitation is consistent with our past interpretations.

#### a. Comment

Coalition agreed with the proposed limitation, but asked us to clarify delivery to "another pipeline" does not mean delivery to another gathering line.

## b. PHMSA Response

Section 3.2.8 of API RP 80 says, “the definition of gathering line did not directly address the issue of one operator’s gathering line beginning or ending with a connection to another operator’s gathering line.” Based on this clarification, we believe the term “another pipeline” in section 2.2(a)(1)(D) of API RP 80 does not mean delivering to another gathering line.

### *B. Defining “Regulated Onshore Gathering Line”*

We proposed to change how part 192 applies to onshore gathering lines outside inlets of the Gulf of Mexico by making the rules fit the level of risk gathering lines present. The proposal would restrict rules to two categories of lines, Type A and Type B, and define these lines as “regulated onshore gathering lines.” A description of the proposed definition is in section II of this preamble.

#### 1. Approach To Defining Regulated Lines

##### a. Comments

Columbia suggested we adopt a simpler definition of “regulated onshore gathering line” limited to lines in Class 3 and Class 4 locations and lines in Class 1 and Class 2 locations where a potential impact circle includes 20 or more dwellings. It said the alternative would be easier to understand and apply, and consistent with the scientific-based definition of “high consequence area” in § 192.903. PST also suggested a more straightforward approach under which gathering and transmission lines of similar pressures and operating conditions would be regulated alike, and other gathering lines would be regulated the same as distribution lines.

##### b. PHMSA Response

We did not adopt Columbia’s alternative because it would apply the same classification method (potential impact circles with 20 or more dwellings) to high-pressure and low-pressure lines in Class 1 and 2 locations. If impact circles were applied to low-pressure lines in Class 1 and 2 locations, the circles would most likely be too small to include 20 or more dwellings. So the risk of low-pressure lines to fewer than 20 nearby dwellings would not be addressed.

PST’s alternative parallels our proposal to regulate higher-risk gathering lines the same as transmission lines, but most transmission line rules are more stringent than appear to be necessary for lower-risk gathering lines.

Also, gathering lines are not sufficiently similar to distribution lines to apply the same rules to both types of lines.

#### 2. Identifying Regulated Lines by Potential Impact Circles

##### a. Comments

AGA and Dominion supported using potential impact circles to identify higher-risk regulated gathering, but said the population criteria (proposed 5 or more dwellings) should not be more stringent than the criteria applied to gas transmission lines (20 or more dwellings under § 192.903). Dominion also suggested allowing use of impact circles as an optional identification method for Type B lines, not just Type A lines as proposed.

NAPSR spotted an irregularity in using potential impact circles to identify Type A lines. Some smaller Type B lines (10 inches nominal diameter or less) updated to operate above 20 percent of SMYS would lose their regulated status if operators use impact circles to identify Type A lines and the circles do not contain the minimum number of dwellings (5) found in the rectangles (300 ft x 1000 ft) previously used to identify the lines as Type B. Likewise, the use of impact circles could cause some currently regulated nonrural lines operating above 20% of SMYS to lose their regulated status, even though similarly situated Type B lines would remain regulated. Consequently, NAPSR suggested we adopt the proposed Type B rectangles and safety rules as the minimum standard of safety for all regulated lines.

##### b. PHMSA Response

The decision discussed below (in response to NAPSR’s comment) to withdraw the proposal on using potential impact circles to identify Type A lines makes the AGA and Dominion comments moot. Nevertheless, we offer the following: Section 192.903 requires 20 or more dwellings in potential impact circles used to identify transmission line segments subject to integrity management rules. These rules apply to the identified segments in addition to other applicable transmission rules. In contrast, we did not propose to apply integrity management rules to Type A lines identified by circles with just 5 dwellings or more. So we do not consider the proposed 5-per-circle method to be more stringent than the 20-per-circle method used for integrity management.

We did not propose potential impact circles to identify Type B lines because for low-pressure lines the circles would

most likely be too small to contain at least 5 dwellings. For this reason, they would not equate to the proposed method of 5 or more dwellings per 1000 feet. As further explained under subheading 4 of this section of the preamble, we did not adopt potential impact circles as a method to identify Type B lines.

We believe NAPSR recognized a serious equivalency problem in allowing use of the proposed impact circles to identify Type A lines. The outcome could easily be an unregulated gathering line operating above 20 percent of SMYS next to a regulated Type B line, with both lines exposing the same dwellings to risk. To avoid this situation, we are withdrawing the proposal to use potential impact circles to identify Type A lines. We did not adopt NAPSR’s suggested remedy because the compliance cost of detecting 5 dwellings per 1000 feet would likely be disproportionate to the benefits, as discussed below under subheading 4 of this section of the preamble.

#### 3. Identifying Regulated Lines by Operating Stress

##### a. Comment

Coalition said 20 percent of SMYS is too low to distinguish high-stress Type A lines from low-stress Type B lines. It recommended using 30 percent of SMYS as in §§ 192.935, 192.937, and 192.941 for integrity management and in §§ 192.505 and 192.507 for pressure testing because lines operating at less than 30 percent of SMYS may leak but not rupture.

##### b. PHMSA Response

To regulate the safety of rural gas gathering lines, PHMSA must consider various physical characteristics, including operating pressure, to decide which lines warrant safety regulation (49 U.S.C. 60101(a)(21)(B) and (b)(2)(A)). We proposed 20 percent of SMYS as indicative of onshore gathering lines whose operating pressure presents a significant enough risk in certain circumstances to warrant the same amount of regulation as transmission lines, except rules on integrity management and smart pig passage. The basis for this 20-percent threshold is the part 192 definition of “transmission line,” which includes pipelines other than gathering lines operating at 20 percent of SMYS or more. These pipelines must meet all applicable part 192 safety rules. Because Type A lines can pose risks similar to transmission lines, we do not think 30 percent of

SMYS would be an appropriate threshold for Type A lines.

#### 4. Identifying Regulated Lines Outside Class 3 and 4 Locations by 5 Dwellings per 1000 Feet

##### a. Comments

Coalition, Dominion, and Duke believed frequently surveying slightly populated areas (Class 1 and 2 locations) to identify line segments with 5 dwellings per 1000 feet would dilute, rather than expand, public safety by diverting attention from heavily populated areas (Class 3 and 4 locations). Coalition and Duke also said because most operators do not have the proposed 5-per-1000 dwelling data, they would have to create a new survey process and train personnel to use it. To apply the 5-per-1000 process initially, Coalition believed operators would survey all their onshore gathering lines (rather than 25 percent as we estimated) at a cost of \$99.5 million (four times our estimate). From then on, Coalition estimated operators would resurvey at least 65 percent of lines each year at a cost of over \$12.9 million instead of our estimate of 15 percent at \$3 million.

To improve cost effectiveness, Coalition recommended an alternative regulatory approach to identify regulated onshore gathering lines in areas outside Class 3 and 4 locations. This approach focuses only on lines in Class 2 locations and uses the following methods rather than 5 dwellings per 1000 feet:

- For Type A lines, areas within (1) a Class 2 location; or (2) a potential impact circle with a minimum radius of 150 feet including 5 or more dwellings.
- For Type B lines, an area 150 feet on either side of the centerline of any continuous 1-mile length of pipeline including more than 10 but fewer than 46 dwellings.
- In addition, for Type A lines, Duke supported our proposed sliding mile approach using 25 or more houses per mile.

Commenting on Coalition's approach, Equitable also recommended focusing only on Class 2 locations. But it advised allowing operators a wider choice of identification methods for Type B lines: Potential impact circles like Coalition recommended for Type A lines, our proposed 5-per-1000 method, or Coalition's sliding mile alternative. Equitable said expanding the options to include potential impact circles would allow operators with advanced mapping systems to use them for compliance.

NFGSC sought to add a cluster exception to the proposed 5-per-1000 method for Type B lines to avoid

regulating substantial lengths of line posing little risk. It said a Type B gathering line might pass within 150 feet of 5 dwellings clustered near a highway intersection, but not pass near another dwelling for 1,000 feet in either direction. Under the proposed definition, the regulated segment would extend for up to 1,000 feet in each direction, but pose little risk beyond the cluster. NFGSC suggested the regulated segment should extend in each direction only 150 feet from the nearest dwelling in the cluster.

##### b. PHMSA Response

On further consideration of the proposal, we agree with commenters who suggested frequently searching for pockets of 5 dwellings per 1000 feet in long, thinly populated Class 1 locations, which itself has at most 10 dwellings per mile, does not appear to be a reasonable use of available resources. So we are withdrawing the proposal to define certain lines in Class 1 locations as either Type A or Type B lines. However, as stated in the SNPRM, we are considering amending 49 CFR part 191 to collect reports of gathering line incidents in rural areas. If those reports indicate the risk of gathering lines in Class 1 locations is unacceptable, we will consider the need to expand our gathering line rules to include segments of or all lines in Class 1 locations.

We also think the burden of frequently surveying lines in Class 2 locations to look for line segments with 5 dwellings per 1000 feet is not the least costly way to tackle the risks involved with Type A lines. Thus we are adopting instead the commenters' recommendations to identify Type A lines outside Class 3 and 4 locations as lines in Class 2 locations. Most areas outside Class 3 and 4 locations with a population density of 5 dwellings per 1000 feet are found in Class 2 locations. Also, focusing on Class 2 as a whole, rather than by segments, is a clear and concise risk identification method. It has the advantage of allowing use of customary survey methods, eliminating the need for operators to devise new methods and provide additional training. Our proposed sliding mile approach with 25 or more houses per mile would have some of the same drawbacks as the 5 per 1000 approach. So it too is withdrawn. The change to Class 2 locations appears in final § 192.8(b)(2).

Coalition's recommendation to allow use of potential impact circles with a minimum radius of 150 feet to identify Type A line segments in Class 2 locations would not cure the irregularity NAPSRS recognized. In some cases, the

practical effect of the minimum radius would simply be a threshold density of 5 dwellings per 300 feet. This density would still be less stringent than the threshold of 5 dwellings per 1000 feet we proposed for Type B lines.

Because Type B lines operate at less than 20 percent of SMYS, they are not likely to have potential impact circles large enough to include at least 5 dwellings. So for Type B lines, the impact circle method does not equate to the proposed 5-per-1000 method we proposed for Class 2 locations. Nor do we think requiring impact circles to have a minimum radius of 150 feet, as commenters suggested, would cure the irregularity NAPSRS recognized. So we did not adopt Equitable's comment to allow use of a potential impact circles with a minimum radius of 150 feet for Type B lines.

However, we favor Equitable's idea of offering operators more than one way to identify Type B lines outside Class 3 and 4 locations. As an alternative to the 5-per-1000 method, Coalition and Equitable suggested a variation of Class 2 criteria in which the sliding mile would extend only 150 feet on either side of the centerline instead of 220 yards. Because the potential impact of lines operating is less than 20 percent of SMYS is closer to 150 feet than 220 yards, we think this suggestion is reasonable. We also think small operators or operators who do not have Class 2 survey data may want to use the proposed 5-per-1000 method to minimize regulated mileage. So it remains an option in final § 192.8(b)(2). Also, operators well acquainted with Class 2 location surveys may prefer to treat all low-stress gathering lines in Class 2 locations as Type B lines. Thus, final § 192.8(b)(2) allows this option as well.

Regarding NFGSC's comment, § 192.5(c)(2) provides the following cluster exception for Class 2 and 3 locations: "When a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the class location ends 220 yards (200 meters) from the nearest building in the cluster." As NFGSC recommended, we think a similar exception is appropriate for Type B lines identified by any of the options. The exception is in final § 192.8(b)(2).

## V. Safety Requirements

### A. Applying Operator Qualification (OQ) Rules to Type A Lines Outside Class 3 and 4 Locations

Under proposed § 192.9(c), the safety rules now applicable to nonrural gathering lines would apply to Type A

regulated onshore gathering lines. These rules include all part 192 rules for gas transmission lines, except the rules in § 192.150 on passage of smart pigs and in subpart O on integrity management. Consequently, the proposed rules would require operators to comply with OQ rules in subpart N on Type A lines, no matter where the lines are located.

1. Comments

Coalition and Duke said because most gathering incidents are caused by excavation damage or corrosion rather than operator error, application of OQ rules outside Class 3 and 4 locations would impose significant costs with no proportionate reduction in risk. Duke reasoned compliance would be very costly because, for efficient use of personnel, operators would apply OQ rules to all lines in a gathering system not just to regulated segments. These commenters recommended we drop the proposal to require OQ rules for Type A lines outside Class 3 and 4 locations. In addition, Coalition recommended we collect incident data on regulated lines, and if operator error contributes noticeably to incidents, consider extending the OQ rules at that time.

2. PHMSA Response

In response to Coalition's and Duke's comments, PHMSA again reviewed the GPA study results that were submitted to the TPSSC.<sup>3</sup> This study looked at incidents<sup>4</sup> reported by 40 companies representing an aggregate 171,628 miles of non-regulated onshore gas gathering and found 1 incident attributable to human error. PHMSA notes that other operator qualification factors may indirectly contribute to pipeline failures. Furthermore, Congress directed DOT to establish regulations for OQ programs on pipelines. Congress also directed pipeline facility operators to develop and adopt a qualification program should DOT fail to prescribe standards and criteria. Congress further allowed DOT and State pipeline safety agencies to waive or modify any OQ requirements if not inconsistent with pipeline safety laws (49 U.S.C. 60131(e)(5) and (f)). Thus, Congress recognized that compliance with OQ regulations may not be suitable in all situations. In consideration of this data and Congress' intent, PHMSA modified

<sup>3</sup> The results of this study were presented at the February 2004 meeting of PHMSA's Technical Pipeline Safety Standards Advisory Committee.

<sup>4</sup> The GPA used the following criteria to define incidents for the informal study:

- (1) Death or injury;
- (2) Evacuation;
- (3) Minor property damage (\$5,000–\$25,000);
- (4) Major property damage (over \$25,000).

the requirements of subpart N for Type A gathering lines in Class 2 locations. This change will allow operators of Type A lines in Class 2 locations to describe the processes they have in place to ensure that the personnel performing operations and maintenance activities are qualified. Because Congress directed operators to have OQ programs, this change should not impose any additional administrative costs.

*B. Applying Safety Requirements to Lines "Otherwise Changed"*

1. Comment

Commenting on proposed § 192.9(d)(1), NFGSC considered the term "otherwise changed" unnecessary and vague. It asked us to drop the term unless we clearly explain its meaning.

2. PHMSA Response

Use of the term "otherwise changed" in proposed § 192.9(d)(1) parallels its use in existing § 192.13(b). This latter section, which has been part of part 192 since its initial publication in 1970, provides:

No person may operate a segment of pipeline that is replaced, relocated, or otherwise changed after November 12, 1970, or in the case of an offshore gathering line, after July 31, 1977, unless that replacement, relocation, or change has been made in accordance with this part.

Though not defined in part 192, "otherwise changed" refers to a substantial physical alteration of a pipeline facility as opposed to a repair or restoration.

*C. Compliance Times*

Under proposed § 192.9(e)(1), design, installation, construction, initial inspection, and initial testing requirements would not apply to new, replaced, relocated, or otherwise changed lines until 1 year after publication of the final rule. Under proposed § 192.9(e)(2), the following compliance deadlines for lines not previously subject to part 192 would apply:

Requirement	Proposed compliance deadline
Control corrosion under subpart I.	2 years after final rule takes effect.
Prevent excavation damage under § 192.614.	6 months after final rule takes effect.
Establish MAOP under § 192.619.	6 months after final rule takes effect.
Install line markers under § 192.707.	1 year after final rule takes effect.
Educate public under § 192.616.	1 year after final rule takes effect.

Requirement	Proposed compliance deadline
Other requirements for Type A lines.	2 years after final rule is published.

PHMSA proposed the shorter timelines for provisions that require less time to implement, such as damage prevention. It proposed longer time frames for provisions that may require more time to procure and install materials.

Lastly, as proposed in § 192.9(e)(3), if an onshore gathering line becomes regulated because of a change in class location or an increase in dwelling density, the operator would have 1 year to comply with applicable requirements.

1. Comments

Coalition requested at least 1 additional year to complete training for and to carry out initial classifications if we adopted the Coalition's alternatives to the 5 per 1000 proposal (described in section IV. B. 4. of this preamble). AGA thought operators would need 2 years to complete the proposed classifications, and 4 years for full compliance.

Dominion believed most operators would need 3 years for classifications, and large operators would need 4 years to meet corrosion control requirements. Duke said compliance times for large operators should be about twice as long as proposed, and 5 years for full compliance if operators have to determine classifications based on 5 dwellings per 1000 feet.

For lines that become regulated because of a change in class location or dwelling density, Columbia recommended allowing 2 years to meet the proposed safety requirements. It said this timeframe—1 year longer than we proposed—would be consistent with the time allowed for confirmation or revision of MAOP under § 192.611.

2. PHMSA Response

On the whole, comments indicated the proposed compliance times would not allow enough time to complete initial classifications and assure all regulated lines are in compliance. Since the final rule does not mandate 5 per 1000 surveys, we adopted Coalition's comment and, in final § 192.9(e)(2), added 1 year to the proposed times to allow more time for classifications. This change results in 3 years for full compliance. If an operator finds it needs more time final § 192.9(e)(2) allows operators to petition for more time on a case-by-case basis. For consistency with the time allowed for corrosion control, in final § 192.9(e)(2), we added 1 month to the time proposed for compliance

with “other requirements for Type A lines.”

After initial classifications, we expect most class location or dwelling density changes would cause only short segments of lines to become newly regulated. The bulk of these changes will probably affect Type B lines, requiring compliance with only a few part 192 safety rules. Operators could largely meet these requirements by folding the segments into their existing programs. In these cases, allowing 2 years for compliance as Columbia suggested does not appear necessary. However, if Type A lines are affected, operators would have to comply with many more requirements. Therefore, for Type A lines, final § 192.9(e)(3) allows 2 years for compliance.

#### D. Corrosion Control

##### 1. Comment

Regarding proposed §§ 192.9(c) and (d)(2), PSCWV said where cathodic protection is impractical, operators should have to survey the line for leaks each calendar year, not to exceed 15 months, using gas detection equipment.

##### 2. PHMSA Response

We did not adopt this comment because the SNPRM did not include a proposal to require leak surveys where cathodic protection is impractical. In such cases, which should be few, operators may petition PHMSA or a State agency under 49 U.S.C. 60118 to waive applicable requirements, if not inconsistent with pipeline safety. PSCWV may have been concerned about situations in which § 192.465(e) requires operators to reevaluate unprotected piping but it is impractical to perform an electrical survey to determine the need for cathodic protection. In these situations, § 192.465(e) allows use of alternative means if they include review and analysis of leak repairs and other relevant information.

#### E. Determining MAOP

For any gathering line part 192 regulates for the first time on and after the effective date of this final rule, proposed §§ 192.619(a)(3) and (c) would allow the operator to determine the line’s MAOP based on the line’s highest actual operating pressures during the preceding 5-year period.

##### 1. Comment

Coalition recommended we also apply the proposed rules to transmission lines part 192 regulates for the first time because of the final rule.

##### 2. PHMSA Response

Although we expect few reclassifications of gathering to transmission lines, we agree any newly regulated transmission lines should have the same MAOP options as gathering lines. So we adopted Coalition’s comment. For simplicity, we based the pressure date in the table in final § 192.619(a)(3) on the publication date of the final rule rather than the first day of the month preceding the publication date as proposed.

#### F. Editorial Changes

The proposed definition of “regulated onshore gathering line” distinguished Type A metallic lines by whether the MAOP produces a hoop stress of 20 percent or more of SMYS. In most cases, determining operating stress level is not a problem. However, on some older lines, the stress level corresponding to MAOP may be unknown because a pipe characteristic relevant to calculating stress, such as SMYS or wall thickness, is unknown. Subpart C of part 192 provides options to deal with these uncertainties. Final § 192.8(b) provides that operators are to apply applicable provisions in subpart C if the stress level is unknown.

The proposal to amend § 192.9 to require operators of Type B lines to control corrosion according to subpart I requirements did not specifically refer to subpart I requirements applicable to transmission lines. Final § 192.9(d)(2) makes it clear Type B lines are to meet transmission line requirements.

We proposed to amend § 192.452 to clarify how subpart I requirements specifically applicable to pipelines installed before or after certain past dates would apply to regulated onshore gathering lines existing when the final rule takes effect and not previously subject to subpart I (lines in rural locations). Final § 192.452(b) extends this provision to any onshore gathering line that becomes a regulated onshore gathering line because of an increase in population.

We have made some wording changes in final §§ 192.452 and 192.619 to use more plain language. These non substantive wording changes do not change any of the proposed or existing requirements in these sections.

## VI. Regulatory Analyses and Notices

#### 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 (65 FR 19477) or you may visit <http://dms.dot.gov>.

#### Executive Order 12866 and DOT Policies and Procedures

This rulemaking is not a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. This rulemaking is also not significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

PHMSA prepared a Regulatory Evaluation of this rulemaking and a copy is in Docket No. PHMSA–1998–4868. The evaluation concludes that there will be a net cost savings from implementing this final rule. The savings result from reducing the regulatory burden currently imposed on regulated gas gathering lines by establishing a tiered approach to safety requirements. PHMSA estimates that the total amount of gas gathering pipeline mileage that will be subject to part 192 will be about the same after implementing this rulemaking as it is now. However, requirements applicable to approximately three fourths of the regulated gathering line mileage, that which poses less public safety risk, will be reduced compared to the requirements now applicable to regulated lines. This proposal will result in a total cost of \$26.54 million over a 20-year period. PHMSA estimates that the benefit of reducing the frequency of gas gathering pipeline incidents that have public safety consequences will cause a net benefit that is consistent with the increased regulatory burden.

#### Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities.

This rulemaking will affect operators of gas gathering pipelines. This rulemaking refines the definition of gas gathering pipelines subject to regulation and establishes a tiered regulatory

structure, under which regulated gas gathering lines posing less risk will be subject to only some of the requirements now applied to all regulated gathering lines. PHMSA estimates that the overall economic effect of this regulation will be a net reduction in costs to operators.

At present, many operators of such pipelines are subject to federal safety regulation. The particular portions of their pipeline that are subject to regulation may change, in some cases, due to the changes in the definition, but the economic impact on these operators is expected to be a net reduction in costs, consistent with the regulatory analysis.

There may be some operators of gas gathering pipelines that are not now subject to safety regulations that will become so because portions of their pipeline will meet the criteria in the new definition for regulated gas gathering lines. These companies will experience added costs. The costs will depend on the risk posed by their pipelines. The number of companies expected to come under safety regulation for the first time is approximately 25, some of which may be small entities. In this SNPRM, however, PHMSA invited comments specifically on this estimate, but received no comments. Nevertheless, PHMSA believes the estimate may be too high. The Small Business Administration (SBA) also reviewed the SNPRM analysis and the comments filed in response to the SNPRM. The SBA discussed the SNPRM with its constituents and it resulted in the SBA providing favorable comments. Based on these facts, only a few companies will experience increased costs, and PHMSA believes that there will not be a significant economic impact on a "substantial" number of small entities.

The regulatory flexibility analysis accompanies the regulatory evaluation and is in the docket for review.

#### *Executive Order 13175*

PHMSA has analyzed this rulemaking according to the principles and criteria contained in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the rulemaking will not significantly or uniquely affect the communities of the Indian tribal governments nor impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### *Paperwork Reduction Act*

This rulemaking contains information collection requirements applicable to operators of regulated onshore gas gathering lines. As required by the

Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), PHMSA submitted a paperwork analysis to the Office of Management and Budget for its review. A copy of the analysis is in the docket. The OMB control numbers are: OMB No. 2137-0049 (recordkeeping under 49 CFR part 192) and OMB No. 2137-0579 (drug and alcohol testing under 49 CFR part 199).

For Type B regulated onshore gathering lines, operators will have to comply with part 192 information collection requirements regarding corrosion control, damage prevention programs, and public education programs. For Type A regulated onshore gathering lines, operators will have to comply not only with these requirements but also with others under various part 192 rules applicable to gas transmission lines. All operators of onshore gathering lines that are regulated will have to comply with the information collection requirements in 49 CFR part 199 concerning drug and alcohol testing. The small operators while required to collect test information, do not have to send reports annually and therefore are excluded from the reporting burden estimates but not the reporting estimates.

As explained above in section III of this preamble, gas gathering lines in non-rural locations are currently subject to PHMSA's safety regulations. The number of gathering line operators subject to regulation varies by year as pipelines are brought, taken out of service, and as changes occur in the boundaries of non-rural locations. Currently there are 284 onshore natural gas gathering pipeline operators subject to PHMSA safety regulation.

At present, all 284 of these operators are required to comply with part 192 rules applicable to transmission lines, including information collection requirements. The specific portions of these operators' gathering lines that are subject to part 192 regulations may change as a result of the final rule. Some portions may no longer be regulated, while others could become Type A or Type B lines. For Type B lines, the part 192 information collection burden will be significantly reduced, because Type B lines will be subject to far fewer part 192 regulations. The net effect on the paperwork burden faced by these 284 operators is thus expected to be a reduction. However, the magnitude of this reduction is difficult to estimate because PHMSA lacks the data necessary to determine which portions of operators currently regulated gathering lines will continue to be regulated by part 192 and which

portions will become Type A or Type B lines.

Under the final rulemaking, some operators of gas gathering lines in rural locations could become subject to part 192 regulations for the first time. PHMSA estimates that no more than 25 operators will be newly subject to part 192 regulations as a result of this final rule. These operators will be required to comply with part 192 regulations proposed for Type A and Type B lines and with part 199 drug and alcohol testing regulations, including associated information collection requirements.

PHMSA's estimate of the paperwork burden on these newly-regulated operators is an average of approximately 40 hours per year. Much of this time will involve clerical personnel, but some involvement by managers and technical personnel will be required. At an estimated average hourly rate of \$75 the estimated cost for 25 operators of this new paperwork burden, is \$75,000.

PHMSA expects that this increase in cost for newly-regulated operators will be more than offset by the reduction in paperwork burden associated with currently regulated gas gathering lines that become either unregulated or Type B lines, as described above. Thus, the overall paperwork impact will be a small reduction.

#### *Unfunded Mandates Reform Act of 1995*

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rulemaking.

#### *National Environmental Policy Act*

PHMSA has analyzed this rulemaking for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the rulemaking will require limited physical modification or other work that will disturb pipeline rights-of-way, PHMSA has determined the rulemaking is unlikely to significantly affect the quality of the human environment. Much of the pipeline mileage that will be subject to this final rule is already regulated, and no new actions likely to affect the environment are adopted for currently regulated lines. Also much of the existing rural mileage that become regulated under this final rule is already equipped with cathodic protection and location markers, the two requirements that will involve any installation/modification work along the pipeline. An environmental assessment document

is available for review in the docket. By requiring operators to participate in damage prevention programs and follow the applicable requirements for corrosion control, it may be expected that the number of failures on gathering lines will be reduced. Since gathering lines often contain gas streams laden with condensates and natural gas liquids (NGL's), the reduced number of failures also means a reduced number of spills of these liquids.

*Executive Order 13132*

PHMSA has analyzed this rulemaking according to the principles and criteria contained in Executive Order 13132 ("Federalism"). In its meetings with state agency officials on gathering lines, PHMSA discussed Federalism issues. None of the rules (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on State and local governments; or (3) preempt state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*Executive Order 13211*

Executive Order 13211 (May 18, 2001; 66 FR 28355) requires Federal agencies to prepare a statement of energy effects to ensure that agencies weigh and consider the effects of governmental regulations on the supply, distribution, and use of energy. This statement constitutes the required statement of energy effects for the final rule redefining gas gathering lines and establishing the scope of safety regulations applicable to them.

The Department of Energy (DOE) expressed concerns about the potential adverse effect on the nation's energy supply derived from "marginal well"<sup>5</sup> production in the Alaska, Rocky Mountain, and Appalachian regions of the United States. Production from marginal wells represents approximately 10% of the domestic gas supply.<sup>6</sup>

To better understand the potential impact of changing the gas gathering definition and applying a risk-based approach, PHMSA conducted a study in West Virginia to determine if reclassification would occur as a result of applying the new definitions, to compare the effect on the amount of regulated mileage by applying the new "regulated segment" criteria, and to evaluate the expected cost increase/reductions expected by applying tiered risk-based compliance activities. West Virginia operators were selected for the study as a representative sample of marginal well production. In the sample study, PHMSA found that the concept of applying a risk-based approach to regulating gas gathering for pipeline safety purposes is viable. The gas gathering definitions will not cause significant reclassification of pipelines from a gathering classification to a transmission or distribution classification. Redefining the areas that PHMSA regulates will focus operator and regulatory resources on areas that could have detrimental consequences to the public, in the event of a pipeline failure. Regulatory compliance activities driven by risk will reduce operating and maintenance compliance costs for gathering lines operating at lower stress levels. Given these facts, current and future domestic natural gas production should not be impacted in a negative manner as a result of the final rule.

As described in more detail in the related regulatory analysis, the operators of some gas gathering pipelines will experience a reduction in costs to comply with safety regulations. This reduction in costs, if shared with operators of producing natural gas wells, could result in some wells operating beyond what would now be their economic end-of-life. This could result, over time, in more natural gas being produced for U.S. consumption than would be the case absent this change. PHMSA also discussed this final rule with the DOE and received no negative comments.

Based on the above considerations, and discussions with the DOE, PHMSA has determined that there will be no

significant adverse impact on energy supply, distribution or prices as a result of implementing this final rule.

**List of Subjects in 49 CFR Part 192**

Incorporation by reference, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, PHMSA amends 49 CFR part 192 as follows:

**PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS**

■ 1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

- 2. In § 192.1,
  - a. Revise the section heading,
  - b. Revise paragraph (b)(4),
  - c. Remove paragraph (b)(5), and
  - d. Redesignate paragraph (b)(6) as (b)(5).

The changes read as follows:

**§ 192.1 What is the scope of this part?**

\* \* \* \* \*

(b) \* \* \*

- (4) Onshore gathering of gas—
  - (i) Through a pipeline that operates at less than 0 psig (0 kPa);
  - (ii) Through a pipeline that is not a regulated onshore gathering line (as determined in § 192.8); and
  - (iii) Within inlets of the Gulf of Mexico, except for the requirements in § 192.612.

\* \* \* \* \*

■ 3. In § 192.7, revise the section heading, and in paragraph (c)(2) amend the table of referenced material by redesignating items (B)(4) and (B)(5) as (B)(5) and (B)(6) and adding a new item (B)(4) to read as follows:

**§ 192.7 What documents are incorporated by reference partly or wholly in this part?**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

Source and name of referenced material	49 CFR reference
B. * * *	* * *
(4) API Recommended Practice 80 (API RP 80) "Guidelines for the Definition of Onshore Gas Gathering Lines" (1st edition, April 2000)	§ 192.8
* * * * *	*

<sup>5</sup> A marginal well is generally defined as a well that produces less than 60,000 cubic feet of gas per day.

<sup>6</sup> "Interstate Oil and Gas Compact Commission, Marginal Oil and Gas: Fuel for Economic Growth (2003 Edition)."

■ 4. Add a new § 192.8 to read as follows:

**§ 192.8 How are onshore gathering lines and regulated onshore gathering lines determined?**

(a) An operator must use API RP 80 (incorporated by reference, see § 192.7), to determine if an onshore pipeline (or part of a connected series of pipelines) is an onshore gathering line. The determination is subject to the limitations listed below. After making this determination, an operator must determine if the onshore gathering line is a regulated onshore gathering line under paragraph (b) of this section.

(1) The beginning of gathering, under section 2.2(a)(1) of API RP 80, may not extend beyond the furthestmost downstream point in a production operation as defined in section 2.3 of

API RP 80. This furthestmost downstream point does not include equipment that can be used in either production or transportation, such as separators or dehydrators, unless that equipment is involved in the processes of “production and preparation for transportation or delivery of hydrocarbon gas” within the meaning of “production operation.”

(2) The endpoint of gathering, under section 2.2(a)(1)(A) of API RP 80, may not extend beyond the first downstream natural gas processing plant, unless the operator can demonstrate, using sound engineering principles, that gathering extends to a further downstream plant.

(3) If the endpoint of gathering, under section 2.2(a)(1)(C) of API RP 80, is determined by the commingling of gas from separate production fields, the

fields may not be more than 50 miles from each other, unless the Administrator finds a longer separation distance is justified in a particular case (see 49 CFR § 190.9).

(4) The endpoint of gathering, under section 2.2(a)(1)(D) of API RP 80, may not extend beyond the furthestmost downstream compressor used to increase gathering line pressure for delivery to another pipeline.

(b) For purposes of § 192.9, “regulated onshore gathering line” means:

(1) Each onshore gathering line (or segment of onshore gathering line) with a feature described in the second column that lies in an area described in the third column; and

(2) As applicable, additional lengths of line described in the fourth column to provide a safety buffer:

Type	Feature	Area	Safety buffer
A .....	—Metallic and the MAOP produces a hoop stress of 20 percent or more of SMYS. If the stress level is unknown, an operator must determine the stress level according to the applicable provisions in subpart C of this part. —Non-metallic and the MAOP is more than 125 psig (862 kPa).	Class 2, 3, or 4 location (see § 192.5) ..	None.
B .....	—Metallic and the MAOP produces a hoop stress of less than 20 percent of SMYS. If the stress level is unknown, an operator must determine the stress level according to the applicable provisions in subpart C of this part. —Non-metallic and the MAOP is 125 psig (862 kPa) or less.	Area 1. Class 3 or 4 location ..... Area 2. An area within a Class 2 location the operator determines by using any of the following three methods: (a) A Class 2 location. .... (b) An area extending 150 feet (45.7 m) on each side of the centerline of any continuous 1 mile (1.6 km) of pipeline and including more than 10 but fewer than 46 dwellings. (c) An area extending 150 feet (45.7 m) on each side of the centerline of any continuous 1000 feet (305 m) of pipeline and including 5 or more dwellings.	If the gathering line is in Area 2(b) or 2(c), the additional lengths of line extend upstream and downstream from the area to a point where the line is at least 150 feet (45.7 m) from the nearest dwelling in the area. However, if a cluster of dwellings in Area 2 (b) or 2(c) qualifies a line as Type B, the Type B classification ends 150 feet (45.7 m) from the nearest dwelling in the cluster.

■ 5. Revise § 192.9 to read as follows:

**§ 192.9 What requirements apply to gathering lines?**

(a) *Requirements.* An operator of a gathering line must follow the safety requirements of this part as prescribed by this section.

(b) *Offshore lines.* An operator of an offshore gathering line must comply with requirements of this part applicable to transmission lines, except the requirements in § 192.150 and in subpart O of this part.

(c) *Type A lines.* An operator of a Type A regulated onshore gathering line must comply with the requirements of this part applicable to transmission lines, except the requirements in § 192.150 and in subpart O of this part. However, an operator of a Type A

regulated onshore gathering line in a Class 2 location may demonstrate compliance with subpart N by describing the processes it uses to determine the qualification of persons performing operations and maintenance tasks.

(d) *Type B lines.* An operator of a Type B regulated onshore gathering line must comply with the following requirements:

(1) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection, and initial testing must be in accordance with requirements of this part applicable to transmission lines;

(2) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines;

(3) Carry out a damage prevention program under § 192.614;

(4) Establish a public education program under § 192.616;

(5) Establish the MAOP of the line under § 192.619; and

(6) Install and maintain line markers according to the requirements for transmission lines in § 192.707.

(e) *Compliance deadlines.* An operator of a regulated onshore gathering line must comply with the following deadlines, as applicable.

(1) An operator of a new, replaced, relocated, or otherwise changed line must be in compliance with the applicable requirements of this section by the date the line goes into service, unless an exception in § 192.13 applies.

(2) If a regulated onshore gathering line existing on April 14, 2006 was not

previously subject to this part, an operator has until the date stated in the second column to comply with the applicable requirement for the line listed in the first column, unless the Administrator finds a later deadline is justified in a particular case:

Requirement	Compliance deadline
Control corrosion according to Subpart I requirements for transmission lines.	April 15, 2009.
Carry out a damage prevention program under § 192.614.	October 15, 2007.
Establish MAOP under § 192.619.	October 15, 2007.
Install and maintain line markers under § 192.707.	April 15, 2008.
Establish a public education program under § 192.616.	April 15, 2008.
Other provisions of this part as required by paragraph (c) of this section for Type A lines.	April 15, 2009.

(3) If, after April 14, 2006, a change in class location or increase in dwelling density causes an onshore gathering line to be a regulated onshore gathering line, the operator has 1 year for Type B lines and 2 years for Type A lines after the line becomes a regulated onshore gathering line to comply with this section.

- 6. In § 192.13,
- a. Revise the section heading, and
- b. Revise paragraphs (a) and (b), to read as follows:

**§ 192.13 What general requirements apply to pipelines regulated under this part?**

(a) No person may operate a segment of pipeline listed in the first column

that is readied for service after the date in the second column, unless:

- (1) The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this part; or
- (2) The pipeline qualifies for use under this part according to the requirements in § 192.14.

Pipeline	Date
Offshore gathering line.	July 31, 1977.
Regulated onshore gathering line to which this part did not apply until April 14, 2006.	March 15 2007.
All other pipelines .....	March 12, 1971.

(b) No person may operate a segment of pipeline listed in the first column that is replaced, relocated, or otherwise changed after the date in the second column, unless the replacement, relocation or change has been made according to the requirements in this part.

Pipeline	Date
Offshore gathering line.	July 31, 1977.
Regulated onshore gathering line to which this part did not apply until April 14, 2006.	March 15, 2007.
All other pipelines .....	November 12, 1970.

\* \* \* \* \*

- 7. In § 192.452,
- a. Revise the section heading,
- b. Designate the existing text as paragraph (a),
- c. Add “*Converted pipelines.*” as the heading of newly designated paragraph (a), and

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

**§ 192.452 How does this subpart apply to converted pipelines and regulated onshore gathering lines?**

- (a) *Converted pipelines.* \* \* \*
- (b) *Regulated onshore gathering lines.* For any regulated onshore gathering line under § 192.9 existing on April 14, 2006, that was not previously subject to this part, and for any onshore gathering line that becomes a regulated onshore gathering line under § 192.9 after April 14, 2006, because of a change in class location or increase in dwelling density:

(1) The requirements of this subpart specifically applicable to pipelines installed before August 1, 1971, apply to the gathering line regardless of the date the pipeline was actually installed; and

(2) The requirements of this subpart specifically applicable to pipelines installed after July 31, 1971, apply only if the pipeline substantially meets those requirements.

- 8. In § 192.619, revise the section heading and paragraphs (a)(3) and (c) to read as follows:

**§ 192.619 What is the maximum allowable operating pressure for steel or plastic pipelines?**

- (a) \* \* \*
- (3) The highest actual operating pressure to which the segment was subjected during the 5 years preceding the applicable date in the second column. This pressure restriction applies unless the segment was tested according to the requirements in paragraph (a)(2) of this section after the applicable date in the third column or the segment was updated according to the requirements in subpart K of this part:

Pipeline segment	Pressure date	Test date
—Onshore gathering line that first became subject to this part (other than § 192.612) after April 13, 2006.	March 15, 2006, or date line becomes subject to this part, whichever is later.	5 years preceding applicable date in second column.
—Onshore transmission line that was a gathering line not subject to this part before March 15, 2006.		
Offshore gathering lines .....	July 1, 1976 .....	July 1, 1971.
All other pipelines .....	July 1, 1970 .....	July 1, 1965.

\* \* \* \* \*

(c) The requirements on pressure restrictions in this section do not apply in the following instance. An operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the

segment was subjected during the 5 years preceding the applicable date in the second column of the table in paragraph (a)(3) of this section. An operator must still comply with § 192.611.

Issued in Washington, DC, on March 10, 2006.

**Brigham A. McCown,**  
*Acting Administrator.*

[FR Doc. 06–2562 Filed 3–14–06; 8:45 am]

BILLING CODE 4910–60–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 001005281-0369-02; I.D. 030906E]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Temporary rule; closure.**SUMMARY:** NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.**DATES:** The closure is effective 12:01 a.m., local time, March 12, 2006, until the start of the 2006-2007 fishing year at 12:01 a.m., July 1, 2006.**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast and west coast subzones. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL, boundary) along the west coast of Florida to 87°31.1' W.

long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into a northern and southern subzone. The southern subzone is that part of the Florida west coast subzone, which from November 1 through March 31 extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8' N. lat. and 25°48' N. lat. (a line directly west from the Monroe/Collier County, FL, boundary), i.e., the area off Collier County. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone has been met. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 12:01 a.m., local time, March 12, 2006, through 12:01 a.m., July 1, 2006, the beginning of the next fishing season.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice

and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: March 9, 2006.

**Alan D. Risenhoover,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 06-2504 Filed 3-10-06; 3:02 pm]

**BILLING CODE 3510-22-S****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 060216045-6045-01; I.D. 030906G]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Temporary rule; closure.**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 first seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher processor vessels using trawl gear in the BSAI.**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2006, through 1200 hrs, A.l.t., April 1, 2006.**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 first seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI is 21,086 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006), for the period 1200 hrs, A.l.t., January 1, 2006, through 1200 hrs, A.l.t., April 1, 2006. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 first seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 20,586 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with

§ 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 9, 2006.

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

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

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

Dated: March 10, 2006.

**Alan D. Risenhoover,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 06-2505 Filed 3-10-06; 3:02 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 71, No. 50

Wednesday, March 15, 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.

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 109

[Notice 2006–5]

#### Coordinated Communications

**AGENCY:** Federal Election Commission.

**ACTION:** Supplemental notice of proposed rulemaking; re-opening of comment period.

**SUMMARY:** The Federal Election Commission is making public data related to its ongoing rulemaking regarding coordinated communications and is re-opening the public comment period for the Notice of Proposed Rulemaking (“NPRM”) published on December 14, 2005. The Commission requests additional comments on alternatives presented in the NPRM in light of data regarding the timing of campaign advertising in recent elections. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before March 22, 2006.

**ADDRESSES:** All comments must be in writing, must be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to either [coordination@fec.gov](mailto:coordination@fec.gov) or submitted through the Federal eRegulations Portal at <http://www.regulations.gov>. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal

service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, Mr. Ron B. Katwan or Ms. Esa L. Sferra, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On December 14, 2005, the Commission published a Notice of Proposed Rulemaking (“NPRM”) proposing to amend its current rules at 11 CFR 109.21 that set forth a three-prong test for determining whether a communication is a coordinated communication, and therefore an in-kind contribution to a candidate, a candidate’s authorized committee, or a political party committee. 70 FR 73946 (Dec. 14, 2005). The NPRM proposed seven different alternatives for revising the content prong of the coordinated communications test in response to the decisions in *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004) (“*Shays District*”), *aff’d*, *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (“*Shays Appeal*”) (pet. for reh’g en banc denied Oct. 21, 2005) (No. 04–5352). In *Shays Appeal*, the Court of Appeals invalidated one aspect of the content prong—the 120-day time frame—because the court believed that the Commission had not provided an adequate explanation and justification under the Administrative Procedure Act. *Shays Appeal* at 100. The Court of Appeals emphasized that justifying the 120-day time frame (or any other time frame) requires the Commission to undertake a factual inquiry to determine the appropriate time frame regarding “election-related advocacy.” *Id.* at 102.

The Court of Appeals ordered the Commission to consider carefully certain questions in promulgating new rules, including: “Do candidates in fact limit campaign-related advocacy to the four months surrounding elections, or does substantial election-related communication occur outside that window? Do congressional, senatorial, and presidential races—all covered by this rule—occur on the same cycle, or should different rules apply to each?” *Shays Appeal*, 414 F.3d at 102.

In the NPRM, the Commission specifically requested that commenters submit empirical data showing the time period before an election during which

campaign communications generally occur. NPRM at 73949. None of the commenters on this rulemaking provided empirical data in response to the Commission’s request. One joint comment did provide, however, a compilation of selected campaign advertisements run before certain elections that took place during several recent election cycles.

The Commission held a public hearing on this rulemaking on January 25–26, 2006, at which eighteen commenters testified. At the close of the hearings, the Commission still had not received any empirical data regarding the timing of campaign advertisements.

Therefore, the Commission is issuing this Supplemental Notice of Proposed Rulemaking (“SNPRM”) to invite comment on data that the Commission has now licensed from TNS Media Intelligence/CMAG. These data, which can be accessed from the Commission’s Web site at [http://www.fec.gov/law/law\\_rulemakings.shtml#coordinated](http://www.fec.gov/law/law_rulemakings.shtml#coordinated), provide information regarding television advertising spots run by Presidential, Senate, and House candidates during the 2004 election cycle. The Commission has also provided graphical representations of these data, which are also available at this Web site address.

This SNPRM also re-opens the comment period for this rulemaking. The Commission seeks additional comment, in light of the information presented by these data, on the issues and questions raised in the NPRM regarding the content prong time frame. See NPRM at 73948–52. Comments are due on or before March 22, 2006.

Dated: March 8, 2006.

**Michael E. Toner,**

*Chairman, Federal Election Commission.*

[FR Doc. 06–2551 Filed 3–14–06; 8:45 am]

**BILLING CODE 6715–01–P**

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 900, 917, 925, 930, 931 and 934

[No. 2006–03]

RIN 3069–AB30

#### Excess Stock Restrictions and Retained Earnings Requirements for the Federal Home Loan Banks

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing to add to its regulations provisions that would limit the amount of excess stock that a Federal Home Loan Bank (Bank) can have outstanding and that would prescribe a minimum amount of retained earnings for each Bank. The proposed amendments also would prohibit a Bank from selling excess stock to its members or paying stock dividends, and restrict a Bank's ability to pay dividends when its retained earnings are below the prescribed minimum.

**DATES:** The Finance Board will accept written comments on the proposed rule on or before July 13, 2006.

*Comments:* Submit comments by any of the following methods:

E-mail: [comments@fhfb.gov](mailto:comments@fhfb.gov).

Fax: 202-408-2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at [comments@fhfb.gov](mailto:comments@fhfb.gov) to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Rule: Excess Stock Restrictions and Retained Earnings Requirements for the Federal Home Loan Banks. RIN Number 3069-AB30. Docket Number 2006-03.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at <http://www.fhfb.gov/Default.aspx?Page=93&Top=93>.

**FOR FURTHER INFORMATION CONTACT:**

Scott L. Smith, Associate Director, [smiths@fhfb.gov](mailto:smiths@fhfb.gov) or 202-408-2991; Anthony Cornyn, Senior Advisor to the Director, [cornyna@fhfb.gov](mailto:cornyna@fhfb.gov) or 202-408-2522; Office of Supervision; or Thomas E. Joseph, Senior Attorney-Advisor, [josepht@fhfb.gov](mailto:josepht@fhfb.gov) or 202-408-2512, Office of General Counsel. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Background**

The Federal Home Loan Bank System consists of 12 Banks and the Office of

Finance (OF). The Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1421 *et seq.* Although Banks are federally chartered institutions, they are privately owned and were created by Congress to support the financing of housing and community lending by their members (which are principally depository institutions), and as such, are commonly categorized as "government sponsored enterprises" (GSEs). *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1424, 1430(i) and 1430(j). As GSEs, the Banks are able to borrow in the capital markets at favorable rates. They then pass along this funding advantage to their member institutions—and ultimately to consumers—by providing secured loans known as advances and other financial services to member institutions at rates that the members generally could not obtain elsewhere.

The Banks and OF operate under the supervision of the Finance Board. The Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). To the extent consistent with this primary duty, the Bank Act also requires the Finance Board to supervise the Banks and ensure that they carry out their housing finance mission, remain adequately capitalized and are able to raise funds in the capital markets. *See* 12 U.S.C. 1422a(a)(3)(B). To carry out its duties, the Finance Board is empowered, among other things, "to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of [the Bank Act]." 12 U.S.C. 1422b(a)(1).

Prior to the passage of the Gramm-Leach-Bliley Act<sup>1</sup> (GLB Act) in November 1999, all Banks issued a single class of stock with a par value set at \$100. Generally, all transactions in this stock were required to occur at the par value. *See* 12 U.S.C. 1426(a) and (b)(3) (1994); 12 CFR 925.19 and 925.22(b)(2). By statute, Bank members were required to purchase and retain a minimum amount of stock equal to the greater of: (i) \$500; (ii) 1 percent of the member's aggregate unpaid principal balance of home mortgage or similar loans; or (iii) 5 percent of a member's outstanding advances. *See* 12 U.S.C. 1426(b) (1994). Further, the Bank Act did not impose specific minimum capital requirements on the Banks individually, although the Finance

Board did establish such requirements by regulation. *See* 12 CFR 966.3(a).

The GLB Act amended the Bank Act to create a new capital structure for the Bank System and to impose statutory minimum capital requirements on the individual Banks. As part of this change, each Bank must adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations. Among other things, each capital plan establishes stock purchase requirements that set the minimum amount of capital stock a Bank's members must purchase as a condition of membership and of doing business with the Bank. *See* 12 U.S.C. 1426(c)(1); 12 CFR 933.2(a).

Under the new capital structure, Banks may issue either Class A or Class B stock or both. Class A stock is defined as stock redeemable in cash and at par six months following submission by a Bank member of written notice of its intent to redeem such stock, and Class B stock is defined as stock redeemable in cash and at par five years following submission of a member's written notice of its intent to do so. *See* 12 U.S.C. 1426(a)(4)(A). A Bank must establish in its capital plan the classes of stock that it intends to issue, the par value of such stock, and other rights associated with this new stock. *See* 12 U.S.C. 1426(c)(4); 12 CFR 933.2. Any transactions in Class A or Class B stock, whether involving issuance, redemption, repurchase or transfer of such stock, must be at par value. *See* 12 CFR 931.1 and 931.6.

The GLB Act also requires each Bank to meet certain minimum capital requirements once the Bank converts to the new capital structure. Under these requirements, a Bank must maintain "permanent capital" in an amount sufficient to cover the credit risk and market risk to which it is subject, with the market risk being based on a stress test established by the Finance Board.<sup>2</sup> By regulation, the Finance Board also requires a Bank to hold sufficient permanent capital to meet an operations risk charge. *See* 12 CFR 932.3. *See also* Final Rule: Capital Requirements for the Federal Home Loan Banks, 66 FR 8262, 8299-8300 (Jan. 30, 2001) (explaining reasons for operations risk capital charge) (*hereinafter* Final Capital Rule). The GLB Act also requires the Banks to hold sufficient "total capital" to comply with both a "weighted" and

<sup>2</sup> *See* 12 U.S.C. 1426(a)(3)(A); 12 CFR 932.3. Permanent capital is defined by statute to include the amounts paid-in for Class B stock plus the retained earnings of the Bank, where retained earnings are determined in accordance with generally accepted accounting principles (GAAP). *See* 12 U.S.C. 1426(a)(5)(A).

<sup>1</sup> Public Law 106-102, 133 Stat. 1338 (November 12, 1999).

“unweighted” minimum leverage requirement.<sup>3</sup>

To date, 11 of the 12 Banks have implemented their capital structure plans and converted to the new capital structure established by the GLB Act. The pre-GLB Act stock purchase and retention requirements will continue to apply to the members of the remaining Bank until the Bank implements its capital plan and issues its new capital stock.<sup>4</sup>

## II. Proposed Rule Amendments

### A. Introduction

The proposed amendments would restrict the amount of excess stock that a Bank can accumulate and keep outstanding and would establish a required minimum level of retained earnings for each Bank. These changes are being proposed for prudential reasons to address the Finance Board's concerns that some Banks increasingly use excess stock to capitalize assets that are long term in nature and not readily saleable, such as acquired member assets (AMA), or that are not mission related, and that the Banks' current levels of retained earnings are not adequate to protect against potential impairment of the par value of the Banks' capital stock.<sup>5</sup>

<sup>3</sup> See 12 U.S.C. 1426(a)(2); 12 CFR 932.2. The statute defines total capital to include a Bank's permanent capital, plus the amounts paid-in by members for Class A stock, any general allowances for losses (if consistent with GAAP), and any amounts determined by the Finance Board by regulation to be available to absorb losses. See 12 U.S.C. 1426(a)(5)(B). The “weighted” minimum leverage requirement is calculated by multiplying a Bank's permanent capital by a factor of 1.5 and adding the other elements of total capital to this result, and requires each Bank to maintain a ratio of “weighted” total capital to total assets of at least 5 percent. When the leverage ratio is calculated without weighting permanent capital, each Bank must maintain a ratio of total capital to total assets of at least 4 percent. See 12 U.S.C. 1426(a)(2); 12 CFR 932.2.

<sup>4</sup> See 12 U.S.C. 1426(a)(6). The regulatory leverage requirement in § 966.3(a) also continues to apply to a Bank until it implements its capital plan and complies with the minimum capital requirements in the GLB Act. See 12 CFR 931.9(b)(1). The one Bank that has not yet converted to the new capital structure, however, is operating pursuant to a written agreement with the Finance Board, which requires the Bank to hold capital in excess of the amount set forth in § 966.3(a). See 2005–SUP–01 (Oct. 18, 2005). (2005–SUP–01 is available electronically in the Finance Board's “FOIA Reading Room” under “Supervisory Actions”: <http://www.fhfb.gov/Default.aspx?Page=59&Top=4>).

<sup>5</sup> Among other considerations, a Bank's capital stock could be deemed impaired if losses have depleted a Bank's current income and retained earnings and resulted in “negative” retained earnings. Capital stock impairment is not necessarily indicative of capital insolvency or capital inadequacy. In fact, a Bank could exceed all its minimum capital requirements and still have capital stock that is impaired.

To enforce these proposed limitations, the amendments are proposing to restrict the amount of dividends that a Bank could pay whenever the Bank is not in compliance with the minimum retained earnings requirements, and to prohibit the Banks from issuing dividends in the form of stock. These changes principally would be incorporated into new part 934, which the Finance Board is proposing to add to current subchapter E of its regulations. Conforming changes are also being proposed to other parts of the Finance Board's regulations. The Finance Board emphasizes that the proposed excess stock requirements, the minimum retained earnings requirements and the related dividend limitations would apply to all Banks, whether or not the Bank has implemented its capital plan and converted to the new capital structure mandated by the GLB Act.

### B. Excess Stock Limitation

#### 1. Reasons for Proposing the Excess Stock Limitations

Excess stock is any Bank capital stock owned by an institution greater than the minimum amount that it is required to hold under a Bank's capital plan, the Bank Act or Finance Board regulations as a condition of becoming a member of, or of obtaining and maintaining advances or other transactions with, the Bank.<sup>6</sup> Generally, excess stock may be created in three ways: (1) When stock originally held to fulfill a membership or activity-based stock purchase requirement is no longer needed because that requirement has decreased; (2) through a Bank's payment of dividends in the form of shares of stock rather than in cash; and (3) by direct purchase of excess stock by a member.<sup>7</sup>

<sup>6</sup> While Bank stock generally is held only by members of the Bank, former members may also continue to hold stock for a limited period of time after their membership terminates. A non-member institution also may come into possession of Bank stock if it acquires a Bank member (whose membership would terminate upon its consolidation into the non-member institution), and may continue to hold that stock for a limited period of time and for limited purposes. Stock held by former members or other institutions also may be categorized as either required or excess stock. For example, under Finance Board regulations, any indebtedness or other transactions that were outstanding at the time an institution's membership terminated may be liquidated in an orderly fashion as determined by the Bank. Under Finance Board rules, however, Bank stock must continue to be held to support such indebtedness or transactions during the period of orderly liquidation and until the indebtedness or other transactions are paid off or otherwise terminated. See 12 CFR 925.29. While these non-member institutions may hold Bank stock under limited circumstances, they may not enter into any new transactions with the Bank.

<sup>7</sup> Finance Board rules currently allow a member to purchase excess stock so long as “such purchase

Banks, in their sole discretion, have the right to buy back or repurchase a member's excess stock, subject to specific limitations. See 12 U.S.C. 1426(e)(1); 12 CFR 925.22(b)(2) and 931.7(b). These limitations include a restriction that prevents a Bank from repurchasing any excess stock if, after the repurchase, the Bank would fail to meet any of its minimum regulatory capital requirements or the member would no longer meet any of its stock purchase requirements.

Historically, the Banks usually have repurchased excess stock from members when requested to do so, although other aspects of the Banks' policies on excess stock may differ. In this respect, some Banks specifically have limited the amount of excess stock that members can hold, or periodically have repurchased excess stock to keep the total outstanding amounts of excess stock low. Other Banks do not implement such limits or may actively encourage member investment in excess Bank stock. Thus, the amount of excess stock outstanding at each Bank has tended to vary both in absolute value and as a percentage of the Bank's total capital base.

System-wide, as of December 31, 2005, the Banks had approximately \$7.4 billion in excess stock outstanding. This equaled about 16 percent of the Banks' combined total capital of \$46 billion. As a comparison, as of December 31, 2005, the Banks collectively had about \$36.1 billion in required stock outstanding and \$2.5 billion in retained earnings. These amounts equaled, respectively, approximately 78 percent and 5 percent of the Bank System's total capital base. For individual Banks, the amount of excess stock varied widely at the end of 2005, from zero at one Bank to a high of \$2.3 billion at another Bank. At the end of 2005, four Banks had excess stock in amounts that equaled more than one percent of their individual total assets.

Undue reliance on excess stock by a Bank to meet minimum capital requirements and to capitalize its balance sheet activities can raise both safety and soundness and public policy issues. From a safety and soundness perspective, the fact that most Banks have traditionally honored in a timely fashion a member's request to have its excess stock repurchased could give rise to capital instability, if a Bank were to experience large-scale requests to

is approved by the member's Bank and the laws under which the member operates permit such purchase.” 12 CFR 925.23. As discussed later in the preamble, the Finance Board is proposing to amend its rules and to prohibit the purchase of excess stock in the future.

repurchase stock in a short period of time. These problems could be compounded if a Bank uses excess stock to capitalize investments that cannot readily be liquidated, which could create difficulties for a Bank to shrink its balance sheet safely and easily to meet these repurchase requests.

A Bank's refusal or inability to repurchase excess stock in a timely fashion also could have consequences for members' confidence in the Bank System, especially in the long-term, because members have viewed Bank excess stock as a fairly liquid investment. It also could affect how members' regulators view Bank stock for capital or other purposes and thereby affect the value of members' investment in the Bank System. To the extent that the members' confidence in the System is shaken or they view the value of their investment as declining, members could decide to withdraw from a Bank or cease doing business with a Bank, thereby undermining a Bank's financial stability.

The Banks also may use excess stock to generate earnings through arbitrage of the capital markets. In this regard, the Banks' GSE status permits them to borrow funds at favorable rates that can then be invested in money market securities and other non-core mission assets to earn arbitrage profits. While this activity benefits the Banks and its membership, it does not necessarily further the Bank System's public purpose. It can also result in the Banks' being larger and holding more debt than otherwise would be necessary if their balance sheets were more focused on mission-related activities. Thus, from a public policy perspective, this arbitrage activity can have both safety and soundness and mission implications.

Excess stock can play a role in these arbitrage activities by providing the Banks a means to capitalize the non-mission investments, without necessarily forcing all members to hold more required stock or requiring the Bank to build retained earnings. This is especially true if a Bank's membership as a whole would be unwilling either to hold greater amounts of required stock or to accept lower dividends to build retained earnings in order to capitalize these investments. While the Finance Board currently limits the amount of mortgage backed securities in which a Bank can invest to 300 percent of a Bank's capital, other types of non-mission investments are not subject to any limitation.

## 2. Description of the Proposed Amendments Regarding Excess Stock

*Prohibition on the Sale of Excess Stock.* Under the proposed amendments, a Bank would be prohibited from selling stock to members, or institutions in the process of becoming members, that would be excess stock at the time of the sale. To promulgate this change, the Finance Board is proposing to revise § 925.23 of its regulations, which currently allows members to purchase excess stock if certain conditions are met. The Finance Board intends that the proposed prohibition on the purchase of excess stock would be interpreted narrowly and would only prevent the sale of excess stock by the Banks and would not affect how other transactions are treated under Finance Board rules.

Thus, the proposed revisions to § 925.23 would not alter any right of a member to continue to hold stock once the stock was no longer required as part of a membership or activity based stock purchase requirement, albeit such rights would be subject to Bank's complying with the limits in the proposed rule, a Bank's discretion to repurchase excess stock at any time and to any applicable provisions in a Bank's capital plan. Nor would the proposal prevent a member from acquiring excess stock in a transfer from another institution as long as the transaction was consistent with applicable provisions in the Bank Act, Finance Board rules and a Bank's capital plan. The proposal also would not affect how stock may be transferred as part of a member's consolidation into another institution.

The Finance Board is also proposing a conforming change to § 931.2(a) to prohibit a Bank from selling stock to members or institutions in the process of becoming a member that would be excess stock at the time of the sale. This proposed revision is intended to be similar in scope to that proposed for § 925.23 and would affect only the sale of excess stock by a Bank and not affect current practices or rules with regard to other transactions.

*Overall Excess Stock Limitation and Stock Dividend Prohibition.* The other major limitations on excess stock are being proposed in new § 934.1. Under proposed § 934.1(a), the aggregate amount of excess stock that could be outstanding at a Bank would be limited to one percent of a Bank's total assets. The 1 percent limit would be consistent with requiring the Banks to capitalize their mission assets with required stock while allowing them to capitalize their mortgage backed securities portfolio (limited to no more than 300 percent of

a Bank's capital) and a liquidity portfolio, equal to what has been the historic average of around 10 to 12 percent of total assets, with excess stock. In the past, Banks have been able to operate along these lines without running into the types of potential difficulties that are of concern to the Finance Board and that it believes could arise from undue reliance on excess stock.

Proposed § 934.1(b) would prohibit a Bank from declaring or paying a dividend in the form of stock. Stock dividends, along with the direct sale of excess stock to members, are the main causes of growth in excess stock on the Banks' balance sheets. Thus, the Finance Board believes it would be prudent to address the question of whether the Banks should be able to issue stock dividends in the future as part of this proposed rulemaking. The Finance Board also believes that it would be difficult for Banks to issue stock dividends on other than a sporadic basis and still comply with the proposed limit on excess stock. The Finance Board therefore is proposing to prohibit the issuance of stock dividends. The Finance Board specifically requests comment on whether the proposed prohibition on the issuance of stock dividends is necessary, especially in light of the overall limit on outstanding excess stock that is being proposed.

*Non-Compliance with Excess Stock Limit.* While the Finance Board intends the Banks to maintain compliance with the one percent excess stock limit at all times, proposed § 934.1(c) would require a Bank specifically to report to the Finance Board whenever the Bank is not in compliance with the limit as of the close of the last business day of any quarter.<sup>8</sup> After reporting the violation to the Finance Board, a Bank would have 60 days from the end of the quarter in which the reported violation occurred to either certify that it is again in compliance with the excess stock limitation or develop an excess stock compliance plan, acceptable to the Finance Board, that would demonstrate how the Bank would bring itself into compliance with the regulatory excess stock limits. The Finance Board believes that a 60 day period would be adequate for a Bank either to develop a suitable compliance plan or to rectify minor or readily-correctable violations of the

<sup>8</sup>Banks that repeatedly violate the one percent excess stock limit during a quarter could be required to develop an excess stock compliance plan, if the Finance Board believed the Bank was attempting to manipulate excess stock levels to comply with the limits as of the last day of the quarter but not as a general matter throughout the quarter.

limits. Banks that report a violation of the excess stock limitation but are already operating under an acceptable excess stock compliance plan would, of course, not need to develop a new plan.

*Definitions.* The Finance Board is also proposing to make a conforming revision to the current definition of "excess stock" and to move that definition from § 930.1 to § 900.2 of its rules. "Excess stock" currently is defined with reference to the minimum investment requirements set forth in a Bank's capital plan. See 12 CFR 930.1 and 931.3. The definition, therefore, only is applicable to Banks that have implemented their capital plans and converted to the new capital structure mandated by the GLB Act. The Finance Board intends, however, that the proposed excess stock limitations would apply to a Bank whether or not it has implemented its capital plan.

The proposed revision would define excess stock with reference to any minimum investment in capital stock required under a Bank's capital plan, the Bank Act or Finance Board rules, as applicable. This change would allow the definition to apply whether or not a Bank has converted to the new capital structure. The proposed revision also would make clear that any outstanding stock can be excess stock whether it is held by a member, a former member or another institution that may have acquired such stock through a merger or consolidation with a member. The current definition of excess stock only refers to stock "held by a member." Further, under the proposed definition of "excess stock," all stock held by an individual institution that exceeds its minimum stock purchase requirement would be counted as excess, regardless of whether the Bank's capital plan would allow such stock to be "loaned" or otherwise used to capitalize the activity of other members.

The Finance Board also proposes to move the definition to § 900.2 so that the definition would be applicable to all parts of its regulations, including the proposed revised § 925.23. Section 930.1, where the current definition of "excess stock" is located, by contrast, only applies to terms used in subchapter E.

### 3. Legal Authority

The Bank Act provides the Finance Board with broad authority to take actions or promulgate regulations as are necessary to supervise the Banks and to ensure that they operate in a safe and sound manner and carry out their housing finance mission. See 12 U.S.C. 1422a(a)(3) and 1422b(a). Given the prudential and mission-related purposes

in proposing this rule, the Finance Board believes that the proposed limitations on the issuance and holding of excess stock are within the bounds of these authorities.

Further, at least with regard to the Class A and Class B stock issued under the GLB Act amendments to the Bank Act, the Finance Board is specifically authorized to adopt regulations that, among other things, permit the Banks "to issue, with such rights, terms and preferences not inconsistent with this [Bank] Act and the regulations issued hereunder" and "prescribe the manner in which the stock of a [Bank] may be sold." 12 U.S.C. 1426(a)(4). The proposed prohibitions on the sale of excess stock and issuance of stock dividends would fall within the scope of this authority.

### C. Retained Earnings Requirement and Dividend Limitations

#### 1. Reasons for Proposing the Retained Earnings and Dividend Requirements

A Bank's retained earnings serve a variety of related functions. Most significantly, they provide a cushion to absorb losses, help prevent capital stock impairment by protecting the par value of Bank stock, act as a source of funds to maintain dividend payments in the event of temporary shortfalls in Bank earnings, and provide a source of capital to fund growth. Given these functions, retained earnings afford a margin of protection to both the shareholders and the creditors of a Bank.

The Banks, however, tend to distribute a larger percentage of their net income as dividends when compared to other financial institutions, and as a consequence have lower levels of retained earnings than other financial institutions of comparable size. In part, these lower levels of retained earnings may reflect the difficulties that Bank members have in realizing tangible pecuniary benefits from higher levels of retained earnings given that all transactions in Bank stock occur at par value.<sup>9</sup> Thus, instead of being able to capture the value of higher levels of retained earnings in the price at which their stock will be redeemed, repurchased or transferred, members must forfeit any interest in the retained

earnings (above the par value of the stock) associated with such shares upon undertaking any of these stock transactions.

While the Banks and members may have incentives to keep the level of retained earnings low, a level of retained earnings that is insufficient to protect the par value of Bank stock from losses also can have serious consequences, if those losses are realized and the par value of the stock becomes impaired. In fact, impairment could affect the willingness of the members to enter into transactions with the Bank as well as trigger regulatory restrictions that can prevent or restrict the Bank from paying dividends or from repurchasing or redeeming capital stock.

Whether or not a Bank has converted to the new capital structure mandated by the GLB Act, members must purchase new shares of Bank stock at par value. See 12 CFR 925.19 and 931.1; 12 U.S.C. 1426(a) (1994). Any stock purchased at par value when the par value of the capital stock is impaired will result in an immediate economic loss to the acquirer. Moreover, if the members were required to record Bank stock on their books at its impaired value, any purchase would also result in an immediate financial loss to the members. Under these circumstances, members could well be reluctant to purchase additional stock needed to carry out new transactions with the Bank or to maintain minimum membership requirements, negatively affecting demand for Bank products and the attractiveness of membership in the Bank System.

Impairment of the par value of a Bank's capital stock would also trigger certain regulatory restrictions on various Bank transactions, which could further reduce the value of membership in a Bank. First, Finance Board rules allow a Bank's board of directors to declare or pay a dividend "only if such payment will not result in the projected impairment of the par value of the capital stock." 12 CFR 917.9. This provision would prevent payment of dividends during periods of stock impairment.<sup>10</sup> More generally, because a Bank can only pay dividends from current net earnings or previously retained earnings a Bank would not have a source of funds to pay a dividend whenever it is experiencing losses that

<sup>9</sup> See 12 U.S.C. 1426(a)(4); 12 CFR 931.1 and 931.6. The history of the Bank System may also play a role in the Banks reluctance to build retained earnings. In the late 1980s, the Competitive Equality Banking Act of 1987 and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) required the Banks to pay approximately \$3.1 billion from their retained earnings to capitalize the Financing Corporation (FICO) and the Resolution Funding Corporation (REFCORP). See 12 U.S.C. 1441(d) and 1441b(e).

<sup>10</sup> As part of this proposed rulemaking, the Finance Board is proposing to move the provision prohibiting payment of dividends when capital stock is impaired or when such payment would result in the projected impairment of Bank stock from § 917.9 to new § 934.4 of its rules.

eliminated its retained earnings. See 12 U.S.C. 1436(a).

Statutory restrictions put in place by the GLB Act would also prevent a Bank from redeeming or repurchasing capital stock without the written permission of the Finance Board if the Bank has incurred or is likely to incur losses that will result in charges against the capital of the Bank.<sup>11</sup> The Finance Board has defined the phrase “charge against capital of the Bank” to track criteria set forth in the Industry Audit Guide published by the American Institute of Certified Public Accountants (AICPA) for evaluating impairment of Bank stock. See Proposed Rule: Capital Requirements for Federal Home Loan Banks, 66 FR 41462, 41465–66 (August 8, 2001) (citing AICPA “Industry Audit Guide,” §§ 5.97–5.101 (May 1, 2000)); Final Rule: Capital Requirements for Federal Home Loan Banks, 66 FR 54097, 54106 (October 26, 2001); 12 CFR 930.1.

While harder to predict, an incident of capital stock impairment may also result in market reactions that could affect the Bank’s cost of doing business. For example, impairment of the par value of the Bank’s capital stock could lead to a downgrade in the credit rating of the Bank that, in turn, could raise the rates at which counterparties would be willing to enter into hedging transactions with the Bank. Further, given that there has not been an incident of capital impairment at a Bank, a future incident of impairment could affect the costs of funds for the Bank System, at least in the short term, as the market attempts to sort out the potential consequences of the event.

In August 2003, the Finance Board’s Office of Supervision undertook to get the Banks to address concerns with their relatively low level of retained earnings and the Banks’ overall approaches to retained earnings by issuing Advisory Bulletin 2003–AB–08, *Capital Management and Retained Earnings* (August 18, 2003). The Advisory Bulletin noted the Banks’ low levels of retained earnings when compared to those held by large banks and thrifts. It then called on each Bank, at least

<sup>11</sup> See 12 U.S.C. 1426(f). Under the GLB Act provisions, if the Finance Board gives permission for repurchases or redemptions while capital stock is impaired, such transactions nonetheless would occur at the par value of stock. See 12 U.S.C. 1426(a)(4)(A); 12 CFR 931.7. Allowing for such transaction, thus, would be problematic if the impairment were severe.

The provisions in the Bank Act prior to the GLB Act amendments required the repurchase of stock to occur at the impaired value of stock rather than at the par value whenever the Finance Board found “that the paid-in capital of a \* \* \* Bank [was] or [was] likely to be impaired as a result of losses in or depreciation of the assets held.” 12 U.S.C. 1426(e) (1994); 12 U.S.C. 1426(b)(3) (1994).

annually, to assess the adequacy of its retained earnings under a variety of economic and financial scenarios. The Advisory Bulletin also required each Bank to adopt a retained earnings policy, which was to include a target level of retained earnings. Notwithstanding the requirements in the Advisory Bulletin, the Finance Board has found that there is a general lack of consistency among the Banks’ retained earnings policies and target retained earnings levels. The Finance Board also believes that the retained earnings policies adopted by the Banks often lacked clarity and failed to address key risk elements cited in the Advisory Bulletin.<sup>12</sup> Thus, the Finance Board continues to have concerns with how the Banks are addressing issues related to their retained earnings.

The Finance Board also has concerns because of recent incidents at some Banks that raise questions about the adequacy of retained earnings. For example, one Bank suffered a credit downgrade of certain of its investment securities that were backed by manufactured housing loans. As a result, the Bank sold the assets at a loss of nearly \$189 million. After experiencing the loss, the Bank had to suspend the payment of dividends for a time to rebuild its retained earnings. Other Banks in recent years have experienced steep declines in quarterly earnings or recorded actual quarterly losses. Of these Banks, one currently has suspended payment of dividends in an effort to manage reduced earnings and expected losses over the near term, and two Banks have suspended repurchases of stock. Such incidents further underscore the need for Banks to hold sufficient retained earnings to protect against such events. This is especially true in light of the fact that the increase

<sup>12</sup> The Advisory Bulletin stated that:  
\* \* \* each \* \* \* Bank should specifically assess the adequacy of its retained earnings in light of alternative possible future financial and economic scenarios. The scenarios should include optimistic, pessimistic and most likely forecasts. At the minimum, the analysis should show the expected change in retained earnings that would result from immediate parallel shifts in the yield curve. As a matter of sound practice, the analysis should be supplemented with non-parallel rate shocks such as flattening and a steepening of the yield curve. It would also be useful to analyze scenarios that highlight the effect on retained earnings of other key factors, including changes in prepayment speeds; changes in interest-rate volatility; changes in basis spread between \* \* \* Bank funding costs and Treasury rates, mortgage rates and LIBOR; and changes in the credit quality of the \* \* \* Bank’s investment portfolio.

Advisory Bulletin 2003–AB–08, at p. 2. This Advisory Bulletin can be obtained electronically from the Finance Board’s Web site by accessing “Advisory Bulletins” in the “FOIA Reading Room”: <http://www.fhfb.gov/Default.aspx?Page=59&Top=4>.

in the Banks’ holdings of mortgage assets over the last few years has resulted in the Banks’ having to manage arguably riskier balance sheets than had previously been the case. Changes in accounting rules and in the make up of the Banks’ balance sheets have also added to the potential income volatility that may be experienced by the Banks.<sup>13</sup>

To help to ensure that each Bank’s level of retained earnings adequately reflects its risk profile and that there is greater consistency among the Banks’ retained earnings policies, the Finance Board is proposing a minimum retained earnings requirement. The minimum target levels, and the associated proposed restrictions on the Banks’ ability to pay a dividend when their retained earnings are below their minimum targets are intended to encourage the Banks to build retained earnings to adequate levels. The Finance Board believes that its proposed regulatory changes would reduce the risk that losses could deplete a Bank’s retained earnings and cause the impairment of the par value of a Bank’s stock.

The Finance Board recognizes that capital stock impairment is not necessarily indicative of capital inadequacy, and its purpose in proposing the rule change is not necessarily to require the Banks to increase their overall levels of capital. The Finance Board believes that its capital rules and the Banks’ overall capital levels remain adequate and the risk of capital insolvency at any Bank in the foreseeable future is *de minimis*. The proposed rule, however, does aim to change the composition of capital and to ensure that the Banks hold retained earnings in amounts that would significantly reduce the risk that losses at a Bank would result in capital stock impairment. The Finance Board believes that the potential operational and financial consequences of capital stock impairment for both the Bank and the members justifies addressing the Banks’

<sup>13</sup> An important accounting change contributing to earnings volatility has been the Statement of Financial Accounting Standards (FAS) No. 133, *Accounting for Derivative Instruments and Hedging Activities*, which contributes to higher earnings volatility due to its asymmetric accounting for different financial instruments. On January 25, 2006, the Financial Accounting Standards Board (FASB) released an exposure draft, “The Fair Value Option for Financial Assets and Financial Liabilities, Including an Amendment of FASB Statement No. 115.” The changes proposed in the exposure draft would allow a Bank to designate certain hedged assets to be carried at fair value and thereby eliminate much of the asymmetric accounting of derivative instruments and held-to-maturity hedged items. The proposed changes would allow entities to re-designate the carrying status of existing assets.

levels of retained earnings as a safety and soundness matter.

## 2. Description of the Proposed Amendments Regarding Retained Earnings

*Minimum Retained Earnings Requirement.* Under proposed § 934.2(a), each Bank would be required to achieve and maintain a minimum level of retained earnings, known as the Retained Earnings Minimum or REM. Each Bank would calculate its REM each calendar quarter. The REM calculated for a quarter would be used to determine whether the dividend restrictions proposed in § 934.3 would apply. For example, the REM calculated in the first quarter of the year would determine whether any restrictions would apply to the dividend that would be paid based on the Bank's first quarter's results. This would be true even though under other restrictions being proposed as part of this rulemaking, a Bank would not be able to declare or pay its first quarter dividend until after the beginning of the second quarter. If, after adjusting the retained earnings for any dividend that the Bank intends to pay for that quarter, the Bank's retained earnings would be below its REM, the Bank must assure that the intended dividend conforms to the limitations set forth in proposed § 934.3.<sup>14</sup>

As proposed in § 934.2(b), the REM would equal \$50 million plus 1 percent of a Bank's non-advance assets. Non-advance assets would equal the daily average of the Bank's total assets less the daily average of its advances, as recorded in the calendar quarter immediately preceding the date of the calculation. Thus, a Bank's non-advance assets for the REM calculation done for the second quarter of a year would equal that year's first quarter's daily average of the Bank's total assets less the first quarter's daily average of the Bank's advances.

The Finance Board believes that the proposed REM formula would provide a straightforward, consistent and predictable means to establish minimum retained earnings

<sup>14</sup> Thus, to calculate its retained earnings for a quarter for purposes of determining compliance with the rule, the Bank would subtract from its retained earnings balance as of the close of the quarter (*i.e.*, its previous retained earnings plus its current net earnings) the amount of the dividend it would like to pay for the quarter. The amount of the dividend should include any payments on stock subject to FAS No. 150. *See* n.17. If the resulting amount from this calculation is less than the Bank's REM for that quarter, the Bank would have to verify that it first complied with all limitations proposed in § 934.3 in order to declare and pay its intended dividend.

requirements across the Banks. Basing the REM on non-advance assets would provide a broad approximation of the potential risks faced by a Bank given that risk of losses from advances is very low and the greatest risk of credit or market losses would arise from a Bank's non-advance assets.

A number of provisions of the Bank Act protect the Banks from potential credit losses associated with advances.<sup>15</sup> First, the Bank Act requires that a member fully collateralize any advances by specific types of high quality collateral. *See* 12 U.S.C. 1430(a)(3). In addition, under the Bank Act, a Bank has a lien on any Bank stock owned by its member against any indebtedness of the member, including advances, to a Bank.<sup>16</sup> Thus, should a member default on an advance, the Bank has a variety of statutory means to assure that the defaulting member absorbs any potential credit losses so that the par value of other members' stock would not be affected. Such statutory protections are not necessarily applicable to other assets on the Banks' balance sheets.

Moreover, based on the recent credit losses and financial difficulties experienced by individual Banks, the Finance Board believes that the level of retained earnings required under the proposed formula would be sufficient to provide reasonable protection against capital impairment while not unduly burdening the Banks. In developing a measure for a retained earnings minimum based on the risk of the Banks, we explored a number of risk measures, but determined that use of the more straightforward approach being proposed simplified the application of the proposed requirement and provided a robust approximation of the amount of retained earnings needed given potential losses faced by a Bank, as calculated under the alternative analysis.

The alternative analysis relied on two risk measures that are commonly available for all Banks, one to represent credit risk and the other to represent market risks going forward. First, for credit risk, the analysis used the Internal Ratings-Based Approach from the Basel II Accord that would apply to large and/or complex financial

<sup>15</sup> A Bank has never suffered a credit loss on an advance to a member, and the Banks also have a long history of effectively managing the interest rate and market risks associated with their advances.

<sup>16</sup> *See* 12 U.S.C. 1430(c). Further, under the Bank Act as in effect prior to its amendment by the GLB Act or under the capital plans of the 11 Banks that have already implemented the new capital structure, a member must buy stock to capitalize any advances made to it by the Bank.

institutions. *See* Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards, A Revised Framework*, pp. 48–139 (November 2005); Basel Committee on Banking Supervision, *Consultative Document, the New Basel Capital Accord*, pp. 38–120 (April 2003). The Basel II methodology assigns a capital charge to credit exposures based on the credit rating, maturity and the loss given default for the exposure, assuming a credit risk horizon of one year and a particular target rating for the institution holding the exposure. In applying the Basel II approach to the Banks, the analysis assumed a given Bank would maintain a target rating of AA/Aa. This approach to measuring credit risk capital is considered state of the art for standardized measures. In measuring the credit risk for the Banks, this Basel II measure was applied to all credit exposures except advances. Advances were excluded because the Banks have never had a credit loss associated with an advance to a member institution and because of the statutory protections against credit losses on advances provided under the Bank Act. *See* 12 U.S.C. 1430(a), (c) and (e).

Second, market risks were estimated based on market value of equity losses given parallel interest rate shocks of  $+/- 50, 100$  and  $200$  basis points. The Banks already provide this information to the Finance Board, and currently, these are the only measures of market risk going forward that are available for all Banks on a consistent basis. The measure of market risk incorporated into the analysis equaled the simple average of the worse cases for the up and down shocks.

Finally, the regression analysis indicated that the sum of these credit and market risk measures could be reasonably well approximated by \$50 million plus 1 percent of non-advance assets. This more straightforward formula was deemed more appropriate than using a direct measure because it eliminates concerns about model error at the Bank level, and is more transparent and easy to monitor and apply over time.

As proposed, the rule also would provide the Finance Board with the flexibility to address specific problems or events at individual Banks by requiring a Bank to hold levels of retained earnings that would be higher than that calculated under the formula, if warranted for safety and soundness reasons. This flexibility would allow the Finance Board to refine a Bank's REM if a Bank is more exposed to credit or prevailing market risks than would be

captured by the formula, or if unique operational situations at a particular Bank need to be addressed. Addressing these types of issues on a case-by-case basis would also avoid having to develop a more complicated and complex method for calculating the REM than that being proposed.

The Finance Board also does not believe that the proposed requirements would be unduly burdensome for the Banks. In this respect, based on estimates of the Banks' earnings and other relevant data, the Finance Board believes that if the proposed retained earnings requirement had become effective in the fourth quarter of 2005, one Bank would have been able to comply with its REM as of December 31, 2005. Further, the Finance Board estimates that based on a fourth quarter 2005 effective date for the proposed retained earnings requirement, the other Banks would have been able to meet their REMs in line with the following schedule: one Bank in early 2006; another two Banks before the end of 2006; five more Banks by the end of 2007; and two more Banks by mid 2008. The earnings of the remaining Bank currently are unusually low and, given the Bank's current earnings outlook, it is difficult to estimate when the Bank would be able to meet the proposed requirements.

*Dividend Restriction Based on Non-Compliance with REM.* Under the proposed rule, if a Bank's retained earnings balance as of the close of the quarter and after adjustment for any dividend that the Bank intends to pay for that quarter, were less than the Bank's applicable REM, the Bank would be subject to the limitations on the payment of dividends for that quarter proposed in § 934.3. The proposed rule would allow for an initial transition period during which the dividend limitation would be less strict than thereafter. The dividend limitation that would be in effect during this period is set forth in proposed § 934.3(a), while the limitation that would become effective thereafter is contained in proposed § 934.3(b).

Under proposed § 934.3(a), a Bank that is not in compliance with its REM when the rule first takes effect would be allowed a transition period until such time as the Bank first reaches or exceeds its REM. During this transition period, a Bank generally would be allowed to pay a dividend that did not exceed 50 percent of its current net earnings.<sup>17</sup> The

<sup>17</sup> In determining compliance with this provision, a Bank would be expected to include any payments made on its capital stock subject to FAS 150 in the total amount of the dividend paid out. Under FAS

proposed rule would allow a Bank to pay a dividend in excess of this 50 percent limit only with the Finance Board's prior approval. Among the factors that the Finance Board would consider in deciding whether to grant any request under this provision would be the size of the gap between the Bank's level of retained earnings and its REM, the earnings outlook for the Bank, the Bank's risk profile and any recent examination findings related to Bank's risk management, corporate governance and other relevant areas that could affect the Bank's ability to operate in a financially safe and sound manner.

After a Bank initially complies with its REM, the dividend limitations in proposed § 934.3(b) would require a Bank to receive Finance Board permission before declaring or paying any dividend for a quarter in which the Bank no longer met its REM. In deciding whether to grant such a dividend request, the Finance Board would consider the same factors discussed above. Overall, the dividend limitations in proposed § 934.3 are intended to encourage the Banks to comply with their retained earnings targets while still allowing the Banks the flexibility to pay dividends if circumstances warrant. The Finance Board specifically invites comment on whether higher percentages for the dividend limitations than those being proposed in § 934.3 may be appropriate, keeping in mind the Finance Board's goals of encouraging the Banks to achieve their REMs in a timely fashion and maintain compliance with their REMs thereafter.

*Additional Dividend Limitations.* Proposed § 934.4 would set forth limitations on the payment of dividends that would apply to a Bank whether or not it has met its REM. First, proposed § 934.4(a) would prohibit a Bank from declaring or paying a dividend based on projected or anticipated earnings and would require a Bank to declare a dividend only after its earnings for a particular quarter had been calculated. This provision would make clear procedures that already are strongly implied given the fact that under the retained earnings proposal, a Bank would need to know its retained earnings balance as of the close of a quarter to determine whether the proposed dividend limitations apply. Thus, a Bank would need to calculate its

150, capital stock that is subject to a mandatory redemption request would be classified as a liability on the Bank's balance sheet and dividend payments made on such stock would be classified as an interest expense for accounting purposes.

As discussed below, the Finance Board also is proposing to add a definition for "current net earnings" to § 930.1.

quarterly earnings before its board of directors would be in a position to declare a dividend, even in the absence of proposed § 934.4(a).

Second, proposed § 934.4(b) would incorporate the restriction now contained in § 917.9 of the Finance Board's regulations that prohibit a Bank from declaring or paying a dividend if the par value of the Bank's stock is impaired or would be projected to become impaired after paying the dividend. The Finance Board also is proposing to make suitable conforming changes to §§ 917.9 and 931.4 to reflect the limitations on dividends proposed in Part 934.<sup>18</sup>

*Definitions.* The Finance Board is proposing to add a definition of "current net earnings" in § 930.1. Specifically, "current net earnings" would be defined as "the net income of a Bank for a calendar quarter calculated in accordance with GAAP after deducting the Bank's required contributions for that quarter to the Resolution Funding Corporation under sections 21A and 21B of the Act (12 U.S.C. 1441a and 1441b) and to the Affordable Housing Program under section 10(j) of the Act (12 U.S.C. 1430(j)) and § 951.2 of this chapter, but before declaring any dividend under section 16 of the Act (12 U.S.C. 1436)." The Finance Board believes that this proposed definition is consistent with the current method for calculating earnings for the purpose of paying dividends and, if adopted, would be consistent with the statutory restrictions set forth in section 16 of the Bank Act with regard to how to determine the Bank's current earnings for purposes of paying dividend. See 12 U.S.C. 1436(a). The Finance Board also is proposing to add a definition to § 930.1 that "Retained Earnings Minimum or REM means the minimum amount of retained earnings a Bank is required to hold under § 934.2."

### 3. Legal Authority

The proposed amendments aim to require the Banks to hold retained earnings sufficient to protect against the impairment of their capital stock. They are in many respects a more comprehensive version of the current prohibition in § 917.9, which prohibits dividend payments if such payments result in the impairment of capital stock and which the Finance Board adopted for safety and soundness reasons in 1999. See Interim Final Rule:

<sup>18</sup> The limitations on dividends in proposed § 934.4 would be in addition to other dividend limitations set forth in the Bank Act and Finance Board rules. See, e.g., 12 U.S.C. 1426(h)(3) and 1436(a); 12 CFR 917.9 and 931.4.

Devolution of Corporate Governance Responsibilities, 64 FR 71275, 71276 (December 21, 1999); Resolution No. 2000-29 (June 22, 2000). The Finance Board believes that the more thorough approach proposed in this rulemaking is needed to address concerns that have arisen since § 917.9 was adopted in light of the change in the risk on the Banks' balance sheets and the prospects for more volatile earnings in the future.

As detailed in other parts of the preamble, impairment of a Bank's capital stock can present safety and soundness and mission problems other than ones related to immediate insolvency of a Bank. The Finance Board believes that these concerns provide adequate justification for adopting the proposed retained earnings requirement to assure that the Banks operate in a safe and sound manner and that they accomplish their statutory mission and are able to access the capital markets. Moreover, the Bank Act provides the Finance Board with authority to adopt rules to address these types of concerns. See 12 U.S.C. 1422a(a)(3) and 1422b(a)(1).

The Finance Board also believes that section 16 of the Bank Act provides an alternative source of authority to adopt the proposed requirement. Specifically, section 16 provides the Finance Board with authority to require the Banks to "establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as [it] shall require." 12 U.S.C. 1436. The provision does not limit the reasons for which the Finance Board can require the Banks to establish these additional reserves.

Section 16 states that the required reserves are to be established from net earnings of a Bank and makes a Bank's payment of a dividend subject first to funding these reserves. 12 U.S.C. 1436. Historically, reserves required under section 16 of the Bank Act were included in retained earnings of the Banks, but the use of these reserves to pay dividends was restricted. Further, the term "reserves" as used in section 16 had also been interpreted to exclude loan loss or similar type reserves that were recorded elsewhere on the Banks' balance sheets.<sup>19</sup>

<sup>19</sup> See, e.g., OGC Opinion Memo, from K. Heisler to R. Burklin; Re: "Reserves of FHLBanks," at p.2 (Dec. 9, 1942) (valuation reserves which are held against estimated losses in the value of specific assets or similar types of reserves "are not reserves within the meaning of section 16 of the \* \* \* Bank Act). This long-standing interpretation of section 16 remains consistent with the current wording of that provision. Specifically, section 16 states in relevant part that Banks may pay dividends out of "previously retained earnings or current net earnings remaining after reductions for all reserves

The requirements in section 16 that the Banks "establish such additional reserves \* \* \* as the [Finance Board] shall require" and pay dividends only "out of net earnings remaining after all reserves \* \* \* required under this [Bank] Act" have been funded date back to original Bank Act in 1932. Public Law 72-304, July 22, 1932, c. 522 sec. 16, 47 Stat. 725, 736. Under the original Bank Act, however, these reserves were in addition to the section 16 requirement that each Bank carry to "a reserve account semiannually 20 per centum of its net earnings until said reserve account shall show a credit balance equal to 100 per centum of the paid-in capital of such [B]ank," and thereafter, that each Bank add to such reserve "5 per centum of its net earnings. \* \* \*"*Id.* This was often referred to as the "legal reserve" requirement.

FIRREA amended the Bank Act to delete the provision that the Banks carry a mandated percentage of their net earnings to a reserve, and substituted the current language that a Bank "may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors." The language authorizing the Finance Board to require each Bank to establish additional reserves remained, although after FIRREA such reserves would be in addition to any that the Bank had voluntarily established.<sup>20</sup>

\* \* \* required under [section 16]." This wording indicates that section 16 reserves are funded after a Bank calculates its current net earnings but before the payment of dividends. There would be no need for section 16 to limit payment of dividends to "current net earnings remaining after reductions for all reserves \* \* \*" if the reference to "reserves" meant loan loss or similar reserves, since provisions for those types of reserves would already be considered in the calculation of net earnings. 12 U.S.C. 1436(a) (emphasis added). To read the authority provided in section 16 to refer to requiring the Banks to hold loan loss or similar reserves would violate principles of statutory construction which generally require that a statute be read to give effect, if possible to every word, clause or sentence. See Norman J. Singer, 2A STATUTES AND STATUTORY CONSTRUCTION § 46:06 (6th ed. 2000). The fact that section 16 requires the reserves to be funded from net earnings also supports the conclusion that the reserves should be part of a Bank's retained earnings. Thus, the most reasonable reading of the "additional reserves" authority in section 16 remains that it allows the Finance Board to require the Banks to maintain specific levels of retained earnings.

<sup>20</sup> FIRREA also changed section 16(a) of the Bank Act to allow after January 1, 1992, a Bank to pay dividends from "previously retained earnings or current net earnings remaining after reductions for all reserves, charge-offs, purchases of capital certificates of the Finance Corporations, and payments relating to the Funding Corporation \* \* \* have been provided for" subject to certain additional exceptions. This change was meant to account for the termination of the legal reserve requirement and allow any remaining legal reserves that were held by the Banks to be used as a source of funds for dividends. As explained by the Finance

While FIRREA eliminated the mandatory legal reserve requirement, neither the wording of the FIRREA provisions nor available legislative history suggests that Congress intended to alter either the long standing accounting treatment or interpretations with regard to reserves required under section 16—namely that they were accounted for in retained earnings and were not valuation or similar reserves—or the Finance Board's authority under this section to require the Banks to hold additional reserves. The proposed retained earnings requirement comports with this definition of what is meant by reserves under section 16, and the scope of the authority provided the Finance Board under this section would be sufficient to support the Finance Board's adopting a retained earnings rule along the lines currently proposed.

### III. Regulatory Flexibility Act

The proposed rule would apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if adopted as a final rule, would not have a significant economic effect on a substantial number of small entities.

### IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

### List of Subjects

#### 12 CFR Part 900

Community development, Credit, Federal home loan banks, Housing,

Board when it adopted rules to implement this FIRREA change to the dividend provision:

The \* \* \* Banks' retained earnings are comprised of the legal reserve, the dividend stabilization reserve and undivided profits. Since the \* \* \* Banks are prohibited from paying dividends from the legal reserve in section 16 of the Bank Act, [Finance Board rules] could not generally provide for the payment of dividends from retained earnings. Rather [they] specifically listed the two components of retained earnings from which there could be payment of dividends, namely the dividend stabilization reserve and undivided profits. Effective January 1, 1992, however, section 724 of [FIRREA] amends the Bank Act by eliminating the legal reserve in section 16 of the Bank Act. \* \* \* Thus, retained earnings shall only include the dividend stabilization reserve and undivided profits.

Proposed Rule: Dividends Paid on Federal Home Loan Bank Stock, 56 FR 59898, 59899 (Nov. 26, 1991).

Reporting and recordkeeping requirements.

*12 CFR Part 917*

Community development, Credit, Federal home loan banks, Housing, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

*12 CFR Part 925*

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

*12 CFR Part 930*

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

*12 CFR Part 931*

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

*12 CFR Part 934*

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR, chapter IX, as follows:

**PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS**

1. The authority citation for part 900 continues to read as follows:

**Authority:** 12 U.S.C. 1422b(a).

2. Amend § 900.2 by adding in alphabetical order, a defined term to read as follows:

**§ 900.2 Terms relating to Bank operations, mission and supervision.**

\* \* \* \* \*

*Excess stock* means that amount of a Bank's capital stock held by a member or other institution in excess of its minimum investment in capital stock required under the Bank's capital plan, the Act, or the Finance Board's regulations, as applicable.

\* \* \* \* \*

**PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT**

3. The authority citation for part 917 continues to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), and 1440.

4. Revise § 917.9 to read as follows:

**§ 917.9 Dividends.**

(a) A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings and only in accordance with any other applicable limitations on dividends set forth under the Act or this chapter. Dividends on such capital stock shall be computed without preference.

(b) The requirement in paragraph (a) of this section that dividends shall be computed without preference shall cease to apply to any Bank that has established any dividend preferences for one or more classes or subclasses of its capital stock as part of its approved capital plan, as of the date on which the capital plan takes effect.

(c) A Bank's board of directors may declare and pay a dividend only after the close of the quarter to which the dividend pertains and the Bank's earnings for that quarter have been calculated, and may not declare or pay a dividend based on projected or anticipated earnings.

**PART 925—MEMBERS OF THE BANKS**

5. The authority citation for part 925 continues to read as follows:

**Authority:** 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, and 1442.

6. Revise § 925.23 to read as follows:

**§ 925.23 Prohibition on purchase of excess stock.**

A member, or an institution that has been approved for membership in a Bank, may not purchase capital stock from a Bank if that stock would be excess stock at the time of purchase.

**PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS**

7. The authority citation for part 930 is revised to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1436(a), 1440, 1443, and 1446.

8. Amend § 930.1 by removing the definition of the term "excess stock" and adding, in alphabetical order, the following defined terms to read as follows:

**§ 930.1 Definitions.**

\* \* \* \* \*

*Current net earnings* means the net income of a Bank for a calendar quarter calculated in accordance with GAAP after deducting the Bank's required contributions for that quarter to the Resolution Funding Corporation under sections 21A and 21B of the Act (12 U.S.C. 1441a and 1441b) and to the Affordable Housing Program under section 10(j) of the Act (12 U.S.C.

1430(j)) and § 951.2 of this chapter, but before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

\* \* \* \* \*

*Retained Earnings Minimum* or *REM* means the minimum amount of retained earnings a Bank is required to hold under § 934.2 of this chapter.

\* \* \* \* \*

**PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK**

9. The authority citation for part 931 is revised to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1436(a), 1440, 1443, and 1446.

10. Revise § 931.2(a) to read as follows:

**§ 931.2 Issuance of capital stock.**

(a) *In general.* A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by § 931.1, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members and only in book-entry form, and the Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank's capital plan. A Bank may not sell capital stock to a member or to an institution that has been approved for membership in the Bank if that stock would be excess stock at time of the sale.

\* \* \* \* \*

11. Revise § 931.4(b) to read as follows:

**§ 931.4 Dividends.**

\* \* \* \* \*

(b) *Limitation on payment of dividends.* In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its minimum capital requirements, nor shall a Bank that is not in compliance with any of its minimum capital requirements declare or pay any dividend on its capital stock. A Bank also may not declare or pay a dividend that would violate any limitation on dividends set forth in part 934 of this chapter.

12. Add part 934 to title 12, chapter IX, to read as follows:

**PART 934—EXCESS STOCK LIMITS, MINIMUM RETAINED EARNINGS, AND DIVIDEND LIMITATIONS**

Sec.

934.1 Limitation on excess stock and stock dividends.

934.2 Minimum level of retained earnings.

934.3 Dividend limitations if retained earnings are below the Retained Earnings Minimum.

934.4 Additional limitations on dividends.

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a), and 1436.

**§ 934.1 Limitation on excess stock and stock dividends.**

(a) *Excess Stock Limitation.* The aggregate amount of a Bank's outstanding excess stock may not exceed one percent of the total assets of that Bank.

(b) *Prohibition on Stock Dividends.* A Bank may not declare or pay a dividend in the form of additional shares of capital stock.

(c) *Violation of the Excess Stock Limitation.* If the aggregate amount of a Bank's outstanding excess stock exceeds one percent of its total assets as of the close of the last business day of a quarter:

(1) The Bank shall report such violation to the Finance Board; and

(2) Within 60 calendar days of the close of that quarter, the Bank shall:

(i) Develop an excess stock compliance plan acceptable to the Finance Board that addresses how the Bank will bring its outstanding amount of excess stock into compliance with the limitation, unless the Bank is already operating under such a plan; or

(ii) Certify in writing to the Finance Board that it has corrected the violation and is in compliance with the excess stock limitation.

**§ 934.2 Minimum level of retained earnings.**

(a) *General.* Each Bank is required to maintain a level of retained earnings at least equal to the Bank's Retained Earnings Minimum (REM). If a Bank's retained earnings, as of the close of the quarter and after deducting the amount of any intended dividend for that quarter, would be below its REM, the Bank must comply with the applicable dividend limitation set forth in § 934.3 of this part.

(b) *Calculation of the REM.* Each Bank's REM will equal \$50 million plus 1 percent of the Bank's non-advance assets. Each Bank shall calculate its REM each calendar quarter. For purposes of the REM calculation, a Bank's non-advance assets shall equal the daily average of the Bank's total assets less the daily average of its advances, for the quarter immediately preceding the date of the calculation.

(c) *Adjustment to the REM.* For reasons of safety and soundness, the Finance Board may establish a REM for a Bank that is higher than the amount calculated under paragraph (b) of this section.

**§ 934.3 Dividend limitations if retained earnings are below the Retained Earnings Minimum.**

(a) *Initial limitation.* Until a Bank initially reaches or exceeds its REM, the Bank may not declare or pay a dividend that exceeds 50 percent of its current net earnings without the prior approval of the Finance Board, if, as of the close of the quarter and after deducting the amount of the intended dividend for that quarter, the Bank's retained earnings would be below its REM.

(b) *Limitation thereafter.* After a Bank first complies with its REM, the Bank may not declare or pay a dividend without the prior approval of the Finance Board, if, as of the close of the quarter and after deducting the amount of the intended dividend for that quarter, the Bank's retained earnings would be below its REM.

**§ 934.4 Additional limitations on dividends.**

(a) *Timing of declaration.* A Bank may declare and pay a dividend only after the close of the quarter to which the dividend pertains and the Bank's earnings for that quarter have been calculated, and may not declare or pay a dividend based on projected or anticipated earnings.

(b) *Other limitations.* In addition to any applicable limitations set forth in the Act or elsewhere in this chapter, at no time may a Bank declare or pay a dividend if the par value of the Bank's stock is impaired or is projected to become impaired after paying such dividend.

Dated: March 8, 2006.

By the Board of Directors of the Federal Housing Finance Board.

**Ronald A. Rosenfeld,**  
*Chairman.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 158 and 172**

[EPA-HQ-OPP-2004-0415; FRL-7767-2]

**Pesticides; Data Requirements for Biochemical and Microbial Pesticides Proposed Rule; Notice of Public Workshops**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of public workshop.

**SUMMARY:** The EPA is convening two public workshops to explain the

provisions of its recently proposed rule updating and revising the data requirements for registration of biochemical and microbial pesticides in 40 CFR part 158. These workshops are open to the public.

**DATES:** The first public workshop will be held on March 30, 2006 from 1 p.m. to 4 p.m. in the Washington, DC area. The second public workshop will be held on April 11, 2006 from 1 p.m. to 4 p.m. in the Sacramento, CA area.

**ADDRESSES:** The March 30, 2006 public workshop will be held at the EPA Office of Pesticide Programs, Crystal Mall #2, Room No. 1126, 1801 S. Bell St, Arlington, VA.

The April 11, 2006 public workshop will be held at the UC-Davis Extension, Sutter Square Galleria, Room No. 209, 2901 K St., Sacramento, CA. Visitor information for the April 11, 2006 location may be found at: <http://www.metrochamber.org>.

**FOR FURTHER INFORMATION CONTACT:** Nathanael Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-6475; fax number: 703-305-5884; e-mail address: [martin.nathanael@epa.gov](mailto:martin.nathanael@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this notice if you are a producer or registrant of a biochemical or microbial pesticide product. This proposal also may affect any person or company who might petition the Agency for new tolerances for biochemical or microbial pesticides, or hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration, that is, an import tolerance for biochemical or microbial pesticides. The following is intended as a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes are provided to assist you in determining whether or not this action applies to you. Potentially affected entities may include, but are not limited to:

- Chemical Producers (NAICS 32532), e.g., pesticide manufacturers or formulators of pesticide products, importers or any person or company who seeks to register a pesticide or to obtain a tolerance for a pesticide.
- Crop Production (NAICS 111).
- Animal Production (NAICS 112).

• Food Manufacturing and Processing (NAICS 311).

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 could also be affected. If you have questions regarding the applicability of this action to a particular entity, please consult the appropriate Branch Chief in the U.S. EPA Biopesticides and Pollution Prevention Division of the Office of Pesticide Programs at 703-308-8712, fax number at 703-308-7026 or visit the following Web site: <http://www.epa.gov/pesticides/biopesticides/>.

#### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under Docket identification number (ID) EPA-HQ-OPP-2004-0415; FRL-7763-4. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

## II. Background

EPA is convening two public workshops to review proposed revisions to the data requirements for the registration of biochemical and microbial pesticides. Under the Federal Food, Drug and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), anyone seeking to register a pesticide product is required to provide information to EPA that demonstrates their products can be used without posing unreasonable risk to human health and the environment. For food uses, the registrant is required to provide information demonstrating that there is a reasonable certainty that no harm will result from exposures to the residues of their pesticide product.

The public workshops will include presentations by staff from the Biopesticides and Pollution Prevention Division (BPPD) and the Field and External Affairs Division (FEAD) of the Office of Pesticide Programs (OPP). The proposed revisions are primarily directed at biochemical and microbial

pesticides, not conventional pesticides, antimicrobial pesticides or product performance data requirements. Nonetheless, all interested parties are welcome and may benefit from the discussions since EPA has issued or is planning to issue revisions to these areas in the future. Some of the proposed revisions apply to the data submission process, e.g., revised policy on data waivers, consultations, and pre/post-submission meetings. During the workshop, persons in attendance will be able to ask questions regarding the material being presented.

The proposed revisions were issued in the **Federal Register** of March 8, 2006, (71 FR 12071) (FRL-7763-4). A 90-day comment period will end on June 6, 2006. A limited number of copies of the proposed rule will be available at the workshop. Attendees are encouraged to access the electronic version of the proposed rule from the [regulations.gov](http://www.regulations.gov) Web site under Docket ID No. EPA-HQ-OPP-2004-0415.

#### List of Subjects

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

Dated: March 8, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. E6-3728 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-S**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Ch. I

[FCC 06-10]

#### Customer Proprietary Network Information

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Commission considers whether to take additional steps to protect the privacy of customer proprietary network information (CPNI) that is collected and held by telecommunications carriers. The Commission has long been committed to safeguarding customer privacy, and its rules requiring carriers to take specific steps to ensure that CPNI is adequately protected from unauthorized disclosure.

**DATES:** Comments are due April 14, 2006. Reply comments are due May 15, 2006. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 15, 2006.

**ADDRESSES:** You may submit comments, identified by CC Docket No. 96-115, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Tim Stelzig, (202) 418-0942, Competition Policy Division, Wireline Competition Bureau. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments regarding the NPRM. All filings related to this Notice of Proposed Rulemaking should refer to CC Docket No. 96-115. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. The public may view a full copy of this document at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-06-10A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-10A1.pdf).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, 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](mailto: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.

- 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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

- Parties should send a copy of their filings to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [Janice.myles@fcc.gov](mailto:Janice.myles@fcc.gov). Parties should also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

- Documents in CC Docket No. 96-115 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

- People with Disabilities: Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

### I. Paperwork Reduction Act

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due May 15, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

### II. Notice of Proposed Rulemaking

In this Notice of Proposed Rulemaking (NPRM), CC Docket No. 96-115 and RM-11277, FCC 06-10, released February 14, 2006, the Commission seeks comment on what additional steps, if any, the Commission should take to further protect the privacy of customer proprietary network information (CPNI) that is collected and held by telecommunications carriers. This NPRM directly responds to the petition filed by the Electronic Privacy Information Center (EPIC) expressing concerns about the sufficiency of carrier practices related to CPNI. As the EPIC petition points out, numerous websites advertise the sale of personal telephone records for a price. Specifically, data brokers advertise the availability of cell phone records, which include calls to and/or from a particular cell phone number, the duration of such calls, and

may even include the physical location of the cell phone. In addition to selling cell phone call records, many data brokers also claim to provide calling records for landline and voice over Internet protocol, as well as non-published phone numbers. In many cases, the data brokers claim to be able to provide this information within fairly quick time frames, ranging from a few hours to a few days. The Commission finds this conduct to be very disturbing and, accordingly, the Commission grants EPIC's request and initiates a rulemaking to determine whether enhanced security and authentication standards for access to customer telephone records are warranted.

In the NPRM, the Commission seeks comment, pursuant to the Commission's authority under section 222 of the Act, on the nature and scope of the problem identified by EPIC. The Commission seeks comment generally on how CPNI is maintained and secured by carriers and how data brokers are able to obtain CPNI from carriers. The Commission also seeks comment on whether the Commission's existing opt-out regime sufficiently protects the privacy of CPNI in the context of CPNI disclosed to telecommunications carriers' joint venture partners and independent contractors. The Commission also seeks comment on carriers' current practices regarding the disclosure of CPNI and whether they are sufficient. In particular, EPIC proposes five forms of security measures that it maintains would more adequately protect access to CPNI: consumer-set passwords, audit trails, encryption, limiting data retention, and notice procedures. The Commission seeks comment about the feasibility and advisability of these and other measures. The Commission also seeks comment on whether it should take steps to enhance its ability to enforce the requirements of section 222 and the Commission's regulations relating to CPNI.

### III. Procedural Matters

#### *Ex Parte Presentations*

The rulemaking this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining

to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

#### *Initial Regulatory Flexibility Analysis*

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 603, the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. Comments are due April 14, 2006. Reply comments are due May 15, 2006. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### A. Need for, and Objectives of, the Proposed Rules

2. In the NPRM, the Commission grants EPIC's petition for rulemaking and seeks comment on what security measures telecommunications carriers currently have in place for verifying the identity of people requesting CPNI; what inadequacies currently exist in those measures that allow third parties such as online data brokers and private investigators to access CPNI without the customer's knowledge or authorization; and what kind of security measures may be warranted to better protect telecommunications customers from unauthorized access to CPNI. In particular, the Commission seeks comment on EPIC's five proposals to address the unauthorized means of obtaining CPNI: (1) Consumer-set passwords; (2) audit trails; (3) encryption; (4) limiting data retention; and (5) procedures for notice to the customer on release of CPNI data. The Commission also seeks comment on what steps the Commission should take to enforce its CPNI rules and whether carriers should be required to report further on the release of CPNI.

#### B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 4(i), 4(j), and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 222.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

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

5. *Small Businesses*. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

6. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.

7. *Small Governmental Jurisdictions*. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

#### 1. Telecommunications Service Entities

##### *a. Wireline Carriers and Service Providers*

8. The Commission has included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission

analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

10. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers"*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by the Commission's action.

11. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 143 carriers have reported that they are engaged in the provision of local resale

services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

12. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

13. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 613 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 609 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the Commission's action.

15. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications

Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the Commission's action.

16. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by the Commission's action.

17. *800 and 800-Like Service Subscribers*. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to the Commission's data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

#### *b. International Service Providers*

18. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts.

19. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by the Commission's action.

20. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) Providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by the Commission's action.

#### *c. Wireless Telecommunications Service Providers*

21. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction

does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

22. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

23. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 260 of these are small, under the SBA small business size standard.

24. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the

broad economic census category, "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. In the Paging *Third Report and Order*, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, the Commission estimates that 370 are small, under the SBA-approved small business size standard.

25. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 445 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 245 of these are small under the SBA small business size standard.

26. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held

auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

27. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the

Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

28. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

29. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

30. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size

standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

## 2. Cable and OVS Operators

31. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed a small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

32. *Cable System Operators.* The Commission has developed its own small business size standards for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. In addition, a "small system" is a system serving 15,000 or fewer subscribers.

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

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

34. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

## 3. Internet Service Providers

35. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under \$10 million, and 47 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

36. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The Commission's action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail,

online gaming, Web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

#### D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

37. Should the Commission decide to adopt any regulations to ensure that all providers of telecommunications services meet consumer protection needs in regard to CPNI, the associated rules potentially could modify the reporting and recordkeeping requirements of certain telecommunications providers. The Commission could, for instance, require that telecommunications providers require customer password-related security procedures to access CPNI data and/or encrypt CPNI data. The Commission could also require that telecommunications providers maintain more extensive records regarding CPNI data and report additional CPNI information to their customers and the Commission. The Commission tentatively concludes that the Commission should amend its rules to require carriers to certify as to established operating procedures no later than January 1st (or other date specified by the Commission) of each year, covering the preceding calendar year, and to file the compliance certificate with the Commission within 30 days. The Commission further tentatively concludes that carriers should attach to this annual § 64.2009(e) certification an explanation of any actions taken against data brokers and a summary of all consumer complaints received in the past year concerning the unauthorized release of CPNI. These proposals may impose additional reporting or recordkeeping requirements on entities. The Commission seeks comment on the possible burden these requirements would place on small entities. Also, the Commission seeks comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify

the costs and benefits of any reporting requirement that may be established in this proceeding.

#### E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

39. The Commission's primary objective is to develop a framework for protecting a customer's CPNI, regardless of the customer's underlying technology. The Commission seeks comment here on the effect the various proposals described in the NPRM will have on small entities, and on what effect alternative rules would have on those entities. The Commission invites comment on ways in which the Commission can achieve its goal of protecting consumers while at the same time impose minimal burdens on small telecommunications service providers. With respect to any of the Commission's consumer protection regulations already in place, has the Commission adopted any provisions for small entities that the Commission should similarly consider here? Specifically, the Commission invites comment on whether the problems identified by EPIC are better or worse at smaller carriers. The Commission invites comment on whether small carriers should be exempt from password-related security procedures to protect CPNI. The Commission invites comment on the benefits and burdens of recording audit trails for the disclosure of CPNI on small carriers. The Commission invites comment on whether requiring a small carrier to encrypt its stored data would be unduly burdensome. The Commission solicits comment on the cost to a small carrier of notifying a customer upon release of CPNI. The Commission seeks comment on whether the Commission should amend its rules to require carriers to file annual certifications concerning CPNI and whether this requirement should extend to only telecommunications carriers that are not small telephone companies as

defined by the Small Business Administration, and whether small carriers should be subject to different CPNI-related obligations.

#### F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

#### Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 222, that this NPRM in CC Docket No. 96-115 and RM-11277 *is adopted*.

*It is further ordered* that the Petition for Rulemaking of the Electronic Privacy Information Center *is granted* to the extent described herein.

*It is further ordered* that the proceeding in RM-11277 *is hereby terminated*.

*It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 06-2423 Filed 3-14-06; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

[CC Docket No. 99-200; FCC 06-14]

#### Numbering Resource Optimization

**AGENCY** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission seeks comment on whether we should extend mandatory thousands-block number pooling by, for example, giving the states delegated authority to implement mandatory thousands-block number pooling at their discretion. Alternatively, we could continue to review requests from the states for authority to extend mandatory thousands-block number pooling to new NPAs on a case-by-case basis. Also, we could extend pooling to all rate centers, using a phased implementation schedule. As many state commissions can attest, mandatory number pooling can extend the life of numbering plan areas (NPAs) more effectively than

optional pooling requirements. In addition, the Wireline Competition Bureau specifically stated that the Commission would “consider extending pooling to NPAs outside of the top 100 Metropolitan Statistical Areas (MSAs) once pooling is implemented in the top MSAs.”

**DATES:** Submit comments on or before May 15, 2006; submit reply comments on or before June 13, 2006.

**ADDRESSES:** You may submit comments, identified by [CC Docket No. 99–200], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
  - Federal Communications Commission’s Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- Mail: Sheryl Todd, Wireline Competition Bureau, Telecom Access Policy Division, 445 12th Street, SW., Washington, DC 20554.

4. People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Jones, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 415–4357 or [Marilyn.Jones@fcc.gov](mailto:Marilyn.Jones@fcc.gov). The fax number is: (202) 418–2345.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Fifth Further Notice of Proposed Rulemaking in CC Docket No. 99–200 released on February 24, 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 this Fifth Further Notice of Proposed Rulemaking, we seek comment on whether we should delegate authority to all states to implement mandatory thousands-block number pooling.

2. In the *First Report and Order*, 65 FR 37703, June 16, 2000, the Commission determined that implementation of thousands-block number pooling is essential to extending the life of the North American Numbering Plan (“NANP”) by making the assignment

and use of NXX codes more efficient. Therefore, the Commission adopted national thousands-block number pooling as a valuable mechanism to remedy the inefficient allocation and use of numbering resources and determined to implement mandatory thousands-block pooling in the largest 100 MSAs within nine months of selection of a pooling administrator. The Commission also allowed state commissions to continue to implement thousands-block pooling pursuant to delegated authority and agreed to continue to consider state petitions for delegated authority to implement pooling on a case-by-case basis. The Commission delegated authority to the Common Carrier Bureau, now the Wireline Competition Bureau (“Bureau”), to rule on state petitions for delegated authority to implement number conservation measures, including thousands-block number pooling, where no new issues were raised.

3. The Commission held that such state positions for delegated authority must demonstrate that: (1) An NPA in its state is in jeopardy; (2) the NPA in question has a remaining life span of at least a year; and (3) the NPA is in one of the largest 100 MSAs, or alternatively, the majority of wireline carriers in the NPA are local number portability (“LNP”)–capable. The Commission recognized that there may be “special circumstances” where pooling would be of benefit in NPAs that do not meet all three criteria, and may be authorized in such an NPA upon a satisfactory showing by the state commission of such circumstances. These three criteria were adopted before implementation of nationwide thousands-block number pooling and before the Commission recognized that full LNP capability is not necessary for participation in pooling.

4. National rollout of thousands-block number pooling commenced on March 15, 2002, in the 100 largest Metropolitan Statistical Areas (“MSAs”) and area codes previously in pooling pursuant to state delegation orders. All carriers operating within the 100 largest MSAs, except those specifically exempted by the order, were required to participate in thousands-block number pooling in accordance with the national rollout schedule. The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of LNP from another carrier, as well as carriers that are the only service provider receiving numbering resources in a given rate center. In exempting

certain carriers from the pooling requirement, the Commission confirmed that “it is reasonable to require LNP only in areas where competition dictates its demand.” The Commission directed the North American Numbering Plan Administrator (“NANPA”) to cease assignment of NXX codes to carriers after they were required to participate in pooling. Instead, carriers required to participate in pooling received numbering resources from the national thousands-block number Pooling Administrator responsible for administering numbers in thousands-blocks.

5. In implementing nationwide pooling, the Commission had concluded that mandatory pooling should initially take place in the largest 100 MSAs. In the *Pooling Rollout Order*, the Bureau explained that it would consider extending pooling outside of the top 100 MSAs after pooling was implemented in the top 100 MSAs. The Bureau also encouraged voluntary pooling in areas adjoining qualifying MSAs.

## II. Order Granting Petitions

6. In the Order accompanying the Fifth Further Notice of Proposed Rulemaking, published elsewhere in this issue of the **Federal Register**, we grant petitions for delegated authority to implement mandatory thousands-block number pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. Although all three criteria are not consistently met in these petitions, we find that special circumstances justify delegation of authority to require pooling.

7. With respect to the first criterion, the petitions before us present both jeopardy and non-jeopardy situations. The 304 NPA is currently in jeopardy, whereas the 402, 417, 573, 580, and 989 NPAs are not in jeopardy as defined by industry standards, but are projected to exhaust within three years. Given that most of the NPAs in question are expected to exhaust within one to three years, it is most efficient and in the public interest to permit the state petitioners to implement mandatory thousands-block number pooling at this time. Moreover, if we deny these petitions pursuant to a strict application of the jeopardy requirement, the state commissions will have to refile the petitions in the near future when the NPAs at issue will be in jeopardy. This would be an inefficient use of resources and would further delay the state commissions’ ability to optimize

numbering resources. With regard to the second criterion, all petitions have demonstrated that the NPAs in question have a remaining life span of at least a year. Thus, this prong of the test is met.

8. The third criterion, that the NPA is in one of the largest 100 MSAs or the majority of wireline carriers in the NPA are LNP-capable, is not relevant here. These petitions seek authority to implement pooling outside of the largest 100 MSAs, and we have since determined that pooling can be implemented without full LNP capability. Instead, we are guided by the principle, expressed in our pooling precedent, that it is reasonable to require LNP only in areas where competition dictates demand. For this reason, we have exempted from pooling rural telephone companies and Tier III CMRS providers that have not yet received a specific request for the provision of LNP from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center. Although this exemption should ensure that LNP is only required in areas where completion dictates demand, it is important to also note that, for carriers who are required to participate in number pooling, full LNP capability is not required. In this case, we require state commissions, in exercising the authority delegated herein to implement number pooling, to implement this delegation consistent with the exemption for the carriers described above. We therefore expect that rural carriers who are not LNP capable will not be required to implement full LNP capability solely as a result of the delegation of authority set forth herein.

9. As several commenters observe, allowing states to mandate pooling outside of the top 100 MSAs will delay the need for area code relief by using numbering resources more efficiently. Demand for numbering resources in these states is increasing in rural rate centers, where number pooling is not mandatory, due to additional wireless and competitive carriers entering those areas. The petitioners have demonstrated that many carriers are not participating in optional pooling and instead continue to request full NXX codes in these NPAs. The petitioners observe, and we agree, that mandatory thousands-block number pooling would extend the life of these NPAs by using the resources that otherwise would be stranded. Denying the petitions would allow carriers to continue to request 10,000 blocks of numbers when fewer numbers may be needed to serve their customers, which would further hasten the exhaust of these NPAs. We find that

this is a special circumstance that permits us to delegate authority to these states to implement mandatory thousands-block number pooling.

10. Therefore, for all the reasons stated above, we determine that the petitioners have demonstrated the special circumstances necessary to justify delegation of authority to require pooling, and we grant: The public Service Commission of West Virginia authority to implement mandatory thousands-block number pooling in the 304 NPA; the Nebraska Public Service Commission authority to implement mandatory thousands-block number pooling in the 402 NPA; the Oklahoma Corporation Commission authority to implement mandatory thousands-block number pooling in the 580 NPA; the Michigan Public Service Commission the authority to implement mandatory thousands-block number pooling in the 989 NPA; and the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling in the 417, 573, 636, and 660 NPAs.

11. The Ohio Commission and NARUC request that in addition to granting the Oklahoma Petition for mandatory thousands-block number pooling, we extend such delegated authority to all states. SBC opposes this request and observes that in order to adopt such a rule change, we must provide opportunity for notice and comment. We agree and do so in our Fifth Further Notice of Proposed Rulemaking.

12. Finally, we observe that several commenters asked the Commission to reaffirm that it will not permit states to implement pooling methods that are inconsistent with the national pooling framework set forth in the Commission's rules and industry pooling guidelines. We note that the petitions specifically seek authority to order mandatory thousands-block number pooling in rate centers located outside the top 100 MSAs, but in accordance with the national pooling framework. Thus, these state commissions are not seeking to implement pooling methods that are inconsistent with the national pooling framework.

### III. Fifth Further Notice of Proposed Rulemaking

13. The Order that accompanies this Fifth Further Notice of Proposed Rulemaking ("FNPRM") recognizes the invaluable role of the state commissions in number administration and optimization. In that Order, we granted the requesting state commissions authority to implement mandatory thousands-block number pooling in the

certain NPAs. We took this action because in each case the remaining life in the NPAs at issue was within three years of exhaust. In this FNPRM, we seek comment now on whether we should extend mandatory pooling by, for example, giving the states delegated authority to implement mandatory thousands-block number pooling at their discretion. As many state commissions can attest, mandatory number pooling can extend the life of NPAs more effectively than optional pooling requirements. In addition, in the *Pooling Rollout Order*, the Bureau specifically stated that the Commission would "consider extending pooling to NPAs outside of the top 100 MSAs once pooling is implemented in the top MSAs."

14. Alternatively, we could continue to review requests from the states for authority to extend mandatory thousands-block number pooling to new NPAs on a case-by-case basis. If we were to adopt this approach, the Commission would continue to review state petitions on a case-by-case basis, as we did in the Order preceding this FNPRM. Also, we could extend pooling to all rate centers, using a phased implementation schedule. For example, we could initially expand pooling to NPAs that are within three years of exhaust and continue to expand pooling to other NPAs as they reach a certain state of exhaust. We seek comment on the costs and benefits to each approach. Commenters advocating a case-by-case review of state petitions should propose criteria for such a review. As we discussed in the preceding Order, the third prong in the three-prong test adopted in the *First Report and Order* is no longer relevant, and the first prong was not strictly met by all petitioners. Commenters should discuss whether we should use primarily the second prong of that test in determining whether to extend delegated authority to the states. In particular, we seek comment on whether we should grant authority for mandatory thousands-block number pooling based primarily on the remaining life of the NPA, as we did in the foregoing Order. Commenters should also address whether "special circumstances" would be a more appropriate criterion.

15. We are limiting this FNPRM to the issue of extending mandatory thousands-block number pooling to NPAs outside of the top 100 MSAs. Any such expansion of number pooling would be subject to our current numbering rules and number pooling guidelines. Commenters should discuss any related thousands-block numbering rule changes or new rules that we

should adopt to facilitate this expansion. We recognize that many of the number pooling procedures are in the pooling guidelines, not in the Commission's rules.

#### IV. Procedural Matters

##### A. Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") for this Fifth Further Notice of Proposed Rulemaking ("FNPRM"), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. The IRFA is in the attached Appendix. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### B. Paperwork Reduction Act Analysis

17. This FNPRM does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. In addition, therefore, it does not contain any new or modified "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).

##### C. Ex Parte Presentations

18. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

##### D. Comment Filing Procedures

19. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on this FNPRM within 60 days after

publication in the **Federal Register** and may file reply comments within 90 days after publication in the **Federal Register**. All filings shall refer to CC Docket No. 99-200. Comments may be filed using (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

20. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters 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 for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must contain the docket or rulemaking number that appears in the caption of this proceeding.

22. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

23. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.

- All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

24. People with disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

25. Parties must also send a courtesy copy of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. Ms. Todd's e-mail address is [Sheryl.Todd@fcc.gov](mailto:Sheryl.Todd@fcc.gov); her telephone number is (202) 418-7386.

26. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its Web site: [www.bcpiweb.com](http://www.bcpiweb.com) by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

##### Initial Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as response to IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of this IRFA, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### 1. Need for, and Objectives of, the Proposed Rules

28. In the FNPRM, we seek comment on whether we should extend mandatory thousands-block number

pooling by giving states delegated authority to implement mandatory thousands-block number pooling at their discretion. We also see comment on whether we should, alternatively, continue to review requests from states for authority to extend mandatory thousands-block number pooling on a case-by-case basis. We also seek comment on what criteria we should use for such a review.

## 2. Legal Basis

29. The legal basis for the FNPRM is contained in sections 1, 4(i), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201—205, 214, 254, and 403.

## 3. Description and Estimate of the Number of Small Entities To Which Rules May Apply

30. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, there are approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 73,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

### a. Telecommunications Service Providers

31. We have included small incumbent local exchange carriers in this RFA analysis. A “small business”

under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has not effect on the Commission’s analyses and determinations in other, non-RFA contexts.

32. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small business that may be affected by the rules and policies adopted herein.

33. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and “Other Local Exchange Carriers.”* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to “Other Local Exchange Carriers.” The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 companies, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 39 carriers reported that they were “Other Local Service Providers.” Of the 39 “Other Local Service Providers,” an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission

estimates that most providers of competitive local exchange service, competitive access providers, and “Other Local Service Providers” are small entities that may be affected by the rules and policies adopted herein.

34. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the Commission data, 316 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 316 companies, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the rules and policies adopted herein.

35. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging and Cellular and Other Wireless Telecommunications*. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission data, 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

36. *Private and Common Carrier Paging*. In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, have average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, have average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies

claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of either paging or messaging services, or other mobile services. Of those, the Commission estimates that 370 are small, under the SBA-approved small business size standard.

#### b. Internet Service Providers

37. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of internet service providers increased approximately five percent from 1997 to 2002.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

38. In the FNPRM, we seek comment on whether we should extend mandatory thousands-block number pooling by giving states delegated authority to implement mandatory thousands-block number pooling at their discretion. We also see comment on whether we should, alternatively, continue to review requests from states for authority to extend mandatory thousands-block number pooling on a case-by-case basis. We also seek comment on what criteria we should use for such a review. If we extend thousands-block number pooling, beyond the top 100 MSAs, carriers required by states to implement number pooling will be required to comply with the existing reporting and recordkeeping requirements for number pooling in part 52, subpart C of the Commission's rules.

#### 5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

40. In the FNPRM, we seek comment on whether we should extend mandatory thousands-block number pooling by giving states delegated authority to implement mandatory thousands-block number pooling at their discretion. We also seek comment on whether we should, alternatively, continue to review requests from states for authority to extend mandatory thousands-block number pooling on a case-by-case basis. We also seek comment on what criteria we should use for such a review. If we adopt some form of additional number pooling, beyond the top 100 MSAs, more carriers may be required to comply with the filing requirements for number pooling. Expanding number pooling will, however, conserve numbering resources and will prevent or delay the adoption of other, possibly more burdensome, measures.

#### 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

#### IV. Ordering Clauses

41. *Accordingly*, pursuant to the authority contained in sections 1, 4(i), 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 251, and pursuant to section 52.9(b) of the Commission's rules, 47 CFR 52.9(b), *it is ordered* that the Petition of the Nebraska Public Service Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures *is granted*; the Petition of the West Virginia Public Service Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures *is granted*; and the Petition of the Oklahoma Corporation Commission for Expedited Decision for Authority to

Implement Additional Number Conservation Measures *is granted*; the Petition of the Missouri Public Service Commission for Additional Delegated Numbering Authority to Implement Number Conservation Measures *is granted*; and the Petition of the Michigan Public Service Commission for Additional Delegated Authority over Numbering Resource Conservation Measures *is granted*.

42. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, this Order and Fifth Further Notice of Proposed Rulemaking *is adopted*.

43. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order and Fifth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 06–2330 Filed 3–14–06; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06–384; MB Docket No. 06–43, RM–11313]

#### Radio Broadcasting Services; Oakwood, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 300A at Oakwood, Texas, as the community's first local service. Channel 300A can be allotted to Oakwood, consistent with the minimum distance separation requirements of the Commission's rules at a restricted site located 14.5 kilometers (8.9 miles) northwest of the community. The reference coordinates for Channel 300A at Oakwood are 31–40–21 North Latitude and 95–57–42 West Longitude.

**DATES:** Comments must be filed on or before February 22, 2006, and reply comments on or before February 24, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner, as follows: Charles Crawford, 4553 Bordeaux Ave., Dallas, TX 75205.

**FOR FURTHER INFORMATION CONTACT:** Helen McLean, Media Bureau, (202) 418-2738.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 06-43, adopted February 22, 2006, and released February 24, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, 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>.

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).

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* contact.

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, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Oakwood, Channel 300A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06-2327 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 06-433; MB Docket No. 06-46; RM-11288]

#### Radio Broadcasting Services; Arkansas City, KS and Waukomis, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a Petition for Rule Making filed by Linda Crawford, d/b/a Waukomis Broadcasting, proposing the allotment of Channel 292A at Waukomis, Oklahoma, as the community's first local aural transmission service. To accommodate this allotment, Petitioner requested the reclassification of Station KYQQ (FM) Channel 293C, Arkansas City, Kansas, to specify operation on Channel 293C0 pursuant to the reclassification procedures adopted by the Commission. Due to a failure to respond to an Order to Show Cause, Station KYQQ (FM) has been downgraded to Channel 293C0 to accommodate the Waukomis proposed allotment. Channel 292A can be allotted at Waukomis in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) southwest of the community. The coordinates for Channel 292A at Waukomis are 36-14-01 North Latitude and 97-56-25 West Longitude.

**DATES:** Comments must be filed on or before April 17, 2006, and reply comments on or before May 2, 2006. Any counterproposal filed in this proceeding need only protect FM Station KYQQ (FM) Arkansas City, Kansas, as a Class C0 allotment.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Ms. Linda Crawford, Waukomis Broadcasting,

3500 Maple Ave., #1320, Dallas, Texas 75219.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 06-46, adopted February 22, 2006, and released February 24, 2006. 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>. 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).

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, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Waukomis, Channel 292A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6-3731 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-517; MB Docket No. 06-51; RM-11317]

#### Radio Broadcasting Services; Frisco City, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a Petition for Rule Making filed by MissAla RF requesting the allotment of Channel 278A at Frisco City, Alabama, as that community's first local aural transmission service. Channel 278A can be allotted with a site restriction of 13.7 kilometers (8.5 miles) west of Frisco City at reference coordinates 31-27-42 NL and 87-32-29 WL.

**DATES:** Comments must be filed on or before April 24, 2006, and reply comments on or before May 9, 2006. Any counterproposal filed in this proceeding need only protect FM Station WUSW, Hattiesburg, Mississippi, as a Class C0 allotment.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Heather Hill, Partner, MissAla RF; 2035 Placentia Ave. C1; Costa Mesa, California 92627.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 06-51, adopted March 1, 2006, and released March 3, 2006. 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>. 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).

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, 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Frisco City, Channel 278A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6-3743 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-518; MB Docket No. 06-52; RM-11318]

#### Radio Broadcasting Services; Flora, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a Petition for Rule Making filed by MissAla RF requesting the allotment of Channel 280A at Flora, Mississippi, as that community's second local aural transmission service.

Channel 280A can be allotted with a site restriction of 6.1 kilometers (3.8 miles) southwest of Flora at reference coordinates 32-29-46 NL and 90-20-36 WL.

**DATES:** Comments must be filed on or before April 24, 2006, and reply comments on or before May 9, 2006. Any counterproposal filed in this proceeding need only protect FM Station WUSW, Hattiesburg, Mississippi, as a Class C0 allotment.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Heather Hill, Partner, MissAla RF; 2035 Placentia Ave. C1; Costa Mesa, California 92627.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 06-52, adopted March 1, 2006, and released March 3, 2006. 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>. 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).

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, 336.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 280A at Flora.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6-3742 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 73**

**[DA 06-425; MB Docket No. 05-110; RM-11193]**

#### **Radio Broadcasting Services; Stringtown, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** The Audio Division, at the request of Charles Crawford, the proponent of a petition for rule making to allot Channel 290A at Stringtown, Oklahoma, 70 FR 17,381, dismisses the petition for rule making and terminates the proceeding.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-110, adopted February 22, 2006, and released

February 24, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating 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.bcpweb.com>. The *Report and Order* is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, see U.S.C. 801(a)(1)(A).

Federal Communications Commission

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6-3732 Filed 3-14-06; 8:45 am]

**BILLING CODE 6712-01-P**

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Docket No. TM-06-03]

#### Notice of Funds Availability (NOFA) Inviting Applications for the Farmers' Market Promotion Program (FMPP); Notice of Emergency Approval of New Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) announces the availability of approximately \$1 million in competitive grant funds for fiscal year 2006 to increase domestic consumption of agricultural commodities by expanding direct producer-to-consumer market opportunities. Examples of direct producer-to-consumer market opportunities include new farmers markets, roadside stands, community supported agriculture programs, and other direct producer-to-consumer infrastructures. AMS hereby requests proposals from eligible entities from the following categories: (1) Agricultural cooperatives, (2) local governments, (3) nonprofit corporations, (4) public benefit corporations, (5) economic development corporations, (6) regional farmers' market authorities, and (7) tribal governments. The maximum award per grant is \$75,000. In accordance with the Paperwork Reduction Act of 1995, AMS has received emergency approval of a new information approval.

**DATES:** Applications should be received at the address below as soon as possible, but must be postmarked not later than May 1, 2006. Comments regarding the information collection requirement under the Paperwork Reduction Act of 1995 must be received on or before May 15, 2006.

**ADDRESSES:** Submit proposals and other required materials to Mr. Errol Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646—South, 1400 Independence Avenue, SW., Washington, DC 20250-0269; phone 202/720-8317; and e-mail [USDAFMPP@usda.gov](mailto:USDAFMPP@usda.gov). Comments concerning the information collection requirements should be sent to the office of Information and Regulatory Affairs, OMB: Attention: Desk Officer for AMS, Washington, DC 20503. Please state that your comments refer to Docket No. TM-06-03. Comments concerning the information requirements also should be sent to Mr. Errol Bragg at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Errol Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), on 202/720-8317, fax 202/690-0031, or by e-mail [USDAFMPP@usda.gov](mailto:USDAFMPP@usda.gov). State that your request for information refers to Docket No. TM-06-03.

#### SUPPLEMENTARY INFORMATION:

This solicitation is issued pursuant to section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001-3006) as amended by section 10605 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (the Acts) authorizing the establishment of the Farmers' Market Promotion Program (7 U.S.C. 3005) (FMPP). The amended act states that the purposes of the FMPP are "(A) to increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' markets, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer market opportunities; and (B) to develop, or aid in the development of, new farmers' markets, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer infrastructure." The Secretary of Agriculture has delegated the program's administration to the USDA-AMS. Further, in accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon

good cause that it is impracticable, unnecessary, and contrary to the public interest to engage in further public participation under 5 U.S.C 553 because the applications for the FMPP need to be made available as soon as possible as the programs season approaches. Additionally, a report to Congress is pending.

#### Background

AMS's authorizing authorities are the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001-3006), and the recent amendment to the 1976 Act, the Farmers Market Promotion Program (7 U.S.C. 3005). Under the Agricultural Marketing Act of 1946, the Secretary of Agriculture is authorized to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C. 1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels.

The Farmer-to-Consumer Marketing Act of 1976 directs USDA to encourage the direct marketing of agricultural commodities from farmers to consumers, and to promote the development and expansion of direct marketing of agricultural commodities from farmers to consumers. With this mandate in mind, AMS has been heavily involved for more than a decade in assisting and facilitating farmer and vendor participation in direct farm marketing via farmers markets, community-supported agriculture programs, roadside stands, and other direct marketing channels.

Direct marketing activities have been an especially dynamic area of growth for the U.S. agricultural sector in recent years. AMS estimates that more than 3,700 farmers markets currently operate in the United States, more than double the number of markets that existed in 1994. Community supported agriculture

arrangements, where customers purchase advance shares of a farm's production in return for regular deliveries of product during the harvest season, have also seen a dramatic rise in popularity, expanding from an estimated 60 operations in 1990 to more than 1,000 operations in 2005. The rapid growth in direct farm marketing activities is reflected in the latest statistics available from the U.S. Census of Agriculture, which reports a 37 percent increase in the value of direct farm sales between 1997 and 2002.

Farmers markets and other direct farm marketing outlets represent more than just a commercial outlet for agricultural products; they act as intermediate social structures linking urban, suburban and rural sectors of the economy. Not only do farmers markets provide consumers with convenient access to a wide variety of locally-grown, seasonal farm products at peak condition, many of which are often difficult to find through standard channels of distribution, but they also enable consumers to develop a personal relationship with farmers and learn more about the origin of the food they purchase. Meanwhile, farmers benefit from farmers markets and other direct marketing activities by being able to efficiently reach large numbers of highly motivated customers through a single channel of distribution. Such direct marketing arrangements allow farmers to enhance their farm-based income by:

- Eliminating farmer dependence on intermediaries and reducing their marketing expenses;
- Providing an outlet for farmers to merchandise highly-differentiated farm products with specific quality attributes; and
- Enabling farmers to obtain immediate feedback directly from customers and respond quickly to consumer tastes and preferences.

In view of the growing importance of direct farm marketing activities across the country, AMS has begun to receive an increasing number of requests from farmers, vendors, and other direct farm marketing stakeholders to address the operational, logistical, and training needs of the direct farm marketing community. AMS will oversee and distribute grants under the FMPP to assist those eligible entities needing assistance in order to facilitate the continued successful development and growth of direct farm marketing ventures.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), this notice announces that Agricultural Marketing Service (AMS)

has received emergency approval from the Office of Management and Budget of a new information collection.

*Title:* Farmers Market Promotion Program.

*OMB Number:* 0581-0235.

*Type of Request:* Approval of a new information collection.

*Expiration Date of Approval:* 3 years from date of OMB approval.

*Abstract:* The primary objective of the FMPP is to help eligible entities to improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer market opportunities. Eligible entities under this program include agricultural cooperatives, local governments, nonprofit corporations, public benefit corporations, economic development corporations, regional farmers' market authorities, and other entities as the Secretary may designate (7 U.S.C. 3005(c)). The Secretary has designated Tribal Governments as an eligible entity for this grant program.

AMS has established guidelines for the FMPP that contain full details of the program and application process. The guidelines and all forms required for applying for FMPP grants are available from AMS's Marketing Services Branch Web site at: <http://www.ams.usda.gov/tmd/MSB/index.htm>, by calling 202/720-8317, or faxing 202/690-0031. Eligible entities are strongly encouraged to consult the guidelines when preparing applications for submission to the FMPP.

All applicants requesting Federal funding must complete Form SF-424, "Application for Federal Assistance," (approved under OMB collection number 4040-0004). Form SF-424A, "Budget Information—Non-Construction Programs," (approved under OMB collection number 0348-0044) must also be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-federal sources, as applicable. Form SF-424B, "Assurances—Non-Construction Programs," (approved under OMB collection number 0348-0040) must also be completed by applicants to give the Federal government assurances that the applicant has the legal authority to apply for Federal assistance. Form SF-269A, Financial Status Report (Short form approved under OMB #0348-0038) or SF-269, Financial Status Report, (Long form approved under OMB #0348-0039, (if the project had program income)) is completed once by the eligible entity 90 days after the expiration date of the grant period. The

applicant also gives assurance that it will comply with various legal and regulatory requirements as described within the form.

Completed applications must include a proposal narrative along with an eligibility statement. We estimate that it will take applicants 8 hours to complete the proposal narrative and eligibility statement. Comments are requested on this new public reporting burden.

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 8 hours per response.

*Respondents:* Agricultural Cooperatives, Local Governments, Nonprofit Corporations, Public Benefit Corporations, Economic Development Corporations, Regional Farmers' Market Authorities, and Tribal Governments.

*Estimated annual number of respondents:* 400.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 400.

*Estimated total annual burden on the respondents:* 3,200 hours.

AMS needs to receive the information contained in this collection of information to select the projects it believes will promote the purposes of the Acts and the domestic consumption of agricultural commodities by expanding direct producer-to-consumer marketing opportunities. The selection process is competitive and AMS must ensure that limited funds are used for the intended purpose.

Comments are invited on: (1) Whether the new collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the new collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments concerning the information collection shall reference the docket number and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements should be sent to the office of Information and Regulatory Affairs, OMB: Attention: Desk Officer for AMS, Washington, DC 20503. Please state that

your comments refer to Docket No. TM-06-03. Comments also may be sent to Mr. Errol Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646—South, 1400 Independence Avenue, SW., Washington, DC, 20250-0269; phone 202/720-8317; and e-mail [USDAFMPP@usda.gov](mailto:USDAFMPP@usda.gov). Comments received will be available for public inspection during regular business hours at the same address. All comments will become a matter of public record.

AMS is committed to compliance with the Government Paperwork Elimination Act that requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The three SF forms, as well as the proposal narrative and eligibility statement, can be filled out electronically and printed out for submission or filled out electronically and submitted as an attachment through [Grants.gov](http://Grants.gov) with the proposal narrative and eligibility statement.

#### Definitions of Eligible Entities

The eligible entities include those outlined in section 6 (c) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C 3005(c)). In addition, the Secretary has designated Tribal Governments as an eligible entity for this grant program. Eligible entities are defined in this program and throughout this NOFA as follows:<sup>1</sup>

**Agricultural cooperative**—A group- or member-owned entity or business that provides, offers, or sells agricultural products or services for the mutual benefit of the members thereof.

**Local Government**—Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

**Nonprofit Corporation**—Any organization or institution, including nonprofits with 501(c)(3) IRS status and accredited institutions of higher education, no part of the net earnings of which inures to the benefit of any private shareholders or individuals.

**Public Benefit Corporation**—A corporation organized to construct or operate a public improvement, the

profits from which inure to the benefit of a State(s) or to the people thereof.

**Economic Development Corporation**—An organization whose mission is the improvement, maintenance, development and/or marketing or promotion of a specific geographic area.

**Regional Farmers' Market Authority**—An entity that establishes and enforces region, state, or county policies and jurisdiction over regional, state, or county farmers markets.

**Tribal Government**—A governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688 (43 U.S.C. 1602)) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

#### Recipient and Project Eligibility Requirements

All eligible entities shall be domestic entities, *i.e.*, those owned, operated, and located within one or more of the 50 United States and the District of Columbia only. Entities located within U.S. territories are not eligible.

Additionally, under this program eligible entities must apply for FMPP funds on behalf of direct marketing operators that include two or more agricultural farmers/vendors that produce and sell their own products through a common distribution channel. For example, a sole proprietor of a roadside farm market would not be eligible for this program. Because the FMPP is authorized by and amends the Farmer-To-Consumer Marketing Act of 1976, AMS will oversee and award grant projects that continue in developing, promoting, and expanding direct marketing of agricultural commodities from farmers to consumers. Eligible proposals should support marketing entities where agricultural farmers or vendors sell their own products directly to consumers, and the sales of these farm products should demonstrate the core business of the entity.

Individual agricultural producers, including farmers and farmers' market vendors, roadside stand operators, community supported agriculture participants, and other individual direct marketers are not eligible for FMPP funds.

FMPP grant funds must be applied to the specific programs and objectives identified in the application. Proprietary projects that benefit one agricultural producer or individual will not be considered.

#### Project Timeframe

Projects are to be completed within 18 months.

#### Proposal Preparation

Applicants must submit the following information; applications that do not contain this information will not be considered:

1. Form SF-424, "Application for Federal Assistance." This form must have an original signature.
2. Form SF-424A, "Budget Information—Non-Construction Programs."
3. Form SF-424B, "Assurances—Non-Construction Programs."
4. DUNS Number—A Dun and Bradstreet Data Universal Numbering System (DUNS) number is required for all FMPP applications and all Federal grants (68 FR 38 402). You may check to see if your organization already has a DUNS number, or if you do not already have a DUNS number, you may acquire one online at no cost at <https://eupdate.dnb.com/requestoptions/government/ccrreg/> You may also acquire one by calling the dedicated toll-free DUNS number request line on 1-866-705-5711.
5. Eligibility Statement. Explain how the applicant meets the definition of an agricultural cooperative, local government, nonprofit corporation, public benefit corporation, regional farmers' market authority, or other eligible entity as outlined in the "Definitions" section of this NOFA. Applications without sufficient information to determine their eligibility will not be considered. This eligibility statement will be counted towards the 10-page maximum for the proposal narrative.
6. Proposal Narrative. The narrative portion of the project proposal must not exceed 10 pages (Times New Roman font, 12 pt. pitch, single spaced, 8.5 by 11 inch-paper). The narrative must be organized under the following headings:
  - a. Project Title. Provide a title that captures the primary focus of the project.
  - b. Executive Summary. The project summary, not to exceed 200 words, must include the following: a description of the project including the goals to be accomplished, stages of work and resources required, the expected timeframe for completing all tasks and results, and primary project manager responsible for the project.
  - c. Goals of the Project. Provide a clear statement that includes the ultimate goal(s) and objective(s) (one or two sentences) of the project.
  - d. Background Statement. Provide information regarding past, current,

<sup>1</sup> References to a state also include the District of Columbia.

and/or future events, conditions, or actions taken that justify the need for the project.

e. **Workplan and Resource Requirements.** Provide a statement that includes the planned scope of work, anticipated stages and timelines, and the resources required to complete the project. Identify who will do the work, whether collaborative arrangements or subcontractors will be used, the amount of resource commitments of the collaborators, and the role(s) and responsibilities of each collaborator or project partner.

f. **Expected Results.** Describe what is to be accomplished, the expected results, and how success will be measured at the completion of the project.

g. **Beneficiaries.** Describe which persons, organizations, and/or entities will benefit from the project work or research outlined in the proposal.

h. **Supplemental Budget Summary.** Provide in sufficient detail information about the budget categories listed on Form SF-424A to demonstrate that the budget is reasonable and adequate for the proposed work. Additional detail and justification must be provided for any purchase that is expected to exceed \$5,000. For full information on how to complete the Supplemental Budget Summary, please refer to the FMPP Guidelines available from AMS's Marketing Services Branch Web site at: <http://www.ams.usda.gov/tmd/MSB/index.htm>

i. **Primary Project Manager Information.** Provide the mailing address, telephone and fax number, and e-mail address for the person responsible for managing and/or overseeing the project.

7. **Methods of Evaluating Proposals.** Applicants should ensure that evaluation criteria are addressed within the proposal narrative. Each proposal will be evaluated using the following criteria:

a. The need for the project, excluding, however, routine operational expenses such as management salaries or other's salaries associated with normal operation of farm markets/marketing entities, utility bills, and insurance premiums.

b. Direct benefit to farmers/vendors, provided any benefit for individual farmers/vendors are provided for every market participating farmer/vendor in a market/market entity.

c. Project innovation.

d. Collaboration/partnerships (include partner qualifications) and farmer/producer participation.

e. Methodology for quantitative evaluation and measurement of the project's impact.

f. Project sustainability.

g. Transferability of project outcomes.

h. Reasonableness of budget.

#### **Grant Amounts**

The amount of funds available for FMPP grants in FY 2006 is approximately \$1 million. The maximum amount of Federal funds awarded for any one proposal will be \$75,000.

#### **Number of Awards**

No one applicant can receive more than one FMPP grant.

#### **Eligible Grant Uses**

FMPP grants are for, but are not limited to, projects and proposals that are associated with the following:

1. **Innovative Approaches to Market Operations and Management**—Projects that address operational or marketing opportunities and issues of markets and/or farmers/vendors to: Enhance product value and sales; increase revenue and efficiency; or reduce expenses. These projects may address:

- Advertising and market promotion.
- Labeling and signage.
- Waste management.
- Recycling.
- Liability coverage and insurance.
- Facility planning and/or design.
- Transportation and delivery systems.

• Infrastructure for electronic benefits transfer (EBT) usage; processing, kitchen incubators, storage, packaging, and refrigeration.

2. **Improving Access to Relevant Marketing and Financial Information**—Projects that provide opportunities and promote training, education, networking, and information sharing for farmers, vendors, market management, and market sponsors. These projects are designed to enhance sales volumes, self-sufficiency, and product security/safety. Project focuses may address:

• Direct marketing practices and methods, business planning, market growth management, recordkeeping, food handling and safety, farmer and vendor selection, recruitment, and retention.

• Consumer trends, demographics, changing ethnic demographics, and their relationship to customer purchasing patterns.

• Alternative purchasing methods, such as EBT; Women, Infants, and Children (WIC) coupons; Senior Farmers Market Nutrition Program (SFMNP) coupons; and debit/credit technologies.

• Association and other organizational development.

3. **Consumer-Based Education and Market Access**—Projects that address ways to improve consumers' access and utilization of markets/entities: These projects may include:

• Increasing consumer EBT use and awareness with a required emphasis on the assessment, evaluation, and measurement of the impact at eligible markets/entities.

• Consumer education that focuses on new food and agricultural products, product applications, and chef demonstrations with a required emphasis on the assessment, evaluation, and impact of such education on consumer patronage at eligible markets/entities.

• Assessment, evaluation, and impact of the vendors and/or the market/entities in providing access to fresh fruits and vegetables to low-income households, children, and seniors.

#### **Ineligible Grant Uses**

FMPP grant funds cannot be used to pay for:

1. Acquisition of land, repair, rehabilitation, acquisition or construction of a building or facility.
2. Political or lobbying activities.
3. Any activities prohibited by 7 CFR parts 3015 and 3019.

#### **How To Submit Proposals and Applications**

Each application must contain the following information stated in the "Proposal Preparation" section of the NOFA: Forms SF-424, SF-424A, and SF-424B; the entity DUNS number; the entity eligibility statement; and the proposal narrative.

Following are the options available for submitting proposals and applications:

**Electronic Submissions**—Proposals that are electronically submitted to AMS via e-mail must be sent to [USDAFMPP@usda.gov](mailto:USDAFMPP@usda.gov). E-mailed proposal submissions must be in Microsoft Word or Adobe Acrobat format. Form SF-424 "Application for Federal Assistance," must be completed and submitted with original signature and mailed to: Mr. Errol Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, AMS, USDA, Room 2646—South, 1400 Independence Avenue, SW., Washington, DC, 20250-0269. (202) 720-8317.

**Paper Submissions**—For paper submissions, an original and one copy of the proposal, with all required forms, must be submitted in one package,

preferably via express mail. Because packages sent to the Agency through the United States Postal Service can be damaged or delayed due to security procedures at USDA Washington DC headquarters, express mail services or couriers are strongly recommended. Paper submissions must be sent to: Mr. Errol Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, AMS, USDA, Room 2646—South, 1400 Independence Avenue, SW., Washington, DC, 20250-0269. (202) 720-8317.

If an e-mail address is provided, FMPP will send an e-mail message confirming receipt of the application package.

Electronic Submissions via Grants.gov—Federal grant applicants may apply electronically for grants through the Federal grants Web site: <http://www.grants.gov>. Applicants who submit their FMPP proposals via the Federal grants Web site are not required to submit any paper documents to FMPP. For information on how to apply electronically, click on <http://www.grants.gov/GetStarted>.

Dated: March 10, 2006.

**Lloyd Day,**  
Administrator, Agricultural Marketing Service.

[FR Doc. E6-3709 Filed 3-14-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Child Nutrition Programs—Income Eligibility Guidelines

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2006 through June 30, 2007. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need

and are revised annually to account for changes in the Consumer Price Index.

**DATES:** *Effective Date:* July 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305-2590.

**SUPPLEMENTARY INFORMATION:** This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

#### Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

#### Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Guidance for School Meals Manual*,

“income,” as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

“Income,” as the term is used in this Notice, does not include any income or benefits received under any Federal programs that are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

#### The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2006 through June 30, 2007. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2006 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

The income eligibility chart for School Year 2006-2007 continues the changes that were implemented for School Year 2004-2005. Prior to School Year 2004-2005, the Department displayed the monthly and weekly amounts for the Federal poverty guidelines in addition to the annual figures as issued by the Department of Health and Human Services. This Notice, however, only displays the annual figures because the monthly and weekly Federal poverty guidelines were

not used to determine the Income Eligibility Guidelines. As detailed below, all calculations are based on the annual figures.

In addition, the chart which details the free and reduced price eligibility criteria includes columns for income received twice monthly as well as income received every two weeks. To differentiate, a person paid every two weeks is paid 26 times per year, whereas a person paid twice monthly is paid 24 times per year. Furthermore, the

inclusion of information about income received twice per month as well as income received every two weeks conforms to the format used by the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (42 U.S.C. 1786; 7 CFR part 246).

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual

income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous states, the District of Columbia, Guam and the territories represent an increase of 3.36% over last year's level for a family of the same size.

**BILLING CODE 3410-30-P**

HOUSEHOLD SIZE		INCOME ELIGIBILITY GUIDELINES											
		Effective from						to					
		FEDERAL POVERTY GUIDELINES			REDUCED PRICE MEALS - 185 %			FREE MEALS - 130 %					
ANNUAL		ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY	ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY		
<b>48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES</b>													
1	9,800	18,130	1,511	756	698	349	12,740	1,062	531	490	245		
2	13,200	24,420	2,035	1,018	940	470	17,160	1,430	715	660	330		
3	16,600	30,710	2,560	1,280	1,182	591	21,580	1,799	900	830	415		
4	20,000	37,000	3,084	1,542	1,424	712	26,000	2,167	1,084	1,000	500		
5	23,400	43,290	3,608	1,804	1,665	833	30,420	2,535	1,268	1,170	585		
6	26,800	49,580	4,132	2,066	1,907	954	34,840	2,904	1,452	1,340	670		
7	30,200	55,870	4,656	2,328	2,149	1,075	39,260	3,272	1,636	1,510	755		
8	33,600	62,160	5,180	2,590	2,391	1,196	43,680	3,640	1,820	1,680	840		
For each add'l family member, add		3,400	525	263	242	121	4,420	369	185	170	85		
<b>ALASKA</b>													
1	12,250	22,663	1,889	945	872	436	15,925	1,328	664	613	307		
2	16,500	30,525	2,544	1,272	1,175	588	21,450	1,788	894	825	413		
3	20,750	38,388	3,199	1,600	1,477	739	26,975	2,248	1,124	1,038	519		
4	25,000	46,250	3,855	1,928	1,779	890	32,500	2,709	1,355	1,250	625		
5	29,250	54,113	4,510	2,255	2,082	1,041	38,025	3,169	1,585	1,463	732		
6	33,500	61,975	5,165	2,583	2,384	1,192	43,550	3,630	1,815	1,675	838		
7	37,750	69,838	5,820	2,910	2,687	1,344	49,075	4,090	2,045	1,888	944		
8	42,000	77,700	6,475	3,238	2,989	1,495	54,600	4,550	2,275	2,100	1,050		
For each add'l family member, add		4,250	7,863	656	328	152	5,525	461	231	213	107		
<b>HAWAII</b>													
1	11,270	20,850	1,738	869	802	401	14,651	1,221	611	564	282		
2	15,180	28,083	2,341	1,171	1,081	541	19,734	1,645	823	759	380		
3	19,090	35,317	2,944	1,472	1,359	680	24,817	2,069	1,035	955	478		
4	23,000	42,550	3,546	1,773	1,637	819	29,900	2,492	1,246	1,150	575		
5	26,910	49,784	4,149	2,075	1,915	958	34,983	2,916	1,458	1,346	673		
6	30,820	57,017	4,752	2,376	2,193	1,097	40,066	3,339	1,670	1,541	771		
7	34,730	64,251	5,355	2,678	2,472	1,236	45,149	3,763	1,882	1,737	869		
8	38,640	71,484	5,957	2,979	2,750	1,375	50,232	4,186	2,093	1,932	966		
For each add'l family member, add		3,910	7,234	603	302	140	5,083	424	212	196	98		

Authority: 42 U.S.C. 1758(b)(1).

Dated: March 9, 2006.

**Roberto Salazar,**  
Administrator.

[FR Doc. 06-2476 Filed 3-14-06; 8:45 am]

BILLING CODE 3410-30-C

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service****Inviting Applications for Rural Business Opportunity Grants**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of grants of up to \$50,000 per application from the Rural Business Opportunity Grant (RBOG) program for fiscal year (FY) 2006, to be competitively awarded. For multi-State projects, grant funds of up to \$150,000 will be available on a competitive basis.

**DATES:** The deadline for the receipt of applications in the Rural Development State Office is May 26, 2006. Any applications received at a Rural Development State Office after that date would not be considered for FY 2006 funding.

**ADDRESSES:** For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive copies of the application package. Potential applicants located in the District of Columbia must send their applications to the National Office at:

*District of Columbia*

Rural Business-Cooperative Service, USDA, Specialty Lenders Division, 1400 Independence Avenue, SW., Room 6867, STOP 3225, Washington, DC 20250-3225. (202) 720-1400.

A list of Rural Development State Offices follows:

*Alabama*

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106-3683. (334) 279-3400/TTD (334) 279-3495.

*Alaska*

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645-6539. (907) 761-7705/TTD (907) 761-8905.

*Arizona*

USDA Rural Development State Office, 230 N. First Avenue, Suite 206, Phoenix, AZ 85003-1706. (602) 280-8700/TTD (602) 280-8705.

*Arkansas*

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201-3225. (501) 301-3200/TTD (501) 301-3279.

*California*

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616-4169. (530) 792-5800/TTD (530) 792-5848.

*Colorado*

USDA Rural Development State Office, 655 Parfet Street, Room E-100, Lakewood, CO 80215. (720) 544-2903/TTD (720) 544-2976.

*Delaware-Maryland*

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904. (302) 857-3580/TTD (302) 857-3585.

*Florida/Virgin Islands*

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614-7010. (352) 338-3402/TTD (352) 338-3499.

*Georgia*

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601-2768. (706) 546-2162/TTD (706) 546-2034.

*Hawaii*

USDA Rural Development State Office, Federal Building, Room 311, 154 Waiianue Avenue, Hilo, HI 96720. (808) 933-8380/TTD (808) 933-8321.

*Idaho*

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709. (208) 378-5600/TTD (208) 378-5644.

*Illinois*

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821. (217) 403-6200/TTD (217) 403-6240.

*Indiana*

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278. (317) 290-3100/TTD (317) 290-3340.

*Iowa*

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309-2196. (515) 284-4663/TTD (515) 284-4858.

*Kansas*

USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604-4040. (785) 271-2700/TTD (785) 271-2767.

*Kentucky*

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503-5477. (859) 224-7300/TTD (859) 224-7422.

*Louisiana*

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302. (318) 473-7920/TTD (318) 473-7655.

*Maine*

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402-0405. (207) 990-9160/TTD (207) 942-7331.

*Massachusetts/Rhode Island/Connecticut*

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002-2999. (413) 253-4300/TTD (413) 253-4318.

*Michigan*

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823. (517) 324-5100/TTD (517) 337-6795.

*Minnesota*

USDA Rural Development State Office, 1408 21st Avenue, Suite 3, Austin, MN 55912. (651) 602-7800/TTD (651) 602-3799.

*Mississippi*

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269. (601) 965-4316/TTD (601) 965-5850.

*Missouri*

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203. (573) 876-0976/TTD (573) 876-9480.

*Montana*

USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771. (406) 585-2580/TTD (406) 585-2562.

*Nebraska*

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508. (402) 437-5551/TTD (402) 437-5093.

*Nevada*

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703-9910. (775) 887-1222/TTD (775) 885-0841.

*New Jersey*

USDA Rural Development State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054. (856) 787-7700/TTD (856) 787-7784.

*New Mexico*

USDA Rural Development State Office, 6200 Jefferson Street NE, Room 255, Albuquerque, NM 87109. (505) 761-4950/TTD (505) 761-4938.

*New York*

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202-2541. (315) 477-6400/TTD (315) 477-6447.

*North Carolina*

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609. (919) 873-2000/TTD (919) 873-2003.

*North Dakota*

USDA Rural Development State Office,  
Federal Building, Room 208, 220 East  
Rosser, P. O. Box 1737, Bismarck, ND  
58502-1737. (701) 530-2037/TDD (701)  
530-2113.

*Ohio*

USDA Rural Development State Office,  
Federal Building, Room 507, 200 North  
High Street, Columbus, OH 43215-2418.  
(614) 255-2400/TDD (614) 255-2554.

*Oklahoma*

USDA Rural Development State Office, 100  
USDA, Suite 108, Stillwater, OK 74074-  
2654. (405) 742-1000/TDD (405) 742-1007.

*Oregon*

USDA Rural Development State Office, 1229  
SE Third Street, Suite A, Pendleton, OR  
97801-4198. (503) 414-3300/TDD (503)  
414-3387.

*Pennsylvania*

USDA Rural Development State Office, One  
Credit Union Place, Suite 330, Harrisburg,  
PA 17110-2996. (717) 237-2299/TDD (717)  
237-2261.

*Puerto Rico*

USDA Rural Development State Office, 654  
Munoz Rivera Avenue, IBM Building, Suite  
601, San Juan, Puerto Rico 00918-6106.  
(787) 766-5095/TDD (787) 766-5332.

*South Carolina*

USDA Rural Development State Office, Strom  
Thurmond Federal Building, 1835  
Assembly Street, Room 1007, Columbia, SC  
29201. (803) 765-5163/TDD (803) 765-  
5697.

*South Dakota*

USDA Rural Development State Office,  
Federal Building, Room 210, 200 4th  
Street, SW., Huron, SD 57350. (605) 352-  
1100/TDD (605) 352-1147.

*Tennessee*

USDA Rural Development State Office, 3322  
West End Avenue, Suite 300, Nashville,  
TN 37203-1084. (615) 783-1300.

*Texas*

USDA Rural Development State Office,  
Federal Building, Suite 102, 101 South  
Main Street, Temple, TX 76501. (254) 742-  
9700/TDD (254) 742-9712.

*Utah*

USDA Rural Development State Office,  
Wallace F. Bennett Federal Building, 125  
South State Street, Room 4311, Salt Lake  
City, UT 84138. (801) 524-4320/TDD (801)  
524-3309.

*Vermont/New Hampshire*

USDA Rural Development State Office, City  
Center, 3rd Floor, 89 Main Street,  
Montpelier, VT 05602. (802) 828-6000/  
TDD (802) 223-6365.

*Virginia*

USDA Rural Development State Office,  
Culpeper Building, Suite 238, 1606 Santa  
Rosa Road, Richmond, VA 23229-5014.  
(804) 287-1550/ TDD (804) 287-1753.

*Washington*

USDA Rural Development State Office, 1835  
Black Lake Boulevard, SW., Suite B,  
Olympia, WA 98512-5715. (360) 704-  
7740.

*West Virginia*

USDA Rural Development State Office,  
Federal Building, 75 High Street, Room  
320, Morgantown, WV 26505-7500. (304)  
284-4860/TDD (304) 284-4836.

*Wisconsin*

USDA Rural Development State Office, 4949  
Kirschling Court, Stevens Point, WI 54481.  
(715) 345-7600/TDD (715) 345-7614.

*Wyoming*

USDA Rural Development State Office, 100  
East B Street, Federal Building, Room  
1005, P.O. Box 11005, Casper, WY 82602-  
5006. (307) 261-6300/TDD (307) 233-6733.

**SUPPLEMENTARY INFORMATION:** The RBOG program is authorized under section 306 of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(11)). The Rural Development State Offices administer the RBOG program on behalf of RBS at the State level. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include technical assistance for business development and economic development planning. A total of \$990,000 of non-earmarked funds is available for the RBOG program for FY 2006. To ensure that a broad range of communities have the opportunity to benefit from the available funds, no grant will exceed \$50,000, unless it is a multi-State project where funds may not exceed \$150,000. Pursuant to the Consolidated Appropriations Act for 2006 (Public Law 108-447), a total of \$990,000 has been earmarked for Native Americans and a total of \$990,000 for Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships. There is no project dollar amount limitation on applications for earmarked funds. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4284, subpart G. Information required to be in the application package are contained in 7 CFR part 4284, subpart G. The State Director may assign up to 15 discretionary points to an application, and the Agency Administrator may assign up to 20 additional discretionary points based on geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee. To

ensure the equitable distribution of funds, two projects from each State that score the greatest number of points based on the selection criteria and discretionary points will be considered for funding. Applications will be tentatively scored by the State Offices and submitted to the National Office for final review and selection.

The National Office will review the scores based on the grant selection criteria and weights contained in 7 CFR part 4284, subpart G. All applicants will be notified by RBS of the Agency's decision on the awards.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570-0024.

**Nondiscrimination Statement**

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice), or (202) 720-6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: February 23, 2006.

**Jackie J. Gleason,**

*Acting Administrator, Rural Business-Cooperative Service.*

[FR Doc. E6-3762 Filed 3-14-06; 8:45 am]

**BILLING CODE 3410-XY-P**

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service****Inviting Rural Business Enterprise Grant Program Preapplications for Technical Assistance for Rural Transportation Systems**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of two individual grants: one single \$495,000 grant from the passenger transportation funds appropriated for the RBS Rural Business Enterprise Grant (RBEG) program and another single \$247,500 grant from the Federally Recognized Native American Tribes' (FRNAT) funds appropriated for RBS under the RBEG program for fiscal year (FY) 2006. Each grant is to be competitively awarded to a qualified national organization. These grants are to provide technical assistance for rural transportation.

**DATES:** The deadline for receipt of preapplications in the Rural Development State Office is April 14, 2006. Preapplications received at a Rural Development State Office after that date would not be considered for FY 2006 funding.

**ADDRESSES:** For further information, entities wishing to apply for assistance should contact a Rural Development State Office to obtain copies of the pre-application package. A list of Rural Development State Offices follows:

*District of Columbia*

Rural Development Business Programs,  
USDA, Specialty Lenders Division, 1400  
Independence Avenue, SW., STOP 3225,  
Room 6867, Washington, DC 20250-3225,  
(202) 720-1400.

*Alabama*

USDA Rural Development State Office,  
Sterling Centre, Suite 601, 4121  
Carmichael Road, Montgomery, AL 36106-  
3683, (334) 279-3400.

*Alaska*

USDA Rural Development State Office, 800  
West Evergreen, Suite 201, Palmer, AK  
99645-6539, (907) 761-7705.

*Arizona*

USDA Rural Development State Office, 230  
N. First Avenue, Suite 206, Phoenix, AZ  
85003-1706, (602) 280-8700.

*Arkansas*

USDA Rural Development State Office, 700  
West Capitol Avenue, Room 3416, Little  
Rock, AR 72201-3225, (501) 301-3200.

*California*

USDA Rural Development State Office, 430 G  
Street, Agency 4169, Davis, CA 95616-  
4169, (530) 792-5800/TDD (530) 792-5848.

*Colorado*

USDA Rural Development State Office, 655  
Parfet Street, Room E-100, Lakewood, CO  
80215, (720) 544-2903/TDD (720) 544-  
2976.

*Delaware-Maryland*

USDA Rural Development State Office, 1221  
College Park Drive, Suite 200, Dover, DE

19904, (302) 857-3580/TDD (302) 857-  
3585.

*Florida/Virgin Islands*

USDA Rural Development State Office, 4440  
NW 25th Place, P.O. Box 147010,  
Gainesville, FL 32614-7010, (352) 338-  
3400/TDD (352) 338-3450.

*Georgia*

USDA Rural Development State Office,  
Stephens Federal Building, 355 E. Hancock  
Avenue, Athens, GA 30601-2768, (706)  
546-2162.

*Hawaii*

USDA Rural Development State Office,  
Federal Building, Room 311, 154  
Waiianuenue Avenue, Hilo, HI 96720, (808)  
933-8380/(808) 933-8321.

*Idaho*

USDA Rural Development State Office, 9173  
West Barnes Drive, Suite A1, Boise, ID  
83709, (208) 378-5600/TDD (208) 378-  
5644.

*Illinois*

USDA Rural Development State Office, 2118  
West Park Court, Suite A, Champaign, IL  
61821, (217) 403-6200/TDD (217) 403-  
6240.

*Indiana*

USDA Rural Development State Office, 5975  
Lakeside Boulevard, Indianapolis, IN  
46278, (317) 290-3100/TDD (317) 290-  
3340.

*Iowa*

USDA Rural Development State Office,  
Federal Building, Room 873, 210 Walnut  
Street, Des Moines, IA 50309 (515) 284-  
4663/TDD (515) 284-4858

*Kansas*

USDA Rural Development State Office, 1303  
SW First American Place, Suite 100,  
Topeka, KS 66604-4040, (785) 271-2700/  
TDD (785) 271-2767.

*Kentucky*

USDA Rural Development State Office, 771  
Corporate Drive, Suite 200, Lexington, KY  
40503, (859) 224-7300/TDD (859) 224-  
7422.

*Louisiana*

USDA Rural Development State Office, 3727  
Government Street, Alexandria, LA 71302,  
(318) 473-7920/TDD (318) 473-7655.

*Maine*

USDA Rural Development State Office, 967  
Illinois Avenue, Suite 4, P.O. Box 405,  
Bangor, ME 04402-0405, (207) 990-9160/  
TDD (207) 942-7331.

*Massachusetts/Rhode Island/Connecticut*

USDA Rural Development State Office, 451  
West Street, Suite 2, Amherst, MA 01002-  
2999, (413) 253-4300/TDD (413) 253-4318.

*Michigan*

USDA Rural Development State Office, 3001  
Coolidge Road, Suite 200, East Lansing, MI  
48823, (517) 324-5100/TDD (517) 337-  
6795.

*Minnesota*

USDA Rural Development State Office, 410  
AgriBank Building, 375 Jackson Street, St.  
Paul, MN 55101-1853, (651) 602-7800/  
TDD (651) 602-3799.

*Mississippi*

USDA Rural Development State Office,  
Federal Building, Suite 831, 100 West  
Capitol Street, Jackson, MS 39269, (601)  
965-4316/TDD (601) 965-5850.

*Missouri*

USDA Rural Development State Office, 601  
Business Loop 70 West, Parkade Center,  
Suite 235, Columbia, MO 65203, (573)  
876-0976/TDD (573) 876-9480.

*Montana*

USDA Rural Development State Office, 900  
Technology Blvd., Unit 1, Suite B, P.O. Box  
850, Bozeman, MT 59771, (406) 585-2580/  
TDD (406) 585-2562.

*Nebraska*

USDA Rural Development State Office,  
Federal Building, Room 152, 100  
Centennial Mall North, Lincoln, NE 68508,  
(402) 437-5551/TDD (402) 437-5093.

*Nevada*

USDA Rural Development State Office, 1390  
South Curry Street, Carson City, NV  
89703-9910, (775) 887-1222/TDD (775)  
885-0841.

*New Jersey*

USDA Rural Development State Office, 5th  
Floor North, Suite 500, 8000 Midlantic  
Drive, Mt. Laurel, NJ 08054, (856) 787-  
7700/TDD (856) 787-7784.

*New Mexico*

USDA Rural Development State Office, 6200  
Jefferson Street NE, Room 255,  
Albuquerque, NM 87109, (505) 761-4950/  
TDD (505) 761-4976.

*New York*

USDA Rural Development State Office, The  
Galleries of Syracuse, 441 South Salina  
Street, Suite 357, Syracuse, NY 13202-  
2541, (315) 477-6400/TDD (315) 477-6447.

*North Carolina*

USDA Rural Development State Office, 4405  
Bland Road, Suite 260, Raleigh, NC 27609,  
(919) 873-2000/TDD (919) 873-2003.

*North Dakota*

USDA Rural Development State Office,  
Federal Building, Room 208, 220 East  
Rosser, P.O. Box 1737, Bismarck, ND  
58502-1737, (701) 530-2037/TDD (701)  
530-2113.

*Ohio*

USDA Rural Development State Office,  
Federal Building, Room 507, 200 North  
High Street, Columbus, OH 43215-2418,  
(614) 255-2400/TDD (614) 255-2554.

*Oklahoma*

USDA Rural Development State Office, 100  
USDA, Suite 108, Stillwater, OK 74074-  
2654, (405) 742-1000/TDD (405) 742-1007.

*Oregon*

USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204-3222, (503) 414-3300/TDD (503) 414-3387.

*Pennsylvania*

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110-2996, (717) 237-2299/TDD (717) 237-2261.

*Puerto Rico*

USDA Rural Development State Office, IBM Building, 654 Munoz Rivera Avenue, Suite 601, San Juan, PR 00918-6106, (787) 766-5095/TDD (787) 766-5332.

*South Carolina*

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765-5163/TDD (803) 765-5697.

*South Dakota*

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352-1100/TDD (605) 352-1147.

*Tennessee*

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203-1084, (615) 783-1300.

*Texas*

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742-9700/TDD (254) 742-9712.

*Utah*

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524-4320/TDD (801) 524-3309.

*Vermont/New Hampshire*

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828-6000/TDD (802) 223-6365.

*Virginia*

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287-1550/TDD (804) 287-1753.

*Washington*

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512-5715, (360) 704-7740.

*West Virginia*

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505-7500, (304) 284-4860/TDD (304) 284-4836.

*Wisconsin*

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345-7600/TDD (715) 345-7614.

*Wyoming*

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602-5006, (307) 261-6300/TDD (307) 233-6733.

**SUPPLEMENTARY INFORMATION:** The passenger transportation portion of the RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). The RBEG program is administered on behalf of RBS at the State level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the application package. For the FRNAT grant, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Tribes. The project that scores the greatest number of points based on the selection criteria and Administrator's points will be selected for each grant. Preapplications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

To be considered "national," a qualified organization is required to provide evidence that it operates in multi-State areas. There is not a requirement to use the grant funds in a multi-State area. Under this notice, grants will be made to qualified, private, non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Public bodies are not eligible for passenger transportation RBEG grants.

The information collection requirements contained within this Notice have received approval by the Office of Management and Budget (OMB) under OMB Control Number 0570-0022 (7 CFR part 1942, subpart G).

**Fiscal Year 2006 Preapplications Submission**

Each application received in a Rural Development State Office will be reviewed to determine if this application is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR part 1942, subpart G, section 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the preapplications are submitted to the Rural Development State Office. Multiple project preapplications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project. For multiple-project preapplications, the average of the individual project scores will be the score for that application.

All eligible preapplications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than May 25, 2006, for final scoring and selection for an award.

The National Office will score preapplications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner and timeframe established by RBS in accordance with 7 CFR part 1942, subpart G. It is anticipated that the grantees will be selected by July 7, 2006. All applicants will be notified by RBS of the Agency's decision on the awards.

**Nondiscrimination Statement**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all

prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 (voice), or (202) 720-6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: February 23, 2006.

**Jackie J. Gleason,**

*Acting Administrator, Rural Business-Cooperative Service.*

[FR Doc. E6-3761 Filed 3-14-06; 8:45 am]

**BILLING CODE 3410-XY-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Household Water Well System Grant Program Announcement of Application Deadlines and Funding

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funding availability and solicitation of applications.

**SUMMARY:** USDA Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development announces its fiscal year (FY) 2006 funding and application window for the Household Water Well System (HWWS) Grant Program. The HWWS Grant Program is authorized under Section 6012 of the Farm Security and Rural Investment Act of 2002 (The Act), Public Law 107-171. The Act authorizes USDA Rural Development to make grants to qualified private non-profit organizations to establish lending programs for household water wells. For FY 2006, the HWWS grant funding available is \$990,000. The non-profit organizations will use the grants to make loans to individuals to construct or upgrade a household water well system for an existing home. The organizations must contribute an amount equal to at least 10 percent of the grant request to capitalize the loan fund. Applications may be submitted in paper or electronic format. The HWWS Grant Program regulations are contained in 7 CFR part 1776.

**DATES:** The deadline for completed applications for a HWWS grant is May 31, 2006. Applications in either paper or electronic format must be postmarked or time-stamped electronically on or before

the deadline. Late applications will be ineligible for grant consideration.

**ADDRESSES:** Submit electronic grant applications through <http://www.grants.gov> (Grants.gov), following the instructions on that Web site. Submit completed paper applications to the U.S. Department of Agriculture, USDA Rural Development Utilities Programs, Mail Stop #1570, Room 2233-S, 1400 Independence Ave., SW., Washington, DC 20250-1570. Applications should be marked "Attention: Water and Environmental Programs."

Application guides and materials for the HWWS Grant Program may be obtained electronically through <http://www.usda.gov/rus/water/well.htm>. Call (202) 720-9589 to request paper copies of application guides and materials from the Water and Environmental Programs staff.

#### FOR FURTHER INFORMATION CONTACT:

Cheryl Francis, Loan Specialist, U.S. Department of Agriculture, Rural Development Programs, Water and Environmental Programs, telephone: (202) 720-1937, fax: (202) 690-0649, e-mail: [cheryl.francis@wdc.usda.gov](mailto:cheryl.francis@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Overview

*Federal Agency:* Rural Utilities Service (RUS).

*Funding Opportunity Title:* Household Water Well System Grant Program.

*Announcement Type:* Grant—Initial.

*Catalog of Federal Domestic*

*Assistance (CFDA) Number:* 10.862.

*Due Date for Applications:* May 31, 2006.

##### Items in Supplementary Information

- I. Funding Opportunity: Description of the Household Water Well System Grant Program.
- II. Award Information: Available funds.
- III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
- IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
- V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
- VI. Award Administration Information: Award notice information, award recipient reporting requirements.
- VII. Agency Contacts: Web, phone, fax, email, contact name.

##### I. Funding Opportunity

###### A. Program Description

The Household Water Well System (HWWS) Grant Program has been

established to help individuals with low to moderate incomes finance the costs of household water wells that they own or will own. The HWWS Grant Program is authorized under section 6012 of the Farm Security and Rural Investment Act of 2002 (The Act), Public Law 107-171. The Act authorizes the USDA Rural Development through the Rural Utilities Service to make grants to qualified private non-profit organizations to establish lending programs for household water wells.

As the grant recipients, non-profit organizations will receive HWWS grants to establish lending programs that will provide water well loans to individuals. The individuals, as loan recipients, may use the loans to construct, refurbish, and service their household well systems. A loan may not exceed \$8,000 and will have a term up to 20 years at a one percent annual interest rate.

###### B. Background

The USDA Rural Development supports the sound development of rural communities and the growth of our economy without endangering the environment. The USDA Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

A central water system may not be the only or best solution to drinking water problems. Distance or physical barriers make public central water systems expensive in remote areas. A significant number of geographically isolated households without water service might require individual wells rather than connections to new or existing community systems. The goal of the USDA Rural Development is not only to make funds available to those communities most in need of potable water but also to ensure that facilities used to deliver drinking water are safe and affordable. There is a role for private wells in reaching this goal.

###### C. Purpose

The purpose of the HWWS Grant Program is to provide funds to non-profit organizations to assist them in establishing loan programs from which individuals may borrow money for household water well systems. Applicants must show that the project will provide technical and financial assistance to eligible individuals to remedy household well problems. Priority will be given to the non-profit organizations that:

1. Demonstrate experience in promoting safe, productive uses of

household water wells and ground water.

2. Demonstrate significant management experience in making and servicing loans to individuals.

3. Contribute more than 50 percent of the grant amount in cash or other liquid assets in order to capitalize the revolving loan fund.

4. Propose to serve rural areas containing the smallest communities with a high percentage of low-income individuals eligible for loans.

5. Target areas which lack running water, flush toilets, and modern sewage disposal systems.

Due to the limited amount of funds available under the HWWS Program, one or two applications may be funded from FY 2006 funds. Previously funded grant recipients must apply for a different target area to be considered for funding under this announcement.

## II. Award Information

*Funding Instrument Type:* Grant.  
*Anticipated Total Priority Area Funding:* \$990,000.

*Anticipated Number of Awards:* 1 or 2.

*Length of Project Periods:* 12-month project.

*Assistance Instrument:* Grant Agreement with successful applicants before any grant funds are disbursed.

## III. Eligibility Information

### A. Who Is Eligible for Grants?

1. An organization is eligible to receive a Household Water Well grant if it:

a. Is a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS). Faith-based organizations are eligible and encouraged to apply for this program.

b. Is legally established and located within one of the following:

- (1) A state within the United States
- (2) The District of Columbia
- (3) The Commonwealth of Puerto Rico
- (4) A United States territory

c. Has the legal capacity and authority to carry out the grant purpose;

d. Has sufficient expertise and experience in lending activities;

e. Has sufficient expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water;

f. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt;

g. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

2. An individual is ineligible to receive a Household Water Well grant. An individual may receive only a loan.

### B. What are the basic eligibility requirements for a project?

1. *Project Eligibility.* To be eligible for a grant, the project must:

a. Be a revolving loan fund created to provide loans to eligible individuals to construct, refurbish, and service individually-owned household water well systems (see 7 CFR 1776.11 and 1776.12). Loans may not be provided for home sewer or septic system projects.

b. Be established and maintained by a private, non-profit organization.

c. Be located in a rural area. Rural area is defined as locations other than cities or towns of more than 50,000 people and the adjacent urbanized area of such towns and cities.

2. *Required Matching Contributions.* Grant applicants must provide written evidence of a matching contribution of at least 10 percent from sources other than the proceeds of a HWWS grant. In-kind contributions will not be considered for the matching requirement. Please see 7 CFR 1776.9 for the requirement.

3. *Other—Requirements.*

a. *DUNS Number.* An organization must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. A DUNS number will be required whether an applicant is submitting a paper application or an electronic application through <http://www.grants.gov>. To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1-866-705-5711 or request one on-line at <http://www.dnb.com>.

b. *Eligibility for Loans.* Individuals are not eligible for grants but are eligible for loans. To be eligible for a loan, an individual must:

(1) Be a member of a household of which the combined household income of all members does not exceed 100 percent of the median non-metropolitan household income for the State or territory in which the individual resides. Household income is the total income from all sources received by each adult household member for the most recent 12-month period for which the information is available. It does not include income earned or received by dependent children under 18 years old or other benefits that are excluded by Federal law. The non-metropolitan household income must be based on the most recent decennial census of the United States.

USDA Rural Development publishes a list of income exclusions in 7 CFR

3550.54(b). Also, a list of federally Mandated Exclusions from Income, published by the Department of Housing and Urban Development may be found in the **Federal Register**, April 20, 2001 at 66 FR 20318.

(2) Own and occupy the home being improved with the proceeds of the Household Water Well loan or be purchasing the home to occupy under a legally enforceable land purchase contract which is not in default by either the seller or the purchaser.

(3) Own the home in a rural area.

(4) Not use the loan for a water well system associated with the construction of a new dwelling.

(5) Not use the loan to substitute a well for water service available from collective water systems. (For example, a loan may not be used to restore an old well abandoned when a dwelling was connected to a water district's water line.)

(6) Not be suspended or debarred from participation in Federal programs.

## IV. Application and Submission Information

### A. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the HWWS Grant regulation are available from these sources:

1. On-line for electronic copies: <http://www.grants.gov> or <http://www.usda.gov/rus/water/well.htm>, and
2. USDA Rural Development for paper copies. USDA Rural Development Utilities Programs, Water Programs Division, Room 2234 South, Stop 1570, 1400 Independence Avenue, SW., Washington, DC 20250-1570. Telephone: (202) 720-9589; Fax (202) 690-0649.

### B. Content and Form of Application Submission

#### 1. Rules and Guidelines

a. Detailed information on each item required can be found in the Household Water Well System Grant Program regulation and the Household Water Well System Grant Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of HWWS financial assistance specified in the regulation. The regulation and application guide provide specific guidance on each of the items listed.

b. Applications should be prepared in conformance with the provisions in 7 CFR part 1776, subpart B, and applicable USDA regulations including

7 CFR parts 3015 and 3019. Applicants should use the Household Water Well System Grant Application Guide which contains instructions and other important information in preparing their application. Completed applications must include the items found in the checklist in the next paragraph.

## 2. Checklist of Items in Completed Application Packages

The forms in items 1 through 6 must be completed and signed where appropriate by an official of your organization who has authority to obligate the organization legally. The forms may be found on-line at the USDA Rural Development Web site: <http://www.usda.gov/rus/water/wwforms.htm>. See section V, "Application Review Information," for instructions and guidelines on preparing Items 7 through 13.

### Application Items

1. SF-424, "Application for Federal Assistance"
  2. SF-424A, "Budget Information—Non-Construction Programs"
  3. SF-424B, "Assurances—Non-Construction Programs"
  4. SF-LLL, "Disclosure of Lobbying Activity"
  5. Form RD 400-1, "Equal Opportunity Agreement"
  6. Form RD 400-4, "Assurance Agreement (Under Title VI, Civil Rights Act of 1964)"
  7. Project Proposal  
Project Summary  
Needs Assessment  
Project Goals and Objectives  
Project Narrative
  8. Work Plan
  9. Budget and Budget Justification
  10. Evidence of Legal Authority and Existence
  11. Documentation of non-profit status and IRS Tax Exempt Status
  12. List of Directors and Officers
  13. Financial information and sustainability (narrative)
  14. Assurances and Certifications of Compliance with Other Federal Statutes
3. Compliance With Other Federal Statutes

The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

- a. 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.
- b. 7 CFR part 3015—Uniform Federal Assistance Regulations.

c. 7 CFR part 3017—Government wide Debarment and Suspension (Non-procurement).

d. 7 CFR part 3018—New Restrictions on Lobbying.

e. 7 CFR part 3021—Government wide Requirements for Drug-Free Workplace (Financial Assistance).

f. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." For information on limited English proficiency and agency-specific guidance, go to <http://www.LEP.gov>.

g. Federal Obligation Certification on Delinquent Debt.

### C. How Many Copies of an Application Are Required?

1. *Applications Submitted on Paper.* Submit one signed original and two additional copies. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, and have original signatures. Do not include organizational brochures or promotional materials.

2. *Applications Submitted Electronically.* The additional paper copies are unnecessary if the application is submitted electronically through <http://www.grants.gov>.

### D. How and Where To Submit an Application

#### 1. Submitting Paper Applications

a. For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date to:

USDA Rural Development Utilities Programs, Water Programs Division, Room 2234 South, Stop 1570, 1400 Independence Avenue, SW., Washington, DC 20250-1570.

b. Applications must show proof of mailing or shipping by one of the following:

- (1) A legibly dated U.S. Postal Service (USPS) postmark;
- (2) A legible mail receipt with the date of mailing stamped by the USPS; or
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

c. If a deadline date falls on a weekend, it will be extended to the following Monday. If the date falls on a Federal holiday, it will be extended to the next business day.

d. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. USDA Rural Development encourages applicants to consider the impact of this

procedure in selecting an application delivery method.

#### 2. Submitting Electronic Applications

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through Grants.gov at <http://www.grants.gov>.

c. Applicants who apply through Grants.gov should submit their applications before the deadline.

d. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application. RUS may request original signatures on electronically submitted documents later.

e. To use Grants.gov:

- (1) Follow the instructions on the Web site to find grant information.
- (2) Download a copy of an application package.
- (3) Complete the package off-line.
- (4) Upload and submit the application via the Grants.gov Web site.

f. You must be registered with Grants.gov before you can submit a grant application.

(1) You will need a DUNS number to access or register at any of the services. In addition to the DUNS number required of all grant applicants, your organization must be listed in the Central Contractor Registry (CCR). If you have not used Grants.gov before, you will need to register with the CCR and the Credential Provider. Setting up a CCR listing (a one-time procedure with annual updates) takes up to five business days. USDA Rural Development recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(2) The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1-888-227-2423 or you may register online at <http://www.ccr.gov>.

(3) The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov at <https://apply.grants.gov/OrcRegister>.

(4) If a system problem or technical difficulty occurs with an electronic

application, please use the customer support resources available at the Grants.gov website.

#### E. Deadlines

The deadline for paper and electronic submissions is May 31, 2006. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than the closing date to be considered for FY 2006 grant funding. Electronic applications must have an electronic date and time stamp by midnight of May 31, 2006, to be considered on time. USDA Rural Development will not accept applications by fax or e-mail. Applications that do not meet the criteria above are considered late applications and will not be considered. USDA Rural Development will notify each late applicant that its application will not be considered.

#### F. Funding Restrictions

##### 1. Eligible Grant Purposes

a. Grant funds must be used to establish and maintain a revolving loan fund to provide loans to eligible individuals for household water well systems.

b. Individuals may use the loans to construct, refurbish, rehabilitate, or replace household water well systems up to the point of entry of a home. Point of entry for the well system is the junction where water enters into a home water delivery system after being pumped from a well.

c. Grant funds may be used to pay administrative expenses associated with providing Household Water Well loans.

##### 2. Ineligible Grant Purposes

a. Administrative expenses incurred in any calendar year that exceed 10 percent of the HWWS loans made during the same period do not qualify for reimbursement.

b. Administrative expenses incurred before USDA Rural Development executes a grant agreement with the recipient do not qualify for reimbursement.

c. Delinquent debt owed to the Federal Government.

d. Grant funds may not be used to provide loans for household sewer or septic systems.

e. Household Water Well loans may not be used to pay the costs of water well systems for the construction of a new house.

f. Household Water Well loans may not be used to pay the costs of a home plumbing system.

## V. Application Review Information

### A. Criteria

This section contains instructions and guidelines on preparing the project proposal, work plan, and budget sections of the application. Also, guidelines are provided on the additional information required for USDA Rural Development to determine eligibility and financial feasibility.

1. *Project Proposal.* The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of the loan program. Explain what will be accomplished by lending funds to individual well owners. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should include the following elements:

a. *Project Summary.* Present a brief project overview. Explain the purpose of the project, how it relates to USDA Rural Development's purposes, how the project will be executed, what the project will produce, and who will direct it.

b. *Needs Assessment.* To show why the project is necessary, clearly identify the economic, social, financial, or other problems that require solutions. Demonstrate the well owners' need for financial and technical assistance. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Provide information on the household income of the area and other demographical information. Address community needs.

c. *Project Goals and Objectives.* Clearly state the project goals. The objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the grant and loan program.

d. *Project Narrative.* The narrative should cover in more detail the items briefly described in the Project Summary. Demonstrate the grant applicant's experience and expertise in promoting the safe and productive use of individually-owned household water well systems. The narrative should address the following points:

(1) Document the grant applicant's ability to manage and service a revolving fund. The narrative may describe the systems that are in place for the full life cycle of a loan from loan origination through servicing. If a servicing contractor will service the

loan portfolio, the arrangement and services provided must be discussed.

(2) Show evidence that the organization can commit financial resources the organization controls. This documentation should describe the sources of funds other than the HWWS grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that the organization has secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

2. *Work Plan.* The work plan or scope of work must describe the tasks and activities that will be accomplished with available resources during the grant period. It must include who will carry out the activities and services to be performed and specific timeframes for completion. Describe any unusual or unique features of the project such as innovations, reductions in cost or time, or extraordinary community involvement.

3. *Budget and Budget Justification.* Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the HWWS grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources.

a. Provide a budget with line item detail and detailed calculations for each budget object class identified in section B of the Budget Information form (SF-424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF-424.

b. Provide a narrative budget justification that describes how the categorical costs are derived for all capital and administrative expenditures, the matching contribution, and other sources of funds necessary to complete the project. Discuss the necessity, reasonableness, and allocability of the proposed costs. Consult OMB Circular A-122: "Cost Principles for Non-Profit Organizations" for information about appropriate costs for each budget category.

c. If the grant applicant will use a servicing contractor, the fees may be reimbursed as an administrative expense as provided in 7 CFR 1776.13. These fees must be discussed in the budget narrative. If the grant applicant will hire a servicing contractor, it must demonstrate that all procurement

transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000).

d. The indirect cost category should be used only when the grant applicant currently has an indirect cost rate approved by the Department of Agriculture or another cognizant Federal agency. A grant applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the grant applicant is in the process of initially developing or renegotiating a rate, the grant applicant shall submit its indirect cost proposal to the cognizant agency immediately after the applicant is advised that an award

will be made. In no event, shall the indirect cost proposal be submitted later than three months after the effective date of the award. Consult OMB Circular A-122 for information about indirect costs.

4. *Evidence of Legal Authority and Existence.* The applicant must provide satisfactory documentation that it is legally recognized under state and Federal law as a non-profit organization. The documentation also must show that it has the authority to enter into a grant agreement with the Rural Utilities Service and to perform the activities proposed under the grant application. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

5. *List of Directors and Officers.* The applicant must submit a certified list of directors and officers with their respective terms.

6. *IRS Tax Exempt Status.* The applicant must submit evidence of tax exempt status from the Internal Revenue Service.

7. *Financial Information and Sustainability.* The applicant must submit pro forma balance sheets, income statements, and cash flow statements for the last three years and projections for three years. Additionally, the most recent audit of the applicant's organization must be submitted.

*B. Evaluation Criteria*

Grant applications that are complete and eligible will be scored competitively based on the following scoring criteria:

Scoring criteria	Points
Degree of expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water.	Up to 30 points.
Degree of expertise and successful experience in making and servicing loans to individuals ..... Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a HWWS grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the HWWS grant and points corresponding to such percentages are as follows:	Up to 20 points.
0 to 9 percent .....	ineligible.
10 to 25 percent .....	5 points
26 to 30 percent .....	10 points
31 to 50 percent .....	15 points
51 percent or more .....	20 points
Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable.	Up to 20 points.
Lowest ratio of projected administrative expenses to loans advanced .....	Up to 10 points.
Administrator's discretion, taking into consideration such factors as: .....	Up to 10 points.
Creative outreach ideas for marketing HWWS loans to rural residents; .....	
Amount of funds requested in relation to the amount of needs demonstrated in the proposal; .....	
Excellent utilization of a previous revolving loan fund; and Optimizing the use of agency resources. ....	
Description of the service area, particularly the range of the area:	
State .....	10 points.
Regional .....	15 points.
National .....	20 points.
Extent to which the problem or issue being addressed in the Needs Assessment is defined clearly and supported by data.	Up to 15 points.
Extent to which the goals and objectives are clearly defined, tied to the need as defined in the Needs Assessment, and are measurable.	Up to 15 points.
Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with expected program outcomes.	Up to 20 points.

*C. Review Standards*

1. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

2. Ineligible applications will be returned to the applicant with an explanation.

3. Complete, eligible applications will be evaluated competitively by a review team, composed of at least two USDA Rural Development employees selected from the Water Programs Division. They will make overall recommendations based on the program elements found in 7 CFR part 1776 and the review criteria presented in this notice. They will award points as described in the scoring criteria in 7 CFR 1776.9 and this notice.

Each application will receive a score based on the averages of the reviewers' scores and discretionary points awarded by the Rural Utilities Service Administrator.

4. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

5. Regardless of the score an application receives, if USDA Rural Development determines that the

project is technically infeasible, USDA Rural Development will notify the applicant, in writing, and the application will be returned with no further action.

## VI. Award Administration Information

### A. Award Notices

USDA Rural Development will notify a successful applicant by an award letter accompanied by a grant agreement. The grant agreement will contain the terms and conditions for the grant. The applicant must execute and return the grant agreement, accompanied by any additional items required by the award letter or grant agreement.

### B. Administrative and National Policy Requirements

1. This notice, the 7 CFR 1776, and Household Water Well System Grant Program Application Guide implement the appropriate administrative and national policy requirements. Grant recipients are subject to the requirements in 7 CFR part 1776.

2. Direct Federal grants, sub-award funds, or contracts under the HWWS Program shall not be used to fund inherently religious activities, such as worship, religious instruction, or proselytization. Therefore, organizations that receive direct USDA assistance should take steps to separate, in time or location, their inherently religious activities from the services funded under the HWWS Program. USDA regulations pertaining to the Equal Treatment for Faith-based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found either at the USDA Web site at <http://www.usda.gov/fbc/finalrule.pdf> or 7 CFR part 16.

### C. Reporting

1. *Performance Reporting.* All recipients of HWWS Grant Program financial assistance must provide quarterly performance activity reports to USDA Rural Development until the project is complete and the funds are expended. A final performance report is also required. The final report may serve as the last annual report. The final report must include an evaluation of the success of the project.

2. *Financial Reporting.* All recipients of Household Water Well System Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. The grantee will provide an audit report or financial statements as follows:

a. Grantees expending \$500,000 or more Federal funds per fiscal year will

submit an audit conducted in accordance with OMB Circular A-133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

b. Grantees expending less than \$500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

## VII. Agency Contacts

A. *Web site:* <http://www.usda.gov/rus/water>. The USDA Rural Development's Web site maintains up-to-date resources and contact information for the Household Water Well program.

B. *Phone:* 202-720-9589.

C. *Fax:* 202-690-0649.

D. *E-mail:* [cheryl.francis@wdc.usda.gov](mailto:cheryl.francis@wdc.usda.gov).

E. *Main point of contact:* Cheryl Francis, Loan Specialist, Water and Environmental Programs, Water Programs Division, USDA Rural Development Utilities Programs, U.S. Department of Agriculture.

Dated: March 6, 2006.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

[FR Doc. E6-3694 Filed 3-14-06; 8:45 am]

**BILLING CODE 3410-15-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Announcement of Grant and Loan Application Deadlines and Funding Levels

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funding availability and solicitation of applications.

**SUMMARY:** USDA Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development announces the Fiscal Year (FY) 2006 funding levels available for its Revolving Fund Program (RFP) grant. In addition, USDA Rural Development announces the maximum amounts for RFP grants applicable for the fiscal year 2006 and the solicitation of applications.

**DATES:** You may submit completed applications for the Revolving Fund Program's grant from March 1, 2006 until May 2, 2006.

Reminder of competitive grant application deadline: Applications must

be mailed, shipped or submitted electronically through Grants.gov no later than May 2, 2006, to be eligible for FY 2006 grant funding.

**ADDRESSES:** You may obtain application guides and materials for the RFP program via the Internet at the USDA Rural Development Water and Environmental Programs (WEP) Web site: <http://www.usda.gov/rus/water/index.htm>. You may also request application guides and materials from USDA Rural Development by contacting the WEP at (202) 690-3789.

Submit completed paper applications for RFP grant to the Rural Development Utilities Programs, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250-1570.

Applications should be marked "Attention: Assistant Administrator, Water and Environmental Programs."

Submit electronic grant applications at <http://www.grants.gov> (Grants.gov) and follow the instructions you find on that Web site.

#### FOR FURTHER INFORMATION CONTACT:

Anita O'Brien, Loan Specialist, Water Program Division, USDA Rural Development Utilities Programs; Telephone: (202) 690-3789, fax: (202) 690-0649.

#### SUPPLEMENTARY INFORMATION:

##### Overview

*Federal Agency:* Rural Utilities Service (RUS).

*Funding Opportunity Title:* Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)).

*Announcement Type:* Funding Level Announcement, and Solicitation of Applications.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 10.864.

*Dates:* You may submit completed application for a RFP grant from March 1, 2006 and May 2, 2006.

*Reminder of competitive grant application deadline:* Applications must be mailed, shipped or submitted electronically through Grants.gov no later than May 2, 2006, to be eligible for FY 2006 grant funding.

#### Items in Supplementary Information

- I. Funding Opportunity: Brief introduction to the RFP.
- II. Award Information: Available funds, maximum amounts.
- III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
- IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how

and where to submit applications, deadlines, items that are eligible.

- V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
- VI. Award Administration Information: Award notice information, award recipient reporting requirements.
- VII. Agency Contacts: Web, phone, fax, e-mail, contact name.

## I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. With dependable water facilities, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water facilities, the communities cannot sustain economic development.

The USDA Rural Development Utilities Programs supports the sound development of rural communities and the growth of our economy without endangering the environment. Rural Utilities Service (RUS) programs are administered by USDA Rural Development. USDA Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Revolving Fund (RFP) Grant Program has been established to assist communities with water or wastewater systems. Qualified private non-profit organizations will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Water and Waste Disposal and Wastewater loan and grant programs administered by USDA Rural Development. As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems. The amount of financing to an eligible entity shall not exceed \$100,000.00 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant work plan.

## II. Award Information

*Available funds:* \$495,000 is available for grants in FY 2006.

## III. Eligibility Information

### A. What Are the Basic Eligibility Requirements for Applying?

Is a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

Is legally established and located within one of the following:

1. A state within the United States;
2. The District of Columbia;
3. The Commonwealth of Puerto Rico;
4. A United States territory;
5. Has the legal capacity and authority to carry out the grant purpose;
6. Has a proven record of successfully operating a revolving loan fund to rural areas;
7. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;
8. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt;
9. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

### B. What Are the Basic Eligibility Requirements for a Project?

1. The following activities are authorized under the RFP statute:

(a) Grant funds must be used to capitalize a revolving fund program for the purpose of providing direct loan financing to Ultimate Recipients for predevelopment costs associated with proposed or with existing water and wastewater systems, or,

(b) Short-term costs incurred for equipment replacement, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

2. Grant funds may not be used to pay any of the following:

- (a) Payment of the Intermediary's administrative costs or expenses, and,
- (b) Delinquent debt owed to the Federal Government.

## IV. Application and Submission Information

*A. The Grant Application Guide, Copies of Necessary Forms and Samples, and the RFP Regulation Are Available From These Sources*

1. The Internet: <http://www.usda.gov/rus/water/index.htm> or <http://www.grants.gov>.

2. For paper copies of these materials telephone (202) 690-3789.

### B. You May File an Application in Either Paper or Electronic Format

1. Applications submitted by paper:  
(a) Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to: Assistant Administrator—Water and Environmental Programs, USDA Rural Development Utilities Programs, 1400 Independence Avenue, SW., STOP 1548, Room S-5145, Washington, DC, 20250-1548.

(b) For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date. The application and any materials sent with it become Federal records by law and cannot be returned to you.

2. Electronically submitted applications:

(a) For electronic applications you must file through Grants.gov, the official Federal Government Web site at <http://www.grants.gov>. You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to access or register at any of the services. The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. USDA Rural Development may request original signatures on electronically submitted documents later.

(b) The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1-888-227-2423 or, you may register online at <http://www.ccr.gov>.

(c) The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov at the following Web address: <https://apply.grants.gov/OrcRegister>.

(d) DUNS Number: Whether you file a paper or an electronic application, you will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. You must provide your

DUNS number on the SF-424, "Application for Federal Assistance." To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1-866-705-5711 or access the Web site at <http://www.dunandbradstreet.com>. The following information is needed when requesting a DUNS number:

- (1) Legal Name.
  - (2) Headquarters name and address of the organization.
  - (3) Doing business as (dba) or other name by which the organization is commonly recognized.
  - (4) Physical address.
  - (5) Mailing address (if separate from headquarters and/or physical address).
  - (6) Telephone number.
  - (7) Contact name and title.
  - (8) Number of employees at the physical location.
- e. USDA Rural Development will not accept applications by fax or e-mail.

### C. What Constitutes a Completed Application?

1. To be considered for support, you must be an eligible entity and must submit a complete application by the deadline date. You should consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a RFP grant:

- (a) Standard Form 424, "Application for Federal Assistance"
- (b) Standard Form 424A, "Budget Information-Non-Construction Programs"
- (c) Standard Form 424B, "Assurances—Non construction Programs"
- (d) Standard Form LLL, "Disclosure of Lobbying Activity"
- (e) Form RD 400-1, "Equal Opportunity Agreement"
- (f) Form RD 400-4, "Assurance Agreement (Under Title VI, Civil Rights Act of 1964)"

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the loan program will work. Explain what you will accomplish by lending funds to eligible entities. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should cover the following elements:

(a) Present a brief project overview. Explain the purpose of the project, how it relates to USDA Rural Development's purposes, how you will carry out the project, what the project will produce, and who will direct it.

(b) Describe why the project is necessary. Demonstrate that eligible entities need loan funds. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Address community needs.

(c) Clearly state your project goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the loan program.

(d) The narrative should cover in more detail the items briefly described in the Project Summary. It should establish the basis for any claims that you have substantial expertise in promoting the safe and productive use of Revolving Funds. In describing what the project will achieve, you should tell the reader if it also will have broader influence. The narrative should address the following points:

(1) Document your ability to administer and service a revolving fund in accordance with the provisions of 7 CFR part 1783.

(2) Document that, to establish the revolving fund, you can commit financial resources your organization controls. This documentation should describe the sources of funds other than the RFP grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that you have secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

(e) The work plan must describe the tasks and activities that will be accomplished with available resources during the grant period. It must show the work you plan to do to achieve the anticipated outcomes, goals, and objectives set out for the RFP Program. The plan must:

(1) Describe the work to be performed by each person.

(2) Give a schedule or timetable of work to be done.

(3) Show evidence of previous experience with the techniques to be used or their successful use by others.

(4) Outline the loan program to include the following: specific loan purposes, a loan application process; priorities, borrower eligibility criteria,

limitations, fees, interest rates, terms, and collateral requirements.

(5) Provide a marketing plan.

(6) Explain the mechanics of how you will transfer loan funds to the borrowers.

(7) Describe follow-up or continuing activities that should occur after project completion such as monitoring and reporting borrowers' accomplishments.

(8) Project Evaluation. It should describe how the results will be evaluated, in line with the project objectives.

(9) Personnel. The applicant should list all personnel responsible for administering this program along with a statement of their qualifications and experience.

(f) The written justification for projected costs should explain how budget figures were determined for each category. It should indicate which costs are to be covered by grant funds and which costs will be met by your organization or other organizations. The justification should account for all expenditures discussed in the narrative. It should reflect appropriate cost-sharing contributions. The budget justification should explain the budget and accounting system proposed or in place. The administrative costs for operating the budget should be expressed as a percentage of the overall budget. The budget justification should provide specific budget figures, rounding off figures to the nearest dollar. Applicants should consult OMB Circular A-122: "Cost Principles for Non-Profit Organizations" for information about appropriate costs for each budget category.

(g) In addition to completing the standard application forms, you must submit supplementary materials:

(h) Demonstrate that your organization is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

(i) Submit a certified list of directors and officers with their respective terms.

(j) Submit evidence of tax exempt status from the Internal Revenue Service.

(k) You must disclose debarment and suspension information required in accordance with 7 CFR, Part 3017, subpart 3017.335, if it applies. The section heading is "What information must I provide before entering into a covered transaction with the Department of Agriculture?" It is part of

the Department of Agriculture's rules on Government-wide Debarment and Suspension.

(l) You must identify all of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR part 3021, subpart 3021.230. The section heading is "How and when must I identify workplaces?" It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

(m) Submit the most recent audit of your organization.

(n) Submit the following financial statements:

i. A pro forma balance sheet at start-up and for at least three additional years; Balance sheets, income

statements, and cash flow statements for the last three years.

ii. If your organization has been formed less than three years, the financial statements should be submitted for the periods from inception to the present. Projected income and cash flow statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected income statement and balance sheet must include one set of projections that shows the revolving loan fund only and a separate set of projections that shows your organization's total operations.

(o) You may present additional information to support and describe your plan for achieving the grant objectives. The information may be regarded as essential for understanding and evaluating the project such as letters of support, resolutions, policies, etc. The supplements may be presented in appendices to the proposal.

**V. Application Review Information**

A. Receipt Acknowledgment by letter sent within 30 days of receiving your application, RUS will acknowledge the application's receipt. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, USDA Rural Development will return it to you with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

C. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

Scoring criteria	Points
1. Degree of expertise and successful experience in making and servicing commercial loans, with a successful record .....	Up to 30 points.
2. Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows: Less than 20 percent .....	Ineligible.
At least 20 percent but not more than 49 percent of the total project costs .....	10 points.
At least 50 percent of the total project costs .....	20 points.
3. Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; clearly defines who will be served by the project or program; and includes all components listed in 1783.37(b)(14).	Up to 40 points.
4. Description of the service area, particularly the range of the area: State .....	10 points.
Regional .....	15 points.
National .....	20 points.
5. Extent to which the problem or issue being addressed in the Needs Assessment is defined clearly and supported by data	Up to 15 points.
6. Extent to which the goals and objectives are clearly defined, tied to the need as defined in the Needs Assessment, and are measurable.	Up to 15 points.
7. Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with expected program outcomes.	Up to 20 points.
8. Administrator's discretion, taking into consideration such factors as: .....	Up to 10 points.
Creative outreach ideas for marketing RFP loans; Amount of funds requested in relation to the amount of needs demonstrated in the proposal; Excellent utilization of a previous revolving loan fund; and, Optimizing the use of agency resources	

**VI. Award Administration Information**

A. USDA Rural Development will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for RFP grants. Each applicant will be notified in writing of the score its application receives.

B. In making its decision about your application, USDA Rural Development may determine that your application is:

1. Eligible and selected for funding,
2. Eligible but offered fewer funds than requested,

3. Eligible but not selected for funding, or

4. Ineligible for the grant.

C. In accordance with 7 CFR part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied USDA Rural Development funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing

and filed at the appropriate Regional Office, which can be found at <http://www.nad.usda.gov/offices.htm> or by calling (703) 305-1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF-270, "Request for Advance or Reimbursement," will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.
2. Upon receipt of a properly completed SF-270, the funds will be

requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

G. Project reporting

1. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

2. SF-269, "Financial Status Report (short form)," and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

3. A final project performance report will be required with the last SF-269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

4. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending \$500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A-133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than \$500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

## VII. Agency Contacts

A. Web site: <http://www.usda.gov/rus/water>. The USDA Rural Development Utilities Programs Web site maintains up-to-date resources and contact information for RFP programs.

B. Phone: 202-690-3789.

C. Fax: 202-690-0649.

D. E-mail: [anita.obrien@wdc.usda.gov](mailto:anita.obrien@wdc.usda.gov).

E. Main point of contact: Stephen Saulnier, Loan Specialist, Water and Environmental Programs, Water Programs Division, USDA Rural Development Utilities Programs, U.S. Department of Agriculture.

Dated: March 7, 2006.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

[FR Doc. E6-3691 Filed 3-14-06; 8:45 am]

**BILLING CODE 3410-15-P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-827]

#### Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order in Part: Certain Cased Pencils From the People's Republic of China

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

**SUMMARY:** On August 30, 2005, the Department of Commerce (the Department) published a notice of initiation of an antidumping duty changed circumstances review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC). See *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Cased Pencils from the People's Republic of China*, 70 FR 51336 (August 30, 2005) (Initiation). The Department published the preliminary results of this review on January 3, 2006. See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 71 FR 92 (January 3, 2006) (Preliminary Results). We are now revoking this order, in part, with respect to pencils meeting the specifications described below, based on the fact that domestic interested parties<sup>1</sup> have

expressed no objection to exclusion of these pencils from the order.

**DATES:** *Effective Date:* March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4474 and (202) 482-0650, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 14, 2005, M.A. Notch Corporation (Notch), a U.S. importer, filed a request asking the Department to revoke the antidumping duty order (AD order) on certain cased pencils from the PRC with respect to a large novelty pencil. See Notch's letter to the Department, dated April 5, 2005 (Notch Request Letter). Specifically, Notch requests that the Department revoke the AD order with respect to imports of certain cased pencils meeting the following description: novelty jumbo pencil that is octagonal in shape, approximately ten inches long, one inch in diameter, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end. See Notch Request Letter at 1. On May 6, 2005, the domestic interested parties submitted a letter to the Department stating that they " \* \* \* do not object to exclusion of items meeting the description set forth in the quoted description" (as stated above). On August 22, 2005, the Department initiated a changed circumstances review. See *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Cased Pencils from the People's Republic of China*, 70 FR 51336 (August 30, 2005).

On August 25, 2005, we informed all interested parties that comments on the initiation of the changed circumstances review and/or comments with respect to whether the domestic interested parties account for substantially all of the production of the domestic like product, were due 21 days subsequent to publication of the initiation notice in the **Federal Register**. No interested party submitted comments.

As noted above, on January 3, 2006, the Department published the **Preliminary Results in the Federal Register** and gave interested parties an additional opportunity to comment. We received no comments from interested parties.

<sup>1</sup> Sanford Corporation, Musgrave Pencil Company, RoseMoon, Inc., and General Pencil Company, domestic manufacturers of cased pencils (collectively, the domestic interested parties).

### New Scope Based on This Changed Circumstances Review

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) Length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

### Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement by interested parties that they have no objection to exclusion of pencils meeting the specifications described above from the order constitutes changed circumstances sufficient to warrant partial revocation of this order. No party commented on the preliminary results or claimed that the domestic interested parties mentioned above do not account for substantially all of the production of the domestic like product to which the order pertains. Therefore, the Department is revoking, in part, the order on pencils from the PRC with

regard to the pencils meeting the specifications described above, in accordance with sections 751(b), 751(d)(1), and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g)(1).

The Department will instruct U.S. Customs and Border Protection (CBP) to liquidate, without regard to antidumping duties, all unliquidated entries of pencils meeting the specifications described above. The Department will instruct CBP to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of pencils meeting the specifications entered, or withdrawn from warehouse, for consumption prior to the effective date of this notice. In addition, the Department will terminate the suspension of liquidation for the merchandise covered by this partial revocation, effective on the date of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. See 19 CFR 351.305. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), 751(d)(1), 777(i) and 782(h)(2) of the Act and 19 CFR 351.216(e) and 19 CFR 351.222(g) of the Department's regulations.

Dated: March 9, 2006.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

[FR Doc. E6-3746 Filed 3-14-06; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010606B]

### Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

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

**ACTION:** Notice.

**SUMMARY:** NMFS issues this notice to notify the public that the United States has accepted conservation and management measures pertaining to fishing in Antarctic waters managed by the Commission for the Conservation of Antarctic Marine Living Resources (Commission or CCAMLR). The Commission adopted these measures at its twenty-fourth meeting in Hobart, Tasmania, October 24 to November 4, 2005. The measures have been agreed upon by the Member countries of CCAMLR, including the United States, in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources (the Convention). The conservation and management measures accepted: restrict overall catches, research catch and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; set fishing seasons; clarify seabird mitigation measures; clarify Member data reporting timelines and vessel monitoring reporting; adopt definitions for use in operating the Catch Documentation Scheme (CDS). The Commission adopted a list of vessels suspected to be engaged in illegal, unregulated or unreported fishing (IUU vessel list) in the Convention Area. The Commission also adopted a resolution urging Member participation in a non-Contracting Party Cooperation Enhancement Program.

**ADDRESSES:** Copies of the CCAMLR conservation and management measures may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Robin Tuttle, 301-713-2282.

**SUPPLEMENTARY INFORMATION:**

### Background

The full text of the conservation and management measures agreed to by consensus by CCAMLR at its 2005 meeting and published by the U.S. Department of State in a formal notice in the **Federal Register** on January 26, 2006 (71 FR 4406).

Public comments were invited on the notice, but no public comments were received. Through this action, NMFS notifies the public that the United States has accepted the measures adopted at CCAMLR's twenty-fourth meeting. NMFS provides the following summary of these conservation and management measures as a courtesy.

### Prohibitions on Directed Fishing

The Commission renewed the prohibition on directed fishing for *Dissostichus* species except in accordance with specific conservation measures. Accordingly, directed fishing for *Dissostichus* species in Subarea 48.5 was prohibited in the 2005/2006 season.

### Bycatch

The Commission agreed to apply the existing bycatch limits in Division 58.5.2 in the 2005/2006 season. The Commission also agreed to apply the existing bycatch limits for exploratory fisheries in the 2005/2006 season, taking account of the revised catch limit for *Dissostichus* species in Subareas 88.1 and 88.2 and the consequential change to the bycatch limits in those subareas.

The Commission agreed to include sleeper shark (*Somniosus* species) on the list of selected species for which its existing move-on rule applies when 2 tons or more are caught in any one haul. In addition, the Commission agreed to a new move-on rule in exploratory fisheries designed to encourage Members and their vessels to further improve the selectivity of fishing gear and fishing methods. The new move-on rule requires vessels to monitor the bycatch of *Macrourus* species relative to that of *Dissostichus* species at ten-day intervals.

### Environmental Protection

The Commission agreed to extend the environmental protection provisions implemented in the fisheries in Subareas 88.1 and 88.2 to fisheries in Subarea 48.6, south of 60° S, Division 58.4.2 and Division 58.4.1, south of 60° S. The provisions regulate the disposal of plastic packaging bands, the dumping or discharge of oil, garbage, food wastes, poultry, sewage, offal or incineration ash, and the translocation of poultry.

### Seabird Mitigation Measures

The Commission amended the conservation measure requiring longline sink rate testing prior to entering the Convention Area for vessels choosing to fish longlines during daylight hours. As amended, the conservation measure now requires a vessel to test a minimum, rather than a maximum, length of longline. The Commission also amended the measure to allow Commission-endorsed experimental trials to test the bottom-line system.

The Commission revised its conservation measure on the minimization of the mortality of seabirds in the course of longline fishing so as to allow fishers to test variations on the design of mitigation measures for longlines.

### Exploratory Fishing

The Commission revised the notification procedure for exploratory fisheries to clarify that information on the license issued to a vessel requesting participation in an exploratory fishery must be included at the time the notification is submitted by the Flag State to the Secretariat.

### Icefish

The Commission adopted area specific conservation measures for *Champscephalus gunnari* for the 2005/2006 season.

The Commission set the overall catch limit for the *C. gunnari* trawl fishery in Subarea 48.3 for the 2005/2006 season at 2,244 tons, limited the catch of this total to 561 tons during the spawning period (March 1, 2005 through May 31, 2006) and continued previously adopted restrictions on the fishery. Any catch taken between October 1, 2005 and November 14, 2005 will be counted against the total catch limit for the 2005/2006 season.

The Commission set the catch limit for *C. gunnari* trawl fishery within defined areas of Division 58.5.2 for the 2005/2006 season at 1,210 tons and continued previously adopted restrictions on and reporting requirements for the fishery.

### Crab

The Commission set the total allowable catch level for the pot fishery for crab for the 2005/2006 fishing season at 1,600 tons and continued to limit participation to one vessel per member country conducted as an experimental harvest regime.

### Squid

The Commission set the total allowable catch limit for the exploratory jig fishery for *Martialia hyadesi* for the 2005/2006 fishing season at 2,500 tons.

### Krill

The Commission carried forward the precautionary catch limits for krill in Statistical Area 48 at 4.0 million tons overall and, as divided by subareas, at 1.008 million tons in Subarea 48.1, 1.104 million tons in Subarea 48.2, 1.056 million tons in Subarea 48.3, and 0.832 million tons in Subarea 48.4.

### *Dissostichus* Species

The Commission removed the requirement to carry out specific research sets in the exploratory fisheries in Subareas 88.1 and 88.2. In its place, the Commission agreed that there be a requirement that all fish of each *Dissostichus* species in a haul (up to a maximum of 35 fish) be measured and

randomly sampled for biological studies from all lines hauled in Subareas 88.1 and 88.2.

The Commission set a combined catch limit of 3,556 tons for the longline and pot fisheries for *D. eleginoides* in the Shag Rocks and South Georgia areas of Subarea 48.3 in the 2005/2006 season. The Commission closed the West Shag Rocks area and set bycatch limits on other species.

The Commission established a mark-recapture program for the 2005/06, 2006/07 and 2007/08 seasons to assess the population of toothfish in Subarea 48.4 and revised the limit on the catch of *Dissostichus eleginoides* to 100 tons per season, revised the fishing season to April 1 through September 30, and required each vessel operating in the fishery to undertake a tagging program in accordance with a CCAMLR Tagging Protocol.

The Commission set a combined catch limit of 2,584 tons of *D. eleginoides* in Division 58.5.2 west of 79°20' E from December 1, 2005, to November 30, 2006, for trawl and pot fishing and from May 1, 2006, to August 31, 2006, for longline fishing. The Commission extended the season to September 30 for vessels which complete longline sink rate testing using CCAMLR testing protocols.

The Commission designated several *Dissostichus* fisheries as exploratory fisheries for the 2005/2006 fishing season. These fisheries are total allowable catch fisheries and are open only to the flagged vessels of countries that notified CCAMLR of an interest by named vessels to participate in the fisheries.

The exploratory fisheries for *Dissostichus* species authorized by the Commission for the 2005/2006 fishing season include the following: (1) Longline fishing in Statistical Division 58.4.1 by Australia (one vessel), Chile (two vessels), Republic of Korea (two vessels), New Zealand (three vessels), Spain (two vessels) and Ukraine (one vessel); (2) longline fishing in Statistical Subarea 48.6 by one vessel per country at any one time by Japan and New Zealand; (3) longline fishing in Statistical Division 58.4.2 by Australia (one vessel), Chile (two vessels), Republic of Korea (one vessel), New Zealand (two vessels), and Spain (two vessels); (4) longline fishing in Statistical Division 58.4.3a (the Elan Bank) outside areas under national jurisdiction to no more than one vessel per country at a time by Australia, Chile, Republic of Korea and Spain; (5) longline fishing in Statistical Division 58.4.3b (the BANZARE Bank) outside areas of national jurisdiction to no more

than one vessel per country at a time by Australia, Chile, Republic of Korea, Spain and Uruguay; (6) longline fishing in Statistical Subarea 88.1 by Argentina (two vessels), Republic of Korea (two vessels), New Zealand (five vessels), Norway (one vessel), Russia (two vessels), South Africa (one vessel), Spain (three vessels), United Kingdom (two vessels), and Uruguay (three vessels); and (7) longline fishing in Statistical Subarea 88.2 by Argentina (two vessels), Republic of Korea (one vessel), New Zealand (five vessels), Norway (one vessel), Russia (two vessels), Spain (three vessels), United Kingdom (two vessels), and Uruguay (one vessel).

#### *Research Catch*

The Commission agreed that catches for research purposes will be considered a part of any catch limits in force for each species taken unless the catch limit in an area is set at zero. In the event of research being undertaken in an area with a zero catch limit, the catches will be considered to be the catch limit for the season in that area unless the zero catch limit area is part of a group of areas for which an overall catch limit is set. In this latter case, the research catches will be considered as part of the overall catch limit for that group of areas.

#### *Member Data Reporting*

The Commission revised the five-day catch and effort reporting system to clarify that reports from Members are due to the CCAMLR Secretariat within 48 hours of the close of each five-day reporting period and must include data on the number of pots used in pot fisheries.

The Commission agreed that haul-by-haul data should be submitted annually by Members for all krill fisheries. The Commission also agreed that monthly catch reports should be compiled at the spatial scale relevant to the management of catch limits specified in the conservation measures setting krill catch limits.

The Commission revised the conservation measures on port inspections of vessels carrying *Dissostichus* species to require that Members submit reports of port inspections on each occasion that a vessel unloads *Dissostichus* species in their territories.

The Commission revised the conservation measure on automated satellite-linked vessel monitoring systems to reinstate a requirement that Flag States notify the CCAMLR Secretariat as soon as possible of the movement between subareas and

divisions of the Convention Area by each of its fishing vessels. The Commission encouraged Flag States to submit all VMS reports to the Secretariat by means of direct reporting by vessels to the CCAMLR Secretariat via VMS land stations.

#### *Illegal, Unregulated and Unreported Vessel List*

The Commission consolidated the lists of vessels suspected of illegal, unregulated or unreported (IUU) fishing or trading (the IUU vessel list) into a combined List of Contracting Party Vessels and non-Contracting Party Vessels. The vessels on the consolidated list are: VIARSA I (Uruguay), MAYA V (Uruguay), AMORINN (Togo), APACHE I (Honduras), CONDOR (Togo), EOLO (Equatorial Guinea), GOLDEN SUN (Equatorial Guinea), HAMMER (Togo), JIAN YUAN (Georgia), KANG YUAN (Georgia), KETA (flag unknown), SOUTH OCEAN (China), RED LION 22 (Equatorial Guinea), SARGO (Togo), SEA STORM (Equatorial Guinea), SOUTH BOY (Equatorial Guinea), ROSS (Togo) and TARUMAN (Cambodia). A vessel on the IUU Vessel List will not be permitted to participate in exploratory fisheries. CCAMLR members are urged to prohibit trade with the vessels on the CCAMLR IUU Vessel List.

#### *Vessel Monitoring*

The Commission reinstated a section in the 2002 version of the conservation measure for an Automated Satellite-linked Vessel Monitoring System requiring notification of each movement of a vessel between subareas and division. The Commission encouraged Flag States to submit all VMS reports to the CCAMLR Secretariat by means of direct reporting by vessels to the Secretariat via VMS land stations.

#### *Catch Documentation Scheme*

The Commission adopted clarifying definitions of export, import, landing, port state and transshipment for purposes of administering the CDS. "Export" is defined as any movement of a catch in its harvested or processed form from the territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other member State of that customs union. "Import" is defined as the physical entering or bringing of a catch into any part of the geographical territory under the control of a State, except where the catch is landed or transshipped within the definitions of "landing" or "transshipment." "Landing" is defined as the initial transfer of catch in its

harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed. "Port State" is defined as the State that has control over a particular port area or free trade zone for the purposes of landing, transshipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transshipment certification. "Re-export" is defined as any movement of a catch in its harvested or processed form from territory under the control of a State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any member State of that customs union of import is the first place of import, in which case the movement is an export within the definition of export. "Transshipment" is defined as the transfer of a catch in its harvested or processed form from a vessel to another vessel or means of transport, and where such transfer takes place within the territory under the control of a Port State, for the purpose of effecting its removal from that State. For the avoidance of doubt, temporarily placing a catch on land or on an artificial structure to facilitate such transfer shall not prevent the transfer from being a transshipment where the catch is not within the definition of landing.

The Commission added a provision to the text of the CDS conservation measure and to the data fields of the *Dissostichus* Catch Document (DCD) and the Re-Export form requiring the reporting of transport details of toothfish shipments.

#### *Non-Contracting Party Cooperation Enhancement Program*

The Commission adopted a resolution on a non-Contracting Party Cooperation Enhancement Program. The resolutions urges Members to provide information, training materials and technical assistance to non-Contracting Flag and Port States with an interest in controlling toothfish harvesting and trade, but which lack the expertise and resources to do so.

**Authority:** 16 U.S.C. 2431 *et seq.*

Dated: March 9, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. E6-3750 Filed 3-14-06; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 030906D]

**Marine Fisheries Advisory Committee; Charter Renewal**

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

**ACTION:** Notice of renewed charter.

**SUMMARY:** Notice is hereby given of the two year renewed charter for the Marine Fisheries Advisory Committee (MAFAC), signed on February 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Laurel Bryant, MAFAC Executive Director; telephone: (301) 713-2379 x171.

**SUPPLEMENTARY INFORMATION:** As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the renewed charter for MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, tribal, and other national interests. The Committee's charter must be renewed every two years from the date of the last renewal. The charter can be accessed on line at [www.nmfs.noaa.gov/ocs/mafac](http://www.nmfs.noaa.gov/ocs/mafac).

Dated: March 9, 2006.

**Gordon J. Helm,**

*Acting Director, Office of Constituent Services, National Marine Fisheries Service.*

[FR Doc. E6-3751 Filed 3-14-06; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program for Fiscal Year 2004**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of indirect cost rates for the Damage Assessment and Restoration Program for Fiscal Year 2004.

**SUMMARY:** The National Oceanic and Atmospheric Administration's (NOAA's) Damage and Restoration Program (DARP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2004. The indirect cost rates for this fiscal year and dates of implementation are provided in this notice. More information on these rates and the DARP policy can be found at the DARP Web site at <http://www.darp.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Brian Julius at 301-713-3038, ext. 199, by fax at 301-713-4387, or e-mail at [Brian.Julius@noaa.gov](mailto:Brian.Julius@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 96012 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARP consists of three component organizations: the Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources. During FY 2005, the DARP expanded to include a fourth component organization, the Coastal Protection and Restoration Division (CPRD) within the National Ocean Service. With this addition, DARP changed its name to the Damage Assessment, Remediation, and Restoration Program (DARRP). Since this notice announces the indirect cost rates for FY 2004, which is prior to DARP's expansion, the acronym "DARP" will be used throughout.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARP has the discretion to develop

indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

**The DARP's Indirect Cost Effort**

In December 1998, the DARP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: evaluate cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARP. A **Federal Register** notice on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARP Web site at <http://www.darp.noaa.gov>.

R&M continued its assessment of DARP's indirect cost rate system and structure for FYs 2000 and 2001. A second Federal notice specifying the DARP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the use of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from the Oak Ridge Institute for Science and Education (ORISE) and I.M. Systems Group (IMSG) also were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ORISE and IMSG provide on-site support to the DARP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. A third Federal notice specifying the DARP indirect rates for FY 2002 was published on October 6, 2003 (68 FR

57672), and a fourth notice for the FY 2003 indirect cost rates appeared on May 20, 2005 (70 FR 29280). Cotton's reports on these indirect rates can also be found on the DARP Web site at <http://www.darp.noaa.gov>.

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2004 indirect cost rates.

### The DARP's Indirect Cost Rates and Policies

The DARP will apply the indirect cost rates for FY 2004 as recommended by Cotton for each of the DARP component organizations as provided in the following table:

DARP component organization	FY 2004 indirect rate (percent)
Damage Assessment Center (DAC) .....	213.03
Restoration Center (RC) .....	181.46
General Counsel for Natural Resources (GCNR) .....	165.39

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2004 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2003 and September 30, 2004. DARP will use the FY 2004 indirect cost rates for future fiscal years until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARP indirect cost rate policies and procedures published in the **Federal Register** on December 7, 2000 (65 FR 76611), on December 2, 2002 (67 FR 71537), October 6, 2003 (68 FR 57672), and May 20, 2005 (70 FR 29280) remain in effect except as updated by this notice.

Dated: March 9, 2006.

**David M. Kennedy,**

*Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 06-2477 Filed 3-14-06; 8:45 am]

BILLING CODE 3510-JE-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 031006A]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the Mount Desert Oceanarium (MDO), Southwest Harbor, ME, contains all of the required information and warrants further consideration. The EFP would allow one fishing vessel to fish for, retain, and land small numbers of regulated fish species, and several unmanaged fish and invertebrate species, for the purpose of public display. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Fishery Management Plans (FMPs) for these species. However, further review and consultation may be necessary before a final determination is made to issue an EFP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments must be received on or before March 30, 2006.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on MDO Specimen Collection, DA6-043." Comments may also be sent via fax to (978) 281-9135. Comments may also be

submitted via e-mail to the following address: [DA6-043@noaa.gov](mailto:DA6-043@noaa.gov). Include in the subject line of the e-mail "Comments on MDO Specimen Collection."

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, 978-281-9341.

**SUPPLEMENTARY INFORMATION:** The MDO submitted an application for an EFP on February 9, 2006, to collect several species of fish and invertebrates for public display. The target species would include American plaice (dab), winter flounder (blackback), yellowtail flounder, witch flounder (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea raven, Atlantic cod, lumpfish, Atlantic wolffish, spiny dogfish, little skate, barndoor skate, and various species of the Phyla Arthropoda (excluding lobsters) and Echinodermata.

One chartered fishing vessel would use a shrimp otter trawl with 2-inch (5.08-cm) mesh to collect marine fish and invertebrates for a maximum of 4 days—2 days during the period May 16–28, 2006, and 2 days during the period June 23–30, 2006. The specimens would be cared for in chilled and aerated seawater while on board the fishing vessel and would be transferred live to tanks the day they are caught. The fish would be brought to shore, maintained in tanks for public display for a period of time not to exceed 5 months, and would be returned to the sea in October 2006.

Collection would be made within the Small Mesh Northern Shrimp Fishery Exemption Area, specifically within an area off the coast of Maine. Because the shrimp fishery will be closed at the time of the proposed collection, and this area lies within the Gulf of Maine Regulated Mesh Area, an exemption from the Northeast (NE) multispecies minimum mesh requirements of 6-inch (15.24-cm) diamond/6.5-inch (16.51-cm) square mesh at 50 CFR 648.80(a)(3) would be required.

The applicant would retain a maximum of six individuals per species, juveniles and adults combined, with the exception of Atlantic halibut. In addition to an exemption from the NE multispecies minimum mesh requirements, the applicant would only be permitted to retain a total of one Atlantic halibut with a minimum length of 36 inches (91.44 cm). The applicant has requested the following exemptions from the NE Multispecies and Monkfish Fishery Management Plans: Effort control program requirements at §§ 648.82(a) and 648.92(a); minimum fish sizes at §§ 648.83(a)(1) and 648.93(a)(1); and monkfish possession

restrictions at § 648.94(b)(6). The EFP would also exempt the vessels from the possession and landing restrictions for the NE skate complex fishery at § 648.322(c).

Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 10, 2006.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E6-3703 Filed 3-14-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO-C-2006-0016]

### Public Advisory Committees

**AGENCY:** United States Patent and Trademark Office.

**ACTION:** Notice and request for nominations.

**SUMMARY:** On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Pub. L. 106-113, Appendix I, Title IV, Subtitle G, 113 Stat. 1501A-572, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters. The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms of three years that begin from date of appointment.

**DATES:** Nominations must be postmarked or electronically transmitted on or before May 8, 2006.

**ADDRESSES:** Persons wishing to submit nominations should send the nominee's resumé to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313-1450; by electronic mail to:

*PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Public Advisory Committee; or by facsimile transmission marked to the Chief of Staff's attention at (571) 273-0464.

### FOR FURTHER INFORMATION CONTACT:

Chief of Staff by facsimile transmission marked to her attention at (571) 273-0464, or by mail marked to her attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313-1450.

**SUPPLEMENTARY INFORMATION:** The Advisory Committees' duties include:

- Advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

### Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary"). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small entity applicants in proportion to the number of such applications filed. The Committees must include members who have "substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent "small business concerns, independent inventors, and nonprofit organizations," and at least one member must represent the independent inventor community. 35 U.S.C. 5(b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO.

### Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of

three years from date of appointment. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance for the Committees.

### Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of Section 202 of Title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

### Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential matters. Nominees must also have the ability to participate in

Committee business through the Internet.

### Procedures for Submitting Nominations

Submit resumés for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, utilizing the addresses provided above.

Dated: March 6, 2006.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E6-3707 Filed 3-14-06; 8:45 am]

**BILLING CODE 3510-16-P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

March 9, 2006.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for a determination that a certain combed and ring spun yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

**SUMMARY:** On March 6, 2006 the Chairman of CITA received a petition from Shibani Inwear alleging that a certain combed and ring spun yarn, of a 92 percent cotton/ 8 percent cashmere blend, comprised of 2/32 Nm resulting in a 16 Nm yarn size, classified in subheading 5205.42.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that men's knit sweaters made of such yarn be eligible for preferential treatment under the AGOA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 30, 2006 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

### FOR FURTHER INFORMATION CONTACT:

Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

### SUPPLEMENTARY INFORMATION:

**Authority:** Section 112(b)(5)(B) of the AGOA; Presidential Proclamation 7350 of October 2, 2000; Section 1 of Executive Order No. 13191 of January 17, 2001.

### BACKGROUND:

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 6, 2006 the Chairman of CITA received a petition from Shibani Inwear alleging that a certain combed and ring spun yarn, of a 92 percent cotton/ 8 percent cashmere blend, comprised of 2/32 Nm resulting in a 16 Nm yarn count, classified in subheading 5205.42.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in men's knit sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner. This petition is requesting quota- and duty-free treatment under the AGOA for apparel articles that are both cut, or knit-to-shape, and sewn or otherwise assembled in one or more AGOA beneficiary countries from such yarns.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for this

yarn for purposes of the intended use. Comments must be received no later than March 30, 2006. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the "subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.06-2507 Filed 3-10-06; 3:24 pm]

**BILLING CODE 3510-DS**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on Commercial Availability Petition under the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

March 13, 2006.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA)

**ACTION:** Request for public comments concerning a petition for a determination that certain nylon and polyester yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA.

**SUMMARY:** On March 9, 2006, the Chairman of CITA received a petition from Encajes, S.A. Colombia, alleging that certain polyester and nylon yarns, classified in the Harmonized Tariff Schedule of the United States (HTSUS) in subheadings 5402.31.6000, 5402.62.000, and 5605.00.1000, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that apparel articles containing lace fabrics of such yarns be eligible for preferential treatment under the ATPDEA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 30, 2006 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2582.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 (b)(3)(B)(ii) of the ATPDEA; Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

#### BACKGROUND:

The ATPDEA provides for duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The ATPDEA also

provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On March 9, 2006, the Chairman of CITA received a petition from Encajes, S.A. Colombia, alleging that certain polyester and nylon yarns, as described below, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests duty-free treatment under the ATPDEA for apparel articles that contain lace fabrics of such yarns that are cut, or knit-to-shape, and sewn in one or more ATPDEA beneficiary countries.

#### Description:

1. Mamilon Metallic Yarn, G-100 1/69  
HTSUS subheading: 5605.00.1000  
Fiber Content: 100% Metallic Covered in Polyester  
Cut: Flat  
Color: Silver and Gold  
Yarn Size: Silver- 115 denier; Gold - 126 denier  
Yarn Type: Flat, non-textured  
Yarn width: 25 microns
2. Cationic Polyester BR 305f96, 120 Ts (Rigid Poly)  
HTSUS subheading: 5402.62.0000  
Fiber Content: 100% Cationic Polyester  
Cut: Trilobal  
Color: Bright  
Yarn Type: Flat, non-textured  
Yarn Size: 305 decitex, 96 filaments with 120 twists in "S" by meter
3. Cationic Polyester Bright Flat 2/78F48 dtex at 120 Ts  
HTSUS subheading: 5402.62.0000  
Fiber Content: 100% Cationic Polyester  
Cut: Trilobal  
Color: Bright  
Yarn Type: Flat, non-textured  
Yarn Size: 78 decitex, 48 filaments, plied, with 120 twists in "S" by meter
4. Tactel Bright

HTSUS subheading: 5402.31.6000  
Fiber Content: 100% Polyamide 6.6 High Tenacity Nylon  
Cut: Trilobal  
Color: Bright  
Yarn Type: Textured  
Yarn Size: 312 decitex, 102 filaments, plied, with 450 twists in "S" by meter

CITA is soliciting public comments regarding this request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these yarns for purposes of the intended use. Comments must be received no later than March 30, 2006. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these yarns can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

**James C. Leonard III,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 06-2558 Filed 3-13-06; 1:02 pm]

**BILLING CODE 3510-DS**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Meeting of the Chief of Naval Operations (CNO) Executive Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The CNO Executive Panel will report on the findings and recommendations of the Shipbuilding Subcommittee to the Chief of Naval Operations. The meeting will consist of discussions of shipbuilding industry, force structure, capabilities, and requirements.

**DATES:** The meeting will be held on March 31, 2006, from 1 p.m. to 2 p.m.

**ADDRESSES:** The meeting will be held in Pentagon room 4E540.

**FOR FURTHER INFORMATION CONTACT:** LCDR Chris Stopyra, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703-681-4909.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: March 6, 2006.

**Eric McDonald,**  
*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E6-3638 Filed 3-14-06; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Meeting of the Chief of Naval Operations (CNO) Executive Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The CNO Executive Panel will form consensus for the final report on the findings and recommendations of the Shipbuilding Study Group to the Chief of Naval Operations. The meeting will consist of discussions of shipbuilding industry, force structure, capabilities, and requirements.

**DATES:** The meeting will be held on March 22, 2006, from 1 p.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the Center for Naval Analyses, Multipurpose Room, 4825 Mark Center Drive, Alexandria, VA 22311-1846.

**FOR FURTHER INFORMATION CONTACT:** LCDR Chris Stopyra, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703-681-4909.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: March 8, 2006.

**Eric McDonald,**  
*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E6-3719 Filed 3-14-06; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

### A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education

**AGENCY:** A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, Department of Education.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming open meeting of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

**DATES:** Thursday, April 6, 2006 and Friday, April 7, 2006.

**Time:** April 6, 2006: 1 p.m. to 6 p.m.; April 7, 2006: 8:30 a.m. to 1 p.m.

**ADDRESSES:** The Commission will meet in Indianapolis, IN, at the Hilton Indianapolis, 120 West Market Street, Indianapolis, IN.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Oldham, Executive Director, A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202-3510; telephone: (202) 205-8741.

**SUPPLEMENTARY INFORMATION:** The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this country. The purpose of this Commission is to consider how best to improve our system of higher education to ensure that our graduates are well prepared to meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider Federal, State, local and institutional roles in higher education and analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this meeting will include panel presentations discussing accreditation, accountability, articulation and affordability. A written report to the Secretary is due by August 2006.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Carrie Marsh at (202) 205-8741 no later than March 27, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Carrie Marsh at (202) 205-8741 or by e-mail at [Carrie.Marsh@ed.gov](mailto:Carrie.Marsh@ed.gov).

Opportunities for public comment are available through the Commission's Web site at <http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html>. Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission from the hours of 9 a.m. to 5 p.m.

Dated: March 9, 2006.

**Margaret Spellings,**

*Secretary, U.S. Department of Education.*

[FR Doc. 06-2459 Filed 3-14-06; 8:45 am]

**BILLING CODE 4000-01-M**

**DEPARTMENT OF ENERGY**

**International Energy Agency Meeting**

**AGENCY:** Department of Energy.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 20 and 21, 2006, at the headquarters of the IEA in Paris, France, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Market.

**FOR FURTHER INFORMATION CONTACT:**

Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-6738.

**SUPPLEMENTARY INFORMATION:** In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 20, 2006, beginning at 11 a.m. and continuing on March 21, 2006, at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM), which is scheduled to be held at the same location and time. The agenda of the joint SEQ/SOM meeting is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Update on the Refinery Sector.
  2. Emerging Russian Hydrocarbon Policy and Implications for Oil and Gas.
  3. Short-term Gas Market Update.
  4. Current Oil Market Situation.
  5. Tanker Market Workshop.
- I. Introduction to Tanker Market
- Tanker Types, Fuel Uses.
  - Regional Preferences.
  - Loading and Transportation Restrictions.
  - Pricing of Freight Rates.
  - Determinants of Supply Demand.
- II. Current Tanker Market Situation
- Tanker Market Update.

- Factors Behind the Current Tanker Market Including Related Oil Market Trends.

- Lessons Learned from the September Hurricanes.

III. Tanker Market Trends in the Medium Term

- Pressures on the Tanker Fleet.

- New Ports/New Exporters.

- Projected Fleet Evolution.

- Appropriateness of Order Book to Market Projections.

- The Implications of Growing Share of Offshore-Loaded Crude.

6. Any Other Business and Tentative Dates of Forthcoming SEQ and SOM Sessions

- Joint SLT/SEQ/SOM Workshop on Gas Security: June 12, 2006

- SEQ: June 20-21, 2006

- SEQ: November 16-17, 2006

- Two-Day London Conference: Monday November 20 to Tuesday November 21, 2006, London, United Kingdom

- SEM: November 22, 2006, London, United Kingdom

7. Market Update on Iran and Nigeria

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, March 9, 2006.

**Samuel M. Bradley,**

*Assistant General Counsel for International and National Security Programs.*

[FR Doc. E6-3759 Filed 3-14-06; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RP06-243-000]**

**Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

March 8, 2006.

Take notice that on March 1, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 453, to become effective April 1, 2006.

CIG states that the tariff sheet updates the Rate Schedule PAL-1 Form of Service Agreement to better define discount rates.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3666 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RP06-245-000]**

**Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

March 8, 2006.

Take notice that on March 1, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC

Gas Tariff, First Revised Volume No 1, Forty-First Revised Sheet No. 11A, to become effective April 1, 2006.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E6-3668 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-259-000]

#### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixteenth Revised Sheet No. 44, with a proposed effective date of April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E6-3682 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-260-000]

#### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 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 sheets with a proposed effective date of April 1, 2006:

Seventy-eighth Revised Sheet No. 25  
Seventy-eighth Revised Sheet No. 26  
Seventy-seventh Revised Sheet No. 27  
Sixty-fifth Revised Sheet No. 28  
Twenty-first Revised Sheet No. 31

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3683 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-262-000]

#### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 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 sheets with a proposed effective date of April 1, 2006:

Seventy-ninth Revised Sheet No. 25.  
Seventy-ninth Revised Sheet No. 26.  
Seventy-eighth Revised Sheet No. 27.  
Sixty-sixth Revised Sheet No. 28.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3685 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-261-000]

#### Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 2006:

Fortieth Revised Sheet No. 18  
Twenty-eighth Revised Sheet No. 18A  
Forty-first Revised Sheet No. 19

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.

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**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3684 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-236-000]

#### Dominion Cove Point LNG, LP; Notice of Tariff Filing

March 7, 2006.

Take notice that on February 28, 2006, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 12, to become effective April 1, 2006.

Cove Point states that the purpose of the filing is to adjust the Transmission Electric Power rates applicable to Cove Point East Shippers.

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.

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**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3647 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-237-000]

#### Dominion Cove Point LNG, LP; Notice of Revenue Crediting Report

March 7, 2006.

Take notice that on February 28, 2006, Dominion Cove Point LNG, LP, (Cove Point) submits this filing to alter its settlement obligation to credit revenues from overrun service to its customers under Rate Schedule LTD-1. Cove Point states that LTD-1 Shipper (Shell NA LNG LLC, BP Energy Company and Statoil Natural Gas LLC) has agreed not to object to the filing.

Cove Point states that copies of the filing have been served to 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 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.

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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](mailto: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 13, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3648 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-383-075]

#### Dominion Transmission, Inc.; Notice of Negotiated Rate

March 7, 2006.

Take notice that on February 28, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective March 1, 2006:

Sixth Revised Sheet No. 1404  
Fourth Revised Sheet No. 1405  
Third Revised Sheet No. 1407  
Second Revised Sheet No. 1408

DTI states that the purpose of this filing is to report a negotiated rate transaction between DTI and Dominion Field Services, Inc. and Riley Natural Gas, as pool operators for Linn Operating, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3653 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission**

[Docket No. RP97-13-024]

**East Tennessee Natural Gas, LLC;  
Notice of Compliance Filing**

March 7, 2006.

Take notice that on February 22, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing a negotiated rate agreement that reflects the renegotiation of a negotiated rate transaction approved with conditions by the Commission on August 16, 2005. East Tennessee is making a compliance filing that complies with the August 16, 2005 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3655 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission**

[Docket No. RP06-263-000]

**Enbridge Pipelines (KPC); Notice of  
Proposed Changes in FERC Gas Tariff**

March 8, 2006.

Take notice that on March 1, 2006, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, to be made effective April 1, 2006.

Seventh Revised Sheet No. 15  
Seventh Revised Sheet No. 21  
Seventh Revised Sheet No. 26  
Seventh Revised Sheet No. 28  
Seventh Revised Sheet No. 30  
Fifth Revised Sheet No. 31A

KPC states that copies of its transmittal letter and appendices have been mailed to all affected 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3686 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****Florida Gas Transmission Company;  
Notice of Tariff Filing**

March 8, 2006.

Take notice that on February 28, 2006, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventy-Fifth Revised Sheet No. 8A, to become effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3678 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-257-000]

#### Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on February 28, 2006, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2006:

Seventy-Fourth Revised Sheet No. 8A.  
Sixty-Sixth Revised Sheet No. 8A.01.  
Sixty-Sixth Revised Sheet No. 8A.02.  
Twenty-Sixth Revised Sheet No. 8A.04.  
Sixty-Ninth Revised Sheet No. 8B.  
Sixty-Second Revised Sheet No. 8B.01.  
Eighteenth Revised Sheet No. 8B.02.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3680 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-251-000]

#### Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its Sixth Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets, to become effective March 31, 2006.

Second Revised Sheet No. 304  
Second Revised Sheet No. 305  
Second Revised Sheet No. 305A

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

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**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3674 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-244-000]

#### High Island Offshore System L.L.C.; Notice of Tariff Filing

March 8, 2006.

Take notice that on March 1, 2006, High Island Offshore System L.L.C. (HIOS) tendered for filing as part its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 2006:

Third Revised Sheet No. 11  
Fourth Revised Sheet No. 69  
Second Revised Sheet No. 104  
Fourth Revised Sheet No. 105  
Original Sheet No. 105A  
Second Revised Sheet No. 106  
First Revised Sheet No. 107  
First Revised Sheet No. 108  
Second Revised Sheet No. 173A  
First Revised Sheet No. 173B

HIOS states that these primary tariff sheets are being filed as part of the first annual fuel tracker filing, as well as to propose modifications to the annual fuel tracker mechanism contained in the HIOS tariff. In the event that these primary tariff sheets are not accepted, HIOS is submitting the following alternate tariff sheet:

Alternate Third Revised Sheet No. 11

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.

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**Magalie R. Salas,**  
Secretary.

[FR Doc. E6-3667 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR06-12-000]

#### Humble Gas Pipeline Company; Notice of Petition for Rate Approval

March 8, 2006.

Take notice that on February 28, 2006, Humble Gas Pipeline Company filed a petition for rate approval for NGPA section 311 maximum transportation

rates, pursuant to section 284.123(b)(2) of the Commission's regulations.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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*Comment Date:* 5 p.m. Eastern Time  
March 29, 2006.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E6-3663 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-230-000]

#### Iroquois Gas Transmission System, L.P.; Notice of Filing

March 7, 2006.

Take notice that on February 16, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its schedules which reflect revised calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2005 through December 31, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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.

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*Comment Date:* 5 p.m. Eastern Time on March 13, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3659 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-249-000]

#### Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective April 1, 2006:

Seventeenth Revised Sheet No. 5  
Thirteenth Revised Sheet No. 5-A  
Fifteenth 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.

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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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3672 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-238-000]

#### National Fuel Gas Supply Corporation; Notice of Tariff Filing

March 7, 2006.

Take notice that on February 28, 2006, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninth Revised Sheet No. 478.

National Fuel states that copies of this filing were served upon 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3649 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-240-000]

#### National Fuel Gas Supply Corporation; Notice of Tariff Filing

March 7, 2006.

Take notice that on February 28, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eighty Seventh Revised Sheet No. 9, 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3651 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-176-115]

#### Natural Gas Pipeline Company of America; Notice Negotiated Rates

March 7, 2006.

Take notice that on February 28, 2006, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2006:

Eighth Revised Sheet No. 26A  
Second Revised Sheet No. 26A.01  
Second Revised Sheet No. 26A.02  
Original Sheet No. 414A.01

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3644 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-176-113]

#### Natural Gas Pipeline Company of America; Notice of Negotiated Rate

March 7, 2006.

Take notice that on February 17, 2006, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2006:

First Revised Sheet No. 26W.29.  
First Revised Sheet No. 26W.30.  
Third Revised Sheet No. 26W.31.  
First Revised Sheet No. 26W.31a.  
First Revised Sheet No. 26W.32.  
Second Revised Sheet No. 26W.33.  
Second Revised Sheet No. 26W.34.

Natural states that the purpose of this filing is to implement an extension to an existing negotiated rate transaction.

Natural further states that copies of the filing are being mailed to all parties set out on the Commission's official service 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3658 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-242-000]

#### Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

March 8, 2006.

Take notice that on February 28, 2006, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 2006.

Natural states that copies of the filing are being mailed to 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3665 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-254-000]

#### Northern Border Pipeline Company; Notice of Tariff Filing

March 8, 2006.

Take notice that on February 27, 2006, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 99A, to become effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3677 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-239-000]

#### Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2006.

Take notice that on February 28, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective April 1, 2006:

*Third Revised Volume No. 1*

Twenty-Seventh Revised Sheet No. 14

*Original Volume No. 2*

Forty-Second Revised Sheet No. 2.1

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3650 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-250-000]

#### Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Thirteenth Revised Sheet No. 161, to become effective March 1, 2006.

Paiute states that copies of the filing are being served upon all of Paiute's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>.

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3673 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-258-000]

#### Panhandle Eastern Pipe Line Company, LP; Notice of Tariff Filing

March 8, 2006.

Take notice that on February 28, 2006, Panhandle Eastern Pipe Line Company, LP (Panhandle) 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 April 1, 2006.

Panhandle states that the purpose of this filing is to update the fuel reimbursement percentages proposed to be effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3681 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-246-000]

#### Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 8 and First Revised Sheet No. 133, to become effective March 31, 2006.

SLNG states that it files the proposed changes to its Tariff to delete redundant text on the above-referenced sheets.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3660 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-234-000]

#### Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2006.

Take notice that on February 28, 2006, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 5, to become effective April 1, 2006. Southwest states that the purpose of this filing is to update the fuel reimbursement percentages proposed to be effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3645 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-255-067]

#### TransColorado Gas Transmission Company; Notice of Compliance Filing

March 7, 2006.

Take notice that on February 17, 2006, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Eleventh Revised Sheet No. 21 and Fourth Revised Sheet No. 22B, to be effective January 1, 2006.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding,

TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3656 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-241-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2006.

Take notice that on March 1, 2005, Transcontinental Gas Pipe Line Corporation (Transco) submitted twenty firm transportation service agreements between Transco and the Municipal Gas Authority of Georgia (MGAG) and tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1,

Seventh Revised Sheet No. 30, and First Revised Sheet No. 30A to be effective January 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3652 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-248-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 2006.

Transco states that copies of the filing are being mailed to its affected 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 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](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3671 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-252-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 2, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Sheet No. 156 and Fourth Revised Sheet No. 156A, to become effective April 2, 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3675 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-247-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on March 1, 2006 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing. The tariff sheets are proposed to be effective April 1, 2006.

Transco states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3687 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-256-000]

#### Trunkline Gas Company, LLC; Notice of Tariff Filing

March 8, 2006.

Take notice that on February 28, 2006, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 2006.

Trunkline states that the purpose of this filing is to update the fuel reimbursement percentages proposed to be effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3679 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-253-000]

#### Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2006.

Take notice that on February 27, 2006, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 5C, to become effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3676 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-235-000]

#### Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2006.

Take notice that on February 28, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective April 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3646 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-28-019]

#### Wyoming Interstate Company, Ltd.; Notice of Negotiated Rates

March 7, 2006.

Take notice that on February 21, 2006, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, one firm transportation agreement with Williams Power Company and Sixth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 2, to become effective March 15, 2006.

WIC states that the FTSA is being submitted to implement a negotiated rate transaction in accordance with the Commission's negotiated rate policies. The FTSA is also being submitted for the Commission's review and information and has been listed on the tendered sheet as a non-conforming 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 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3657 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-28-018]

#### Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

March 8, 2006.

Take notice that on February 15, 2006, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 2, the following tariff sheets, to become effective March 3, 2006:

Third Revised Sheet No. 102.  
Third Revised Sheet No. 105.  
Third Revised Sheet No. 109.  
Fourth Revised Sheet No. 113.  
First Revised Sheet No. 115.

WIC states that copies of its filing have been served to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3670 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. OR06-5-000; IS05-216-000; IS05-260-000]

#### Williams Energy Services, LLC and Williams Power Company, Inc.; Complainants v. Mid-America Pipeline Company, LLC and Seminole Pipeline Company; Respondents; Mid-America Pipeline Company, LLC; Notice of Complaint

March 8, 2006.

Take notice that on March 6, 2006, Williams Energy Services, LLC and Williams Power Company, Inc. (Williams), filed a complaint against Mid-America Pipeline Company, LLC (MAPL) and Seminole Pipeline Company (Seminole) pursuant to section 13 (1) of the Interstate Commerce Act, 49 U.S. App. 13(1), and Rule 206 of the Commission Rules of Practice and Procedure, 18 CFR 385.206. Williams alleges that MAPL and Seminole have violated the Interstate Commerce Act by charging unjust and unreasonable rates for the transportation of natural gas liquids. Williams also alleges that: (1) The cost of providing service has not been properly allocated among the MAPL pipeline segments, (ii) transportation rate differentials between specific and separate "Groups" were unjustified, (iii) the MAPL and Seminole application of the Commission's "Joint Rate Policy" was inappropriate, (iv) MAPL cannot request a cost of service rate increase and an index rate increase during a single index year, (v) the Seminole rate increase is invalid, (vi) specific rate differentials are unjustified; and (vii) the MAPL revisions to an existing incentive rate program are unduly discriminatory.

Williams states that copies of the complaint have been served on the contacts for MAPL and Seminole as listed on the Commission's list of corporate officials.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time March 27, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-3662 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 8, 2006.

Take notice that the Commission received the following electric rate filings.

*Docket Numbers:* ER06-274-001.

*Applicants:* Southwestern Public Service Company.

*Description:* Southwestern Public Service Co. submits a compliance filing pursuant to FERC's January 31, 2006. Suspension Order re: filing rates within 30 days to correct the clerical and program errors, etc.

*Filed Date:* March 2, 2006.

*Accession Number:* 20060306-0118.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 23, 2006.

*Docket Numbers:* ER06-315-001.

*Applicants:* American Electric Power Service Corp.

*Description:* American Electric Power Service Corp., agent for Ohio Power Co. et al. submits & requests a second revision to the Interconnection & Local Delivery Agreement made pursuant to AEP's OATT with Buckeye Power.

*Filed Date:* February 17, 2006.

*Accession Number:* 20060223-0051.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 15, 2006.

*Docket Numbers:* ER06-475-001.

*Applicants:* Colorado Power Partners.  
*Description:* Colorado Power Partners submits Substitute Third Revised Sheet 1, revising Third Revised Sheet 1, to be effective January 12, 2006.

*Filed Date:* March 3, 2006.

*Accession Number:* 20060307-0207.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 24, 2006.

*Docket Numbers:* ER06-693-000.

*Applicants:* Pacific Gas & Electric Company.

*Description:* Pacific Gas and Electric Co. submits an executed Letter of Agreement dated March 31, 1998 with California Department of Water Resources—State Water Project in accordance with section 205(c) of the Federal Power Act, etc.

*Filed Date:* March 2, 2006.

*Accession Number:* 20060307-0055.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 23, 2006.

*Docket Numbers:* ER06-694-000.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Niagara Mohawk Power Corp. dba National Grid submits an Original Service Agreement 914 with Steel Winds, LLC under the New York Independent System Operator, LLC, FERC Electric Tariff, Original Volume 1.

*Filed Date:* March 2, 2006.

*Accession Number:* 20060307-0038.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 23, 2006.

*Docket Numbers:* ER06-695-000.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Niagara Mohawk Power Corp., dba National Grid submits an Original Service Agreement 915 with Modern Innovative Energy LLC under the New York Independent System Operator LLC's open access tariff, etc.

*Filed Date:* March 2, 2006.

*Accession Number:* 20060307-0045.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 23, 2006.

*Docket Numbers:* ER06-696-000.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Niagara Mohawk Power Corp. dba National Grid submits an Original Service Agreement 916 w/ Innovative Energy Systems, Inc. under the New York Independent System Operator, LLC's FERC Electric Tariff, Original Volume 1.

*Filed Date:* March 2, 2006.

*Accession Number:* 20060307-0043.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 23, 2006.

*Docket Numbers:* ER06-698-000.

*Applicants:* First Commodities Ltd.

*Description:* First Commodities Ltd.'s submits a petition for acceptance of its initial rate schedule (FERC Electric Rate Schedule 1), and granting certain waivers and blanket authorities.

*Filed Date:* March 2, 2006.

*Accession Number:* 20060307-0041.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 23, 2006.

*Docket Numbers:* ER96-2495-028; ER97-4143-016; ER97-1238-023; ER98-2075-022; ER98-542-018; EL04-131-000.

*Applicants:* AEP Power Marketing Inc.; AEP Service Corporation; CSW Power Marketing, Inc.; CSW Energy Services, Inc.; Central and South West Services, Inc.

*Description:* American Electric Power Service Corp., on behalf of AEP Power Marketing Inc. et al. submits revised market tariff sheets in accordance with Order 614 to remove the Market Behavior Rules pursuant to Commission's February 16, 2006 order.

*Filed Date:* March 3, 2006.

*Accession Number:* 20060307-0084.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 24, 2006.

*Docket Numbers:* ER97-886-009.

*Applicants:* Brooklyn Navy Yard Cogeneration Partners, LP

*Description:* Brooklyn Navy Yard Cogeneration Partners LP states that neither itself nor its affiliates can engage in any prohibited affiliate abuse or reciprocal dealing in response to FERC's letter dated February 1, 2006.

*Filed Date:* March 3, 2006.

*Accession Number:* 20060307-0083.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 24, 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 docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3688 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP06-76-000]

#### Algonquin Gas Transmission LLC; Notice of Alternative Project Site Algonquin Ramapo Expansion Project

March 8, 2006.

On January 10, 2006, a Notice of Intent to Prepare a Supplemental Environmental Impact Statement (NOI) was issued by the Federal Energy Regulatory Commission (FERC or Commission) concerning the preparation of a supplemental environmental impact statement (SEIS) that discusses the environmental impacts of Millennium Pipeline L.P.'s (Millennium) proposed Millennium Phase I Project (Phase I Project) which involves design and route changes to the pipeline facilities previously approved as part of the Millennium Pipeline Project and the related projects proposed by other pipeline companies. These related projects are: Columbia Gas

Transmission Corporation's (Columbia) Line A-5 Replacement Project (Docket No. CP05-19-000), Empire Pipeline, Inc.'s (Empire) Empire Connector Project (Docket No. CP05-6-000), Algonquin Gas Transmission's (Algonquin) Ramapo Expansion Project (pre-filing Docket No. PF06-5-000 and certificate application filed in Docket No. CP06-76-000 on March 2, 2006), and Iroquois Gas Transmission System, L.P.'s MarketAccess Project (pre-filing Docket No. PF06-6-000). Together, these projects are referred to as the Northeast (NE)-07 Project. A copy of the NOI is attached for your reference (see appendix 1).

Algonquin Gas Transmission LLC (Algonquin) filed information regarding an alternative compressor station (CS) site for the proposed Oxford CS that it may consider as its preferred site. This alternative site is in Oxford, New Haven County, Connecticut. The property is referred to as alternative "Site F, Oxford Tax Identification: Map 24, Block 21, Lot 8" (Woodruff Hill #3). It would be at approximate Algonquin milepost 132.5. It would be about 0.85 mile east of the Oxford Airport runway. It is associated with the planned Woodruff Hill Industrial Park (Industrial Park) site just east of the Oxford Airport in an area that has been designated as "future development". But, it is not included in the current plans for developing the Industrial Park. A location map for the proposed alternative Oxford CS site is in appendix 2.

Site F occupies a 41-acre parcel that lies mostly within a valley that is bisected by an intermittent stream and some associated wetlands. The site is moderately level and mostly wooded. Algonquin indicates that an approximate 1600-foot-long driveway would be required for permanent access to the site.

This notice announces the opening of the scoping period for the alternative site that will be used to gather environmental information from the public and interested agencies on the NE-07 Project. Please note that the scoping period will close on April 7, 2006. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to potentially affected landowners within a half mile of the alternative new compressor station site; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to

construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the NE-07 Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

#### The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the SEIS on the important environmental issues. By the NOI, the Commission staff requested public comments on the scope of the issues to address in the EIS. All comments received are considered during the preparation of the SEIS. Landowners receiving this supplemental notice about the alternative compressor station site have been given an opportunity to comment of the project outside the comment period identified in the attached NOI.

#### Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed alternative facilities and the environmental information provided by the applicants. This preliminary list of issues may be changed based on your comments and our analysis.

- Water Resources.
  - Impact on water quality.
  - Impact on wetlands.
- Vegetation and Wildlife.
  - Impact on forests due to clearing to construct and operate the compressor station and access road.
- Endangered and Threatened Species.
  - Impact on Indiana bats.
  - Impact on bog turtles.

- Reliability and Safety.
  - Assessment of hazards associated with compressor stations.
- Air Quality and Noise.
  - Temporary impacts from construction of the pipeline on residences.
  - Impacts of operation of the new compressor stations and compressor station additions.
- Alternatives.

#### Public Participation

You can make a difference by providing us with your specific comments or concerns about the NE-07 Project. By becoming a commentor, your concerns may be addressed in the SEIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they may be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference the docket number of the project about which you are commenting on the original and both copies. For these projects, please reference:—Ramapo Expansion Project—CP06-76-000.
- Mail your comments so that they will be received in Washington, DC on or before April 7, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments, you will need to open a free account which can be created on-line.

#### Becoming an Intervenor

Please see the attached NOI for the NE-07 Project for this information.

### Environmental Mailing List

If you do not want to send comments at this time, but still want to remain on our mailing list, please return the attached Mailing List Retention Form (Appendix 3). If you do not return the form, you will be taken off the mailing list.

### Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact 1-202-502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E6-3661 Filed 3-14-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP06-58-000]

#### Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Southern Natural Gas Company's 2006 Abandonment and Replacement Project Request for Comments on Environmental Issues

March 8, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or

Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Southern Natural Gas Company's (Southern) application for its 2006 Abandonment and Replacement Project. Southern proposes to abandon, replace and modify facilities associated with its 22-inch North Main Loop Line and abandon its Pell City Compressor Station Unit No. 3 as part of an extensive pipeline integrity program. Pipeline changes would occur on Southern's existing system in Tuscaloosa County, Alabama. Abandonment of a compressor station would occur in St. Clair County, Alabama.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Scoping comments are requested by April 10, 2006.

With this notice, the staff of the FERC is asking other Federal, State, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Southern's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described in Appendix 1.

This notice is being sent to potentially affected landowners; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (<http://www.ferc.gov>).

This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

### Background

#### *Pipeline Abandonment, Replacement and Modification*

Southern's 22-inch McConnells North Main Loop Line, which is part of its North Main Line System in Tuscaloosa County, Alabama, was commissioned in 1946 and is proposed for retirement as part of the application. Because of a reduction in contracted capacity in this area due to capacity turnback and capacity shift, this section of the line is no longer needed. However, to continue to provide reliable and safe gas supplies to the western Alabama region, Southern proposes to replace a section of the abandoned 22-inch McConnells North Main loop Line by extending the existing 24-inch 2nd North Main Loop Line.

#### *Compressor Station Abandonment*

The Pell City Compressor Station was built in 1989 to deliver firm contract volumes on the Gadsden Lateral Line. Since the Gadsden Lateral Line has not been operating at full contract capacity, the Pell City Unit No. 3 has not been required to deliver peak day demand on the Gadsden Lateral Line. Recent capacity turnback on the Gadsden Lateral Line makes it possible to abandon the Pell City Unit No. 3 since it is no longer required to meet firm peak day requirements.

### Summary of the Proposed Project

#### *Tuscaloosa, Alabama*

- Abandon in place 4.55 miles of the McConnells 22-inch North Main Loop Segment from Milepost 260.74 to Milepost 265.29. This portion of the McConnells North Main Loop Segment would be pigged, filled with nitrogen, and capped before being abandoned in place.

- Abandon and remove 6.36 miles from Milepost 265.29 to Milepost 271.65. Southern proposes to remove all pipeline and associated piping assemblies along this 6.36 mile route, with the exception of the North River crossing at Milepost 269.45 and any uncased road crossings. The uncased road crossing would be cut and capped on each side of the road crossing and filled with grout for abandonment in place. The cased road crossings that are left void would also be filled with grout and abandoned in place.

- Install a new anchor block and blowoff/crossover assembly at Milepost 271.65, and, if necessary, continue maintenance by installing sleeves on coupled joints from Milepost 271.65 to Milepost 271.73.

- Extend its 24-inch 2nd North Main Loop Line by constructing, installing and operating 6.1 miles of 24-inch pipeline from Milepost 142.6 to Milepost 148.7 (Tuscaloosa County, Alabama). This segment of the 24-inch 2nd North Main Loop Line is parallel to Milepost 265.3 to Milepost 271.6 of the 22-inch North Main Loop Line, which is proposed to be abandoned above.

Installation of the proposed 2nd North Main Loop Segment would be within the same location and same ditch line as Southern's 22-inch North Main Loop Line after the abandonment and removal of the 6.36 miles described above.

- Connect the proposed 2nd North Main Loop Segment to the existing 24-inch 2nd North Main Loop Line by removing the existing weld cap and making a tie-in at Milepost 142.56. It would also be necessary to install a new blowoff/crossover assembly at Milepost 148.93, which would be connected to the crossover assembly installed at Milepost 271.65 on the 22-inch North Main Loop Line as detailed above.

#### *St. Clair County, Alabama*

- Abandon in place its Pell City Compressor Station Unit No. 3 (St. Clair County, Alabama) at Milepost 352.8 on Southern's North Main and North Main Loop Lines. All existing gas piping systems would be disconnected including fuel gas and blind flanges would be installed at these points. Additionally, electric power would be disconnected from the unit such that all control systems would be inoperable. The unit would then be purged with nitrogen and prepared for long term storage in place.

The location of the project facilities is shown in Appendix 2.<sup>1</sup>

#### **Land Requirements**

Abandonment, replacement and modification of the proposed facilities would require the temporary disturbance of about 105.24 acres of land, the majority of which is within Southern's existing 100-foot right-of-way. Additional extra work spaces of

10.32 acres) would be required at road and waterbody crossings.

Following construction, permanent land acquisition of 0.16 acres would be maintained as part of the right-of-way for the maintenance of the 24-inch 2nd North Main Loop Line Replacement section. The remaining acreage required during construction would be restored and allowed to revert to its former land uses.

#### **The EA Process**

We<sup>2</sup> are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

#### **Currently Identified Environmental Issues**

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate

reasonable alternatives to the proposed project or portions of the project.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be changed based on your comments and our analysis.

Project-related impact on:

- 7 residences/structures within 50 feet of the construction workspace.
- 1 active private well within 32 feet of the construction workspace.
- 2.6 acres of upland forest.
- Four federally-listed threatened and endangered species potentially in the project area.
- 9 emergent wetland crossings 3.5 acres.
- 23 water body crossings.
- Road crossings.

#### **Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket Number CP06-58-000.
- Mail your comments so that they will be received in Washington, DC on or before April 10, 2006.

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of

<sup>1</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

<sup>2</sup> "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

filing you are making. This filing is considered a "Comment on Filing."

The determination of whether to distribute the EA for public comment will be based on the response to this notice. If you are interested in receiving it, please return the Information Requested (Appendix 3). An effort is being made to send this notice to all individuals affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

#### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenor has the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at <http://www.ferc.gov>. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

#### Environmental Mailing List

If you wish to remain on our environmental mailing list, please return the Information Request Form

included in Appendix 3. If you do not return this form, you will be removed from our mailing list.

#### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3669 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. RP06-151-000]

##### Kern River Gas Transmission Company; Notice of Technical Conference

March 8, 2006.

Take notice that the Commission will convene a technical conference on Tuesday, March 21, 2006, at 9:30 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The technical conference will deal with issues related to Kern River Gas

Transmission Company's prior-period adjustments to its gas compressor fuel and lost and unaccounted for balances, as discussed in the February 15, 2006 order.<sup>1</sup>

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](mailto:accessibility@ferc.gov) or call toll free (866) 208-3372 (voice) or 202-502-8659 (TTY), or send a fax to 202-208-2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Abraham Silverman at (202) 502-6444 or e-mail [abraham.silverman@ferc.gov](mailto:abraham.silverman@ferc.gov).

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-3664 Filed 3-14-06; 8:45 am]

**BILLING CODE 6717-01-P**

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

##### Meetings; Sunshine Act

March 9, 2006.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** March 16, 2006, 10 a.m.

**PLACE:** Room 2C, 888 First Street NE., Washington DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

\*Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:**

Magalie R. Salas, Secretary, Telephone (202) 502-8400. For a recorded listing item stricken from or added to the meeting, call (202) 502-8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

<sup>1</sup> *Kern River Gas Transmission Co.*, 114 FERC ¶61,162 (2006).

## 903RD—MEETING—REGULAR MEETING

[March 16, 2006, 10 a.m.]

Item No.	Docket No.	Company
<b>Administrative Agenda</b>		
A-1	AD02-1-000	Agency Administrative Matters.
A-2	AD02-7-000	Customer Matters, Reliability, Security and Market Operations.
A-3	AD06-3-000	Energy Market Update.
<b>Electric</b>		
E-1	OMITTED.	
E-2	OMITTED.	
E-3	EC03-131-003, EC03-131-004	Oklahoma Gas and Electric Company and McClain LLC
E-4	ER96-719-006, EL05-59-000	MidAmerican Energy Company.
	ER96-719-008, ER99-2156-006	Cordova Energy Company LLC.
E-5	ER06-451-000	Southwest Power Pool, Inc.
E-6	ER06-356-000, ER06-356-001	Midwest Independent Transmission System Operator, Inc.
E-7	ER06-493-000	Midwest Independent Transmission System Operator, Inc.
E-8	ER06-487-000	PJM Interconnection, L.L.C. and the PJM Transmission Owners.
	ER06-488-000	PJM Interconnection, L.L.C., and Virginia Electric and Power Company (PJM South).
	ER06-489-000	PJM Interconnection, L.L.C., and Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power, American Electric Power Service Corporation on behalf of its Operating Companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company; Commonwealth Edison Company, Commonwealth Edison Company of Indiana, and Dayton Power and Light Company (PJM West).
	ER06-490-000	Public Service Electric and Gas Company, PECO Energy Company, PPL Electric Utilities Corporation, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, Atlantic City Electric Company, Delmarva Power & Light Company, UGI Utilities, Inc., Allegheny Electric Cooperative, Inc., CED Rock Springs, LLC, Old Dominion Electric Cooperative, Rockland Electric Company, and Duquesne Light Company.
E-9	ER06-506-000, ER06-506-001	New York Independent System Operator, Inc.
E-10	ER06-522-000	Midwest Independent Transmission System Operator, Inc.
E-11	ER97-4345-017	Oklahoma Gas and Electric Company.
	ER98-511-005, EL05-107-000	OGE Energy Resources, Inc.
E-12	ER01-2230-001, ER01-2230-002	New York Independent System Operator, Inc.
E-13	OMITTED.	
E-14	OMITTED.	
E-15	ER02-2263-003, ER02-2263-004, ER02-2263-005	Southern California Edison Company.
E-16	ER03-1079-006	Aquila, Inc.
	ER02-47-006	Aquila Long Term, Inc.
	ER95-216-026	Aquila Merchant Services, Inc.
	ER03-725-006	Aquila Piatt County L.L.C.
	ER02-309-006	MEP Clarksdale Power, LLC.
	ER02-1016-004	MEP Flora Power, LLC.
	EL05-83-000, EL05-83-001	Aquila, Inc., Aquila Long Term, Inc., Aquila Merchant Services, Inc., Aquila Piatt County L.L.C., MEP Clarksdale Power, LLC, and MEP Flora Power, LLC.
E-17	OMITTED.	
E-18	OMITTED.	
E-19	EL04-57-002	FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.
E-20	OMITTED.	
E-21	ER05-130-001, ER05-130-003, ER05-150-00	Pacific Gas and Electric Company.
E-22	OMITTED.	
E-23	ER06-207-001, ER06-208-001, ER06-209-001, ER06-210-001.	Xcel Energy Services Inc.
E-24	OMITTED.	
E-25	OMITTED.	
E-26	ER04-938-003, ER04-938-004	California Independent System Operator Corporation.
E-27	OMITTED.	
E-28	ER05-611-003	Bridgeport Energy, LLC.
E-29	EL05-49-001	Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC.

903RD—MEETING—REGULAR MEETING—Continued

[March 16, 2006, 10 a.m.]

Item No.	Docket No.	Company
E-30 .....	ER00-2268-003, ER00-2268-005, ER00-2268-006, ER00-2268-007, ER00-2268-008, ER00-2268-010, ER00-2268-012, ER00-2268-013, ER00-2268-015, EL05-10-002. ER99-4124-001, ER99-4124-003, ER99-4124-004, ER99-4124-005, ER99-4124-006, ER99-4124-008, ER99-4124-010, ER99-4124-011, ER99-4124-013, EL05-11-002, EL05-11-004. ER00-3312-002, ER00-3312-004, ER00-3312-005, ER00-3312-006, ER00-3312-007, ER00-3312-009, ER00-3312-011, ER00-3312-012, ER00-3312-014, EL05-12-002, EL05-12-004. ER99-4122-004, ER99-4122-006, ER99-4122-007, ER99-4122-008, ER99-4122-009, ER99-4122-011, ER99-4122-013, ER99-4122-014, ER99-4122-016, EL05-13-002, EL05-13-004. ER03-352-003 .....	Pinnacle West Capital Corporation. Arizona Public Service Company. Pinnacle West Energy Corporation. APS Energy Services Company, Inc. Gen West LLC.
E-31 .....	ER06-517-000, ER06-524-000 .....	California Independent System Operator Corporation.
E-32 .....	ER06-532-000 .....	Midwest Independent Transmission System Operator, Inc., and First Energy Services Company.
E-33 .....	OMITTED.	
<b>Miscellaneous</b>		
M-1 .....	RM05-33-001 .....	Revision of Rules of Practice and Procedure Regarding Issue Identification.
<b>Gas</b>		
G-1 .....	RM05-22-0000 .....	Five-Year Review of Oil Pipeline Pricing Index.
G-2 .....	RP06-177-000 .....	Iroquois Gas Transmission System, L.P.
G-3 .....	RP05-668-002, RP05-668-001 .....	Southern Star Central Gas Pipeline, Inc.
G-4 .....	OR06-3-000 .....	Enbridge Energy, Limited Partnership.
G-5 .....	RP05-422-000 .....	El Paso Natural Gas Company.
G-6 .....	OMITTED.	
<b>Energy Projects—Hydro</b>		
H-1 .....	P-2659-018 .....	PacifiCorp.
H-2 .....	P-2738-061 .....	New York State Electric & Gas Corporation.
H-3 .....	P-2056-038 .....	Northern States Power Company.
<b>Energy Projects—Certificates</b>		
C-1 .....	CP06-10-000 .....	Dominion Transmission, Inc.

Magalie R. Salas.  
Secretary.

A free Webcast of this event is available through <http://www.ferc.gov>. Anyone with Internet access who desires to view this event can do so by navigating to <http://www.ferc.gov>'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit <http://www.CapitolConnection.org> or contact Danelle Perkowski or David Reininger at 703-993-3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room

2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 06-2586 Filed 3-13-06; 3:45 pm]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OEI-2006-0037, FRL-8045-3]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Exchange Network Grants Progress Report; EPA ICR No. 2207.02, OMB Control No. 2025-0006**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (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 May 15, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2006-0037, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.

- *E-mail*: [oei.docket@epa.gov](mailto:oei.docket@epa.gov).

- *Fax*: 202-566-1753.

- *Mail*: Exchange Network Grants

Progress Report, Environmental Protection Agency, Mailcode: 2823-T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery*: Exchange Network Grants Progress Report, EPA West Building, 1301 Constitution Ave., NW., Rm. #B102, Washington, DC 20004.

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-OEI-2006-0037. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

*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 *www.regulations.gov* or e-mail. The *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 *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 Home page at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Wells, OEI/OIC/IESD, Mailcode 2823T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-1706; fax number: 202-566-1684; e-mail address: [wells.jeffrey@epa.gov](mailto:wells.jeffrey@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-OEI-2006-0037, which is available for online viewing at *www.regulations.gov*, or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., 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 OEI Docket is 202-566-1752.

Use *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.

**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 Environmental Information Exchange Network grant recipients. These recipients include state, territorial, and tribal governments.

*Title:* Exchange Network Grants Progress Report Renewal.

*ICR numbers:* EPA ICR No. 2207.02, OMB Control No. 2025-0006.

*ICR status:* This ICR is for a renewal of 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 are listed in Title 40 of the Code of Federal Regulations (CFR), after OMB approval. The OMB control numbers are displayed in 40 CFR part 9, or may be displayed by other appropriate means, such as on the collection forms.

*Abstract:* This notice announces the proposed collection of information related to the U.S. EPA Environmental Information Exchange Network (EIEN) Grant Program. The EPA Office of Environmental Information provides funding to EPA's Exchange Network partners: States; territories; and Federally recognized Indian tribes to support the development of the EIEN. The EIEN is an Internet-and-standards-based, secure information system that

supports the electronic collection, exchange, and integration of data among its partners. The goal of the EIEN is to improve information quality, timeliness, accessibility and the ability to integrate data, while offering business process improvements. Funding for the Grant Program has been provided through annual congressional appropriations for the EPA.

To enhance the quality and overall public benefit of the Network, EPA proposes to collect information from the EIEN grantees about how they intend to ensure quality in their projects and the environmental outcomes and outputs from their projects. The proposed Quality Assurance Reporting Form is intended to provide a simple means for grant recipients to present how quality will be addressed throughout their projects. The Quality Assurance Reporting Form is derived from guidelines provided in the EIEN's fiscal year 2006 grant solicitation notice. As a stipulation of their award, grant recipients are to submit the form within ninety days of grant award.

Grantees are also currently required to submit semiannual progress reports as a stipulation of their award. In these reports, grantees outline project goals, the activities required to meet these goals, and the outputs and outcomes of the activities to date. At the request of numerous grantees, we are proposing to offer the Performance Progress Reporting Form as a vehicle for collecting this information. This form is easier to complete than an unstructured narrative, and the information returned will be of higher quality.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per Performance Progress Reporting Form and 1 hour per Quality Assurance Reporting Form 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; process and maintain information; disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; 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 ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 225.

*Frequency of response:* Semi-Annual for Performance Progress Reporting Form; once for Quality Assurance Reporting Form.

*Estimated total annual number of responses for each respondent:* 3.

*Estimated total annual burden hours:* 900 hours.

*Estimated total annual costs:* \$0. This includes an estimated burden cost of \$0 and an estimated cost of \$0 for capital investment or maintenance and operational 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 7, 2006.

**Doreen Sterling,**

*Acting Director, Information Exchange and Services Division.*

[FR Doc. E6-3730 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

[EPA-R09-OAR-2006-0137; FRL-8044-8]

### **Adequacy Status of the Truckee Meadows (Washoe County, NV) Submitted Carbon Monoxide Maintenance Plan for Transportation Conformity Purposes**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy determination.

**SUMMARY:** In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the submitted Redesignation Request and Maintenance Plan for the Truckee Meadows (Washoe County, Nevada) Carbon Monoxide Nonattainment Area (September 2005) ("Truckee Meadows Carbon Monoxide

Redesignation Request and Maintenance Plan") are adequate for transportation conformity purposes. As a result of our finding, the Washoe County Regional Transportation Commission and the U.S. Department of Transportation must use the carbon monoxide motor vehicle emissions budgets from the submitted plan for future conformity determinations.

**DATES:** This determination is effective March 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** The finding is available at EPA's conformity Web site: <http://www.epa.gov/oms/traq>, (once there, click on the "Transportation and Air Quality Planning" link and click on the "Transportation Conformity" link, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Eleanor Kaplan, U.S. EPA, Region IX, Air Division AIR-2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 947-4147, or [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever "we", "us", or "our" is used, we mean EPA.

This notice announces our finding that the emissions budgets contained in the Carbon Monoxide State Implementation Plan revision for Truckee Meadows (Washoe County, Nevada) ("Truckee Meadows Carbon Monoxide Redesignation Request and Maintenance Plan") submitted by the State of Nevada on November 4, 2005, are adequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the Nevada Division of Environmental Protection on February 13, 2006. We are also announcing this finding on our conformity Web site: <http://www.epa.gov/oms/traq>, (once there, click on the "Transportation and Air Quality Planning" link and click on the "Transportation Conformity" link, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions

budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the motor vehicle emissions budgets, when considered together with all other emission sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission). We have preliminarily determined that the Truckee Meadows Carbon Monoxide Redesignation Request and Maintenance Plan does provide for maintenance of the CO standard. Therefore, the motor vehicle emissions budgets can be found adequate. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate action on the submitted plan itself. Even if we find a budget adequate, the submitted plan could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). This guidance is now reflected in the amended transportation conformity rule, July 1, 2004 (69 FR 40004), and in the correction notice, July 20, 2004 (69 FR 43325). We followed this process in making our adequacy determination on the emissions budgets contained in the Truckee Meadows Carbon Monoxide Redesignation Request and Maintenance Plan.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: February 21, 2006.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E6-3729 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0222; FRL-7769-2]

### Pesticide Program Dialogue Committee Spray Drift Work Group; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), the U.S. Environmental Protection Agency (EPA) gives notice of a public

meeting of the Pesticide Program Dialogue Committee (PPDC) Spray Drift Work Group on March 29 and 30, 2006. An agenda for this meeting is being developed and will be posted on EPA's Web site. The work group is developing input and advice concerning spray drift for EPA's Offices of Water and Pesticide Programs.

**DATES:** The meeting will be held on Wednesday, March 29 and Thursday, March 30, 2006. The meeting is tentatively scheduled for 9 a.m. to 4:30 p.m. on Wednesday and from 9 a.m. to noon on Thursday; please check the agenda posted on EPA's Web site for any revision to the scheduled times.

**ADDRESSES:** The meeting will be held in EPA's offices at Crystal Mall #2, 1801 S. Bell Street, Arlington, VA in room 1126 (the "Fishbowl").

**FOR FURTHER INFORMATION CONTACT:** Pat Cimino, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (703) 308-9357; fax number (703) 308-4776; e-mail address: [cimino.pat@epa.gov](mailto:cimino.pat@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Clean Water Act (CWA); the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Farmers and agricultural workers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under Docket

identification number EPA-HQ-OPP-2006-0222; FRL-7769-2. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

## II. Background

The Office of Pesticide Programs is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Office of Water is responsible for protecting public health by ensuring safe drinking water and for protecting water quality and restoring impaired waterways.

## III. How Can I Request to Participate in the Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. For information on facilities and services for the handicapped or to request special assistance at the meeting, contact Pat Cimino at the phone number listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Growers, Pesticides and pests, Pesticide applicators, Public health, Risk assessment, Tolerance reassessment, Water quality.

Dated: March 8, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. E6-3726 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2006-0193; FRL-7768-2]

**Notice of Filing of a Pesticide Petition for the Establishment of an Exemption from the Requirement of Regulations for Residues of Quillaja Saponaria in or on All Food Commodities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of regulations for residues of Quillaja Saponaria extract in or on all food commodities.

**DATES:** Comments must be received on or before April 14, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0193 and pesticide petition number (PP) 5F6982, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *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-2006-0193. 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-2006-0193. 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 [www.regulations.gov](http://www.regulations.gov/) or e-

mail. The [www.regulations.gov](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 at [www.regulations.gov](http://www.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/dockets.htm/>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](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. 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 Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Driss Benmhend, Biopesticides and Pollution Prevention Division, (7511C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; (703) 308-9525; e-mail: [benmhend.driss@epa.gov](mailto:benmhend.driss@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 at the end of the pesticide petition summary of interest.

*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](http://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 ID 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. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at <http://www.regulations.gov/>. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Exemption from Tolerance

*PP 5F6982.* Desert King Chile, Ltd., Antonio Bellet 77 OF.401, Providencia, Santiago, Chile 6640209 (submitted by Technology Sciences Group, Inc., 1101 17th Street, NW, Suite 500, Washington, DC 20026), proposes to establish an exemption from the requirement of a tolerance for residues of the biopesticide Quillaja Saponaria, extract in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 7, 2006.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E6-3738 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0541; FRL-7767-3]

### Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Mancozeb in or on Various Food Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of mancozeb in or on food commodities sugar apple, cherimoya, atemoya, custard apple, and sweetsop (9E5061); mango, star apple (caimito), canistel, mamey sapote, sapodilla, and white sapote (5E4570); ginseng (9E5054); and the cucurbit vegetable crop group 9 (3E4173).

**DATES:** Comments must be received on or before April 14, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0541 and pesticide petition numbers (PPs) 3E4173, 5E4570, 9E5054, and 9E5061, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *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-2005-0541. 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-2005-

0541. 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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 to [www.regulations.gov](http://www.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/dockets.htm/>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](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. 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 Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460-0001; 703-305-6463; e-mail: [madden.barbara@epa.gov](mailto:madden.barbara@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://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. What Action is the Agency Taking?**

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at <http://www.regulations.gov/>. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

**New Tolerance**

1. PP 3E4173. Interregional Research Project No. 4 (IR-4), 681 U. S. Highway No. 1 South, North Brunswick, NJ 08902-3390, proposes to establish a tolerance for residues of the fungicide mancozeb in or on food commodities Cucurbit Vegetable Crop Group 9 at 4.0 parts per million (ppm);

2. PP 5E4570. Mango, star apple (caimito), canistel, mamey sapote, sapodilla, and white sapote at 15.0 ppm;

3. PP 9E5054. Ginseng at 2.0 ppm; and

4. PP 9E5061. Sugar apple, cherimoya, atemoya, custard apple, and sweetsop at 3.0 ppm.

Residues of mancozeb are determined by decomposing the residue with a strong acid to release carbon disulfide (CS<sub>2</sub>). The CS<sub>2</sub> can be measured by gas chromatography or by absorbance of a colored copper dithiocarbamate complex formed by sweeping the CS<sub>2</sub> through a trap and into a reaction tube containing a solution of copper acetate and an amine. Adequate methodology for enforcement is available in the Pesticide Analytical Manual (PAM II, Method II).

**List of Subjects:**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 2, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 06-2432 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPPT-2003-0006; FRL-7765-6]

**TSCA Chemical Testing; Receipt of Test Data**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of test data regarding *In Vitro* Dermal Absorption Rate Testing of certain chemicals of interest to the Occupational Safety and Health Administration (OSHA). EPA received data on the following chemicals: Acetonitrile (CAS No. 75-05-8); methyl acetate (CAS No. 79-20-9); propylene dichloride (CAS No. 78-87-5); p-nitroaniline (CAS No. 100-01-6); pentane (CAS No. 109-66-0); n-heptane (CAS No. 142-82-5); and tetrahydrofuran (CAS No. 109-99-9). These data were submitted pursuant to a test rule issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of these chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2003-0006. Publicly available docket materials are available electronically at <http://www.regulations.gov> or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

### II. Test Data Submissions

Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after these data are received by EPA.

1. Test data for acetonitrile were submitted by DuPont Chemical Solutions Enterprise and received by EPA on November 7, 2005. The submission includes a final study report titled: "Acetonitrile: *In Vitro* Dermal Absorption Rate Testing." (See Document ID No. EPA-HQ-2003-0006-0309).

2. Test data for methyl acetate were submitted by the American Chemistry Council and received by EPA on November 21, 2005. The submission includes a final study report titled: "Methyl Acetate: *In Vitro* Dermal Absorption Rate Testing." (See Document ID No. EPA-HQ-2003-0006-0315).

3. Test data for propylene dichloride were submitted by The Dow Chemical Company and received by EPA on December 14, 2005. The submission includes a final study report titled: "Propylene Dichloride: *In Vitro* Dermal Absorption Rate Testing." (See Document ID No. EPA-HQ-2003-0006-0319).

4. Test data for p-nitroaniline were submitted by Aceto Corporation and received by EPA on December 27, 2005. The submission includes a final study report titled: "Human Percutaneous Absorption and Cutaneous Disposition of [<sup>14</sup>C]-Nitroaniline *In Vitro*." (See Document ID No. EPA-HQ-2003-0006-0320).

5. Test data for pentane were submitted by the Alkanes Dermal Absorption Consortium of the American Chemistry Council and received by EPA on December 29, 2005. The submission includes a final study report titled: "Pentane: *In Vitro* Dermal Absorption Rate Testing." (See Document ID No. EPA-HQ-2003-0006-0322. This document also contains the results of *In Vitro* Dermal Absorption Rate Testing for n-heptane).

6. Test data for n-heptane were submitted by the Alkanes Dermal Absorption Consortium of the American Chemistry Council and received by EPA on December 29, 2005. The submission includes a final study report titled: "n-Heptane: *In Vitro* Dermal Absorption Rate Testing." (See Document ID No. EPA-HQ-2003-0006-0322. This document also contains the results of *In Vitro* Dermal Absorption Rate Testing of pentane).

7. Test data for tetrahydrofuran were submitted by the Tetrahydrofuran Task Force (TTF) and received by EPA on November 23, 2005. The submission includes a final study report titled "Determination of the Percutaneous Absorption of THF, *In Vitro*, Using the Human Cadaver Skin Model." (See Document ID No. EPA-HQ-2003-0006-0323).

These chemical substances are used in a wide variety of applications as industrial solvents, which may result in exposures of a substantial number of workers as described in the support document for the proposed rule (64 FR 31074, June 9, 1999, Table 3-Exposure Information for Chemical Substances).

EPA has initiated its review and evaluation process for these submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

**Authority:** 15 U.S.C. 2603.

#### List of Subjects

Environmental protection, Hazardous substances.

March 2, 2006.

**Jim Willis,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6-3586 Filed 3-14-06; 8:45 am]

**BILLING CODE 6560-50-S**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

**DATES AND PLACE:** March 28, 2006, Washington, DC. The meeting will be held in the Grand Ballroom of the George Washington University Marvin Center Building, 800 21st St. NW., Washington DC 20052.

*Type of Meeting:* Open. Further details on the meeting agenda will be posted on the PCAST Web site at <http://www.ostp.gov/PCAST/pcast.html>.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday March 28, 2006, at approximately 9 a.m. The PCAST is tentatively scheduled to hear a presentation on the Federal Networking and Information Technology Research and Development (NITRD) program as part of its review of that program. The PCAST also is tentatively scheduled to hear presentations relating to its ongoing study of energy technologies and to discuss draft recommendations for a forthcoming report. An update of other PCAST topics (e.g., nanotechnology) and a briefing on the President's American Competitiveness Initiative and the National Science Foundation's 2006 Science and Engineering Indicators report are also tentatively scheduled to occur. This session will end at approximately 5 p.m. Additional

information and the final agenda will be posted at the PCAST Web site at: <http://www.ostp.gov/PCAST/pcast.html>.

**Public Comments:** There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Celia Merzbacher, PCAST Executive Director, at (202) 456-7116, or fax your request/comments to (202) 456-6021.

**FOR FURTHER INFORMATION CONTACT:** For information regarding time, place and agenda, please call Celia Merzbacher at (202) 456-7116, prior to 3 p.m. on Friday, March 24, 2006. Information will also be available at the PCAST Web site at: <http://www.ostp.gov/PCAST/pcast.html>. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

**Celia Merzbacher,**

*PCAST Executive Director, Office of Science and Technology Policy.*

[FR Doc. 06-2542 Filed 3-14-06; 8:45 am]

**BILLING CODE 3170-W4-M**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 9, 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 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 May 15, 2006. If you anticipate that you will be submitting 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:** You may submit all your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0017.

*Title:* Application for a Low Power TV, TV Translator, or TV Booster Station License.

*Form Number:* FCC Form 347.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, local or tribal government.

*Number of Respondents:* 300.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 450 hours.

*Total Annual Cost:* \$36,000.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* The FCC Form 347 is used by licensees/permittees of low power television, TV translator or TV booster stations to apply for a station license. Data is used by FCC staff to confirm that the station has been built in the outstanding construction permit. Data from FCC Form 347 is also included in any subsequent license to operate the station.

*OMB Control Number:* 3060-0906.

*Title:* Annual DTV Report.

*Form Number:* FCC Form 317.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 800.

*Estimated Time per Response:* 0.5 hours-4.0 hours.

*Frequency of Response:* Recordkeeping requirement; Annual reporting requirement.

*Total Annual Burden:* 2,528 hours.

*Total Annual Cost:* \$80,000.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Each commercial and noncommercial educational digital television (DTV) broadcast station licensee is required to file FCC Form 317 annually. The licensees report whether they provided ancillary or supplementary services at any time during the reporting cycle. The report indicates which services were provided, fee related services, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. The Commission established this program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with Section 336(e)(1) of the Telecommunications Act of 1996.

On October 11, 2001, the Commission adopted a Report and Order, *In the*

*Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees*, MM Docket No. 98–203, which extended this requirement to noncommercial educational television licensees. Each licensee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. Noncommercial DTV licensees must also retain documentation sufficient to show that their entire bitstream was used “primarily” for noncommercial education broadcast services on a weekly basis. The data is used by FCC staff to ensure that DTV licensees comply with the requirements of section 336(e) of the Communications Act.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. E6–3727 Filed 3–14–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 99–200; FCC 06–14]

### Numbering Resource Optimization

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this Order, the Federal Communications Commission grants petitions for delegated authority to implement mandatory thousands-block number pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. We find that the petitioners have demonstrated the special circumstances necessary to justify delegation of authority to require thousands-block number pooling. In granting these petitions, the Commission permits these states to optimize numbering resources and further extend the life of the numbering plan areas (“NPAs”) in question.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Jones, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–4357 or [Marilyn.Jones@fcc.gov](mailto:Marilyn.Jones@fcc.gov). The fax number is: (202) 418–2345.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Order in CC Docket No. 99–200 released on February 24, 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 this Order, the Federal Communications Commission grants petitions for delegated authority to implement mandatory thousands-block number pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. We find that the petitioners have demonstrated the special circumstances necessary to justify delegation of authority to require thousands-block number pooling. In granting these petitions, the Commission permits these states to optimize numbering resources and further extend the life of the numbering plan areas (“NPAs”) in question. Specifically, the Commission grants the following:

- To the Public Service Commission of West Virginia, the authority to implement mandatory thousands-block number pooling in the 304 NPA.
- To the Nebraska Public Service Commission, the authority to implement mandatory thousands-block number pooling in the 402 NPA.
- To the Oklahoma Corporation Commission, the authority to implement mandatory thousands-block number pooling in the 580 NPA.
- To the Michigan Public Service Commission, the authority to implement mandatory thousands-block number pooling in the 989 NPA.
- To the Missouri Public Service Commission, the authority to implement mandatory thousands-block number pooling in the 417, 573, 636, and 660 NPAs.

2. In the *First Report and Order*, 65 FR 37703, June 16, 2000, the Commission determined that implementation of thousands-block number pooling is essential to extending the life of the North American Numbering Plan (“NANP”) by making the assignment and use of NXX codes more efficient. Therefore, the Commission adopted national thousands-block number pooling as a valuable mechanism to remedy the inefficient allocation and use of numbering resources and determined to implement mandatory thousands-block pooling in the largest 100 MSAs within nine months of selection of a pooling administrator. The Commission also allowed state commissions to continue to implement thousands-block pooling pursuant to delegated authority and agreed to

continue to consider state petitions for delegated authority to implement pooling on a case-by-case basis. The Commission delegated authority to the Common Carrier Bureau, now the Wireline Competition Bureau (“Bureau”), to rule on state petitions for delegated authority to implement number conservation measures, including thousands-block number pooling, where no new issues were raised.

3. The Commission held that such state petitions for delegated authority must demonstrate that: (1) An NPA in its state is in jeopardy; (2) the NPA in question has a remaining life span of at least a year; and (3) the NPA is in one of the largest 100 MSAs, or alternatively, the majority of wireline carriers in the NPA are local number portability (“LNP”)–capable. The Commission recognized that there may be “special circumstances” where pooling would be of benefit in NPAs that do not meet all three criteria, and may be authorized in such an NPA upon a satisfactory showing by the state commission of such circumstances. These three criteria were adopted before implementation of nationwide thousands-block number pooling and before the Commission recognized that full LNP capability is not necessary for participation in pooling.

4. National rollout of thousands-block number pooling commenced on March 15, 2002, in the 100 largest Metropolitan Statistical Areas (“MSAs”) and area codes previously in pooling pursuant to state delegation orders. All carriers operating within the 100 largest MSAs, except those specifically exempted by the order, were required to participate in thousands-block number pooling in accordance with the national rollout schedule. The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of LNP from another carrier, as well as carriers that are the only service provider receiving numbering resources in a given rate center. In exempting certain carriers from the pooling requirement, the Commission confirmed that “it is reasonable to require LNP only in areas where competition dictates its demand.” The Commission directed the North American Numbering Plan Administrator (“NANPA”) to cease assignment of NXX codes to carriers after they were required to participate in pooling. Instead, carriers required to participate in pooling received numbering resources from the national thousands-block number Pooling Administrator responsible for

administering numbers in thousands-blocks.

5. In implementing nationwide pooling, the Commission had concluded that mandatory pooling should initially take place in the largest 100 MSAs. In the *Pooling Rollout Order*, the Bureau explained that it would consider extending pooling outside of the top 100 MSAs after pooling was implemented in the top 100 MSAs. The Bureau also encouraged voluntary pooling in areas adjoining qualifying MSAs.

## II. The Petitions

6. Between October 20, 2004 and April 7, 2005, the Commission received five petitions from state utility commissions requesting permission to expand the scope of thousands-block pooling. The petitions are similar in that each state asserts that thousands-block pooling is a proactive measure to forestall area code exhaust in the area codes listed. In four of the states, there was an optional pooling mechanism that was being underutilized by the carriers. Accordingly, those state petitioners argued that mandatory thousands-block number pooling will likely postpone the need for area code relief in their respective NPAs. The petitions differ only with regard to specific jeopardy projections, which start within the first quarter of 2006. Specifically, the 304 NPA in West Virginia is projected to exhaust in the first quarter of 2006; the 402 NPA in Nebraska in the second quarter of 2006; the 580 NPA in Oklahoma in the second quarter of 2007; the 989 NPA in Michigan in the second quarter of 2008; and the 417 and 573 NPAs in Missouri in the second and third quarters of 2008, respectively, with the Missouri 636 and 660 NPAs facing accelerated exhaust due to their close proximity to the St. Louis and Kansas City MSAs.

7. On October 28, 2004, the Bureau released a public notice seeking comment on the Oklahoma Petition. On November 30, 2004, the Bureau released a public notice seeking comment on the West Virginia and Nebraska Petitions. On May 4, 2005, the Bureau released a public notice seeking comment on the Missouri and Michigan Petitions. Several parties filed comments and reply comments.

## III. Order Granting Petitions

8. In the Order, the Commission grants petitions for delegated authority to implement mandatory thousands-block number pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public

Service Commission, and the Missouri Public Service Commission. Although all three criteria are not consistently met in these petitions, we find that special circumstances justify delegation of authority to require pooling.

9. With respect to the first criterion, the petitions before us present both jeopardy and non-jeopardy situations. The 304 NPA is currently in jeopardy, whereas the 402, 417, 573, 580, and 989 NPAs are not in jeopardy as defined by industry standards, but are projected to exhaust within three years. Given that most of the NPAs in question are expected to exhaust within one to three years, it is most efficient and in the public interest to permit the state petitioners to implement mandatory thousands-block number pooling at this time. Moreover, if we deny these petitions pursuant to a strict application of the jeopardy requirement, the state commissions will have to refile the petitions in the near future when the NPAs at issue will be in jeopardy. This would be an inefficient use of resources and would further delay the state commissions' ability to optimize numbering resources. With regard to the second criterion, all petitions have demonstrated that the NPAs in question have a remaining life span of at least a year. Thus, this prong of the test is met.

10. The third criterion, that the NPA is in one of the largest 100 MSAs or the majority of wireline carriers in the NPA are LNP-capable, is not relevant here. These petitions seek authority to implement pooling outside of the largest 100 MSAs, and we have since determined that pooling can be implemented without full LNP capability. Instead, we are guided by the principle, expressed in our pooling precedent, that it is reasonable to require LNP only in areas where competition dictates demand. For this reason, we have exempted from pooling rural telephone companies and Tier III CMRS providers that have not yet received a specific request for the provision of LNP from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center. Although this exemption should ensure that LNP is only required in areas where competition dictates demand, it is important to also note that, for carriers who are required to participate in number pooling, full LNP capability is not required. In this case, we require state commissions, in exercising the authority delegated herein to implement number pooling, to implement this delegation consistent with the exemption for the carriers described above. We therefore expect that rural

carriers who are not LNP capable will not be required to implement full LNP capability solely as a result of the delegation of authority set forth herein.

11. As several commenters observe, allowing states to mandate pooling outside of the top 100 MSAs will delay the need for area code relief by using numbering resources more efficiently. Demand for numbering resources in these states is increasing in rural rate centers, where number pooling is not mandatory, due to additional wireless and competitive carriers entering those areas. The petitioners have demonstrated that many carriers are not participating in optional pooling and instead continue to request full NXX codes in these NPAs. The petitioners observe, and we agree, that mandatory thousands-block number pooling would extend the life of these NPAs by using the resources that otherwise would be stranded. Denying the petitions would allow carriers to continue to request 10,000 blocks of numbers when fewer numbers may be needed to serve their customers, which would further hasten the exhaust of these NPAs. We find that this is a special circumstance that permits us to delegate authority to these states to implement mandatory thousands-block number pooling.

12. Therefore, for all the reasons stated above, we determine that the petitioners have demonstrated the special circumstances necessary to justify delegation of authority to require pooling, and we grant: The Public Service Commission of West Virginia authority to implement mandatory thousands-block number pooling in the 304 NPA; the Nebraska Public Service Commission authority to implement mandatory thousands-block number pooling in the 402 NPA; the Oklahoma Corporation Commission authority to implement mandatory thousands-block number pooling in the 580 NPA; the Michigan Public Service Commission the authority to implement mandatory thousands-block number pooling in the 989 NPA; and the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling in the 417, 573, 636, and 660 NPAs.

13. The Ohio Commission and NARUC request that in addition to granting the Oklahoma Petition for mandatory thousands-block number pooling, we extend such delegated authority to all states. SBC opposes this request and observes that in order to adopt such a rule change, we must provide opportunity for notice and comment. We agree and do so in our Fifth Further Notice of Proposed

Rulemaking, published elsewhere in this issue of the **Federal Register**.

14. Finally, we observe that several commenters asked the Commission to reaffirm that it will not permit states to implement pooling methods that are inconsistent with the national pooling framework set forth in the Commission's rules and industry pooling guidelines. We note that the petitions specifically seek authority to order mandatory thousands-block number pooling in rate centers located outside the top 100 MSAs, but in accordance with the national pooling framework. Thus, these state commissions are not seeking to implement pooling methods that are inconsistent with the national pooling framework.

#### IV. Ordering Clauses

15. *Accordingly*, pursuant to the authority contained in sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 251, and pursuant to section 52.9(b) of the Commission's rules, 47 CFR 52.9(b), *it is ordered* that the Petition of the Nebraska Public Service Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures *is granted*; the Petition of the West Virginia Public Service Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures *is granted*; and the Petition of the Oklahoma Corporation Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures *is granted*; the Petition of the Missouri Public Service Commission for Additional Delegated Numbering Authority to Implement Number Conservation Measures *is granted*; and the Petition of the Michigan Public Service Commission for Additional Delegated Authority over Numbering Resource Conservation Measures *is granted*.

16. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, this Order and Fifth Further Notice of Proposed Rulemaking *is adopted*.

17. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order and Fifth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch**,

*Secretary*.

[FR Doc. 06–2331 Filed 3–14–06; 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](mailto:tradeanalysis@fmc.gov)).

*Agreement No.:* 011741–008.

*Title:* U.S. Pacific Coast-Oceania Agreement.

*Parties:* A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line/CP Ships USA, LLC; FESCO Ocean Management Limited; Hamburg-Süd; and P&O Nedlloyd Limited/P&O Nedlloyd B.V.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment removes the P&O Nedlloyd companies as parties, changes Maersk's trade name throughout, and deletes obsolete language.

*Agreement No.:* 011910–002.

*Title:* HSDG/APL Space Charter Agreement.

*Parties:* Hamburg-Süd and APL Co. PTE Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment extends the duration of the agreement through April 12, 2007.

*Agreement No.:* 011926–001.

*Title:* Transpacific Space Charter Agreement.

*Parties:* CMA CGM, S.A. and COSCO Container Lines Co., Ltd.

*Filing Party:* Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

*Synopsis:* The amendment extends the duration of the agreement through April 22, 2006.

By Order of the Federal Maritime Commission.

Dated: March 10, 2006.

**Bryant L. VanBrakle**,

*Secretary*.

[FR Doc. E6–3757 Filed 3–14–06; 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:* 002865NF.

*Name:* Aces, Ltd.

*Address:* 114 Front Street, Scituate, MA 02066.

*Date Revoked:* December 27, 2005.

*Reason:* Surrendered license voluntarily.

*License Number:* 004337F.

*Name:* Air-Land & Sea Transport, Inc. dba Celestial Navigation.

*Address:* 3000 Wilcrest, Suite 350, Houston, TX 77042.

*Date Revoked:* January 15, 2006.

*Reason:* Failed to maintain a valid bond.

*License Number:* 002346F.

*Name:* All Shore Forwarders, Ltd.

*Address:* 159 West 33rd Street, New York, NY 10001.

*Date Revoked:* January 15, 2006.

*Reason:* Failed to maintain a valid bond.

*License Number:* 003709F.

*Name:* Amano U.S.A. Corporation.

*Address:* 1140 East Sandhill Avenue, Carson, CA 90746.

*Date Revoked:* January 30, 2006.

*Reason:* Surrendered license voluntarily.

*License Number:* 004529F.

*Name:* Cargo U.K. Inc.

*Address:* 4790 Aviation Parkway, Atlanta, GA 30349.

*Date Revoked:* January 15, 2006.

*Reason:* Failed to maintain a valid bond.

*License Number:* 001771F.

*Name:* Chris T. Banis

*Address:* 35 Greenwood Avenue, San Francisco, CA 94112

*Date Revoked:* November 28, 2005.

*Reason:* Surrendered license voluntarily.

*License Number:* 001694F.

*Name:* Constant Shipping Corporation

*Address:* 431 North Post Oak Lane, Houston, TX 77024

*Date Revoked:* January 15, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 004166F.  
*Name:* Fabius & Co. Export, Inc.  
*Address:* 181 Hudson Street, New York, NY 10013.

*Date Revoked:* January 15, 2006.  
*Reason:* Surrendered license voluntarily.

*License Number:* 016426N.  
*Name:* First Express International Corp.  
*Address:* First Bldg., 394-44, Seogyo-Dong, Mapo-Ku, Seoul 212-840, Korea.  
*Date Revoked:* October 28, 2005.

*Reason:* Surrendered license voluntarily.

*License Number:* 001728F.  
*Name:* I.M.S., Inc. dba International Moving Service.  
*Address:* 4412-4414 Wheeler Avenue, Alexandria, VA 22304.

*Date Revoked:* February 11, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 003892F.  
*Name:* Josephine D. Mima-Saito.  
*Address:* 29360 N. Begonias Lane, Canyon Country, CA 91351.

*Date Revoked:* January 15, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 019303F.  
*Name:* LTR Associated Enterprises, Inc. dba RC Export Packers.  
*Address:* P.O. Box 6670, Orange, CA 92863-6670.

*Date Revoked:* January 15, 2006.  
*Reason:* Surrendered license voluntarily.

*License Number:* 002827F.  
*Name:* Raymond Express Corporation dba Raymond Express International.  
*Address:* 320 Harbor Way, So. San Francisco, CA 94080.

*Date Revoked:* January 15, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 002419F.  
*Name:* San Pedro, Pacifico D. dba St. Peter Shipping Co.

*Address:* 55 New Montgomery St., Suite 526, San Francisco, CA 94105.  
*Date Revoked:* January 15, 2006.

*Reason:* Failed to maintain a valid bond.

*License Number:* 011365F.  
*Name:* Seawinds Freight Services, Inc.  
*Address:* 601 S. Airport Blvd., Unit B, So. San Francisco, CA 94080.

*Date Revoked:* January 15, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 002890F.  
*Name:* Sunrise Cargo Services, Inc.  
*Address:* 7392 NW 35th Terrace, Suite 205, Miami, FL 33122.

*Date Revoked:* January 21, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 003556F.  
*Name:* Tampa International Forwarding, Inc.  
*Address:* 2701 North Himes Ave., Suite 104, Tampa, FL 33807.

*Date Revoked:* January 15, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 002704F.  
*Name:* Traffic Marketing Development Services, U.S.A., Inc. dba TMD U.S.A.  
*Address:* 7 Howell Drive, Smithtown, NY 11787.

*Date Revoked:* January 15, 2006.  
*Reason:* Failed to maintain a valid bond.

*License Number:* 003636N.  
*Name:* World Connections, Inc.  
*Address:* 8380 Isis Ave., Los Angeles, CA 90045.

*Date Revoked:* January 5, 2006.  
*Reason:* Failed to maintain a valid bond.

**Peter J. King,**

*Deputy Director, Bureau of Certification and Licensing.*

[FR Doc. E6-3755 Filed 3-14-06; 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 Applicant:

Apex Shipping Co. (NYC), Inc., One Cross Island Plaza, Suite LL5A, Rosedale, NY 11422, Officers: Vicky Cheung, President (Qualifying

Individual), Lena Cheung, Secretary.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Triumph Link (USA), Inc., 10 Via Subida, Rancho Palos Verdes, CA 90275, Officers: Stan Chu, President (Qualifying Individual), Derek McDonald, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Airwaves Global Logistics LLC, 181-15 Rockaway Blvd., Suite 204, Jamaica, NY 11434, Officer: Gordon Kastin, President (Qualifying Individual).

RD Shipping Multy Services Inc., 327 North Broad Street, Elizabeth, NJ 07208, Officers: Julio C. Madrid, President (Qualifying Individual), Bertha Triminio, Vice President.

Dated: March 10, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6-3752 Filed 3-14-06; 8:45 am]

**BILLING CODE 6730-01-P**

**FEDERAL MARITIME COMMISSION**

**Ocean Transportation Intermediary Licenses Correction**

In the **Federal Register** Notice published March 9, 2006 (71 FR 46) reference to the name of D.M.C. Logistics Incorporated is corrected to read: D.M.G. Logistics, Inc.

Dated: March 10, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6-3754 Filed 3-14-06; 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
012345N .....	Home Run Shipping International, Inc., 420 W. Merrick Road, Valley Stream, NY 11580-0459	November 18, 2005.
019170N .....	Seabound Freight, LLC, 12972 133rd Court, Suite A, Miami, FL 33186 .....	October 30, 2005.

**Peter J. King,**

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6-3753 Filed 3-14-06; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL RESERVE SYSTEM****Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:****Background**

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before May 15, 2006.

**ADDRESSES:** You may submit comments, identified by FR 1380, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- Fax: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** A copy of the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Request for Comment on Information Collection Proposal**

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

- Whether the proposed collections of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections,

including the validity of the methodology and assumptions used;

- Ways to enhance the quality, utility, and clarity of the information to be collected; and

- Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Collection of Information**

*Report title:* Studies to Develop and Test Consumer Regulatory Disclosures.

*Agency form number:* FR 1380.

*OMB control number:* 7100—to be assigned.

*Frequency:* Consumer surveys: Qualitative testing, 4; Quantitative testing, 4; Institution surveys: Quantitative testing, 5.

*Reporters:* Consumers and financial institutions that engage in consumer lending and provide other financial products.

*Estimated annual reporting hours:* 25,434 hours.

*Estimated average hours per response:* Consumer surveys: qualitative testing, 1.5 hours; quantitative testing, .33 hours; Institution surveys: quantitative testing, 15 hours.

*Estimated number of respondents:* Consumer surveys: qualitative testing, 225; quantitative testing, 1,200; Institution surveys: quantitative testing, 300.

*General description of report:* This information collection is authorized pursuant to the: Home Mortgage Section 806 (12 U.S.C. 2804(a)); Community Reinvestment Act, Section 806 (12 U.S.C. 2905); Competitive Equality Banking Act, Section 1204 (12 U.S.C. 3806) (adjustable rate mortgage caps); Expedited Funds Availability Act, Section 609 (12 U.S.C. 4008); Truth in Saving Act, Section 269 (12 U.S.C. 4308); Federal Trade Commission Act, Section 18(f) (15 U.S.C. 57a(f)); Truth in Lending Act, Section 105 (15 U.S.C. 1604); Fair Credit Reporting Act, Section 621 (15 U.S.C. 1681s(e)); Equal Credit Opportunity Act, Section 703 (15 U.S.C. 1691b(a)); Electronic Funds Transfer Act, Section 904 (15 U.S.C. 1693b) and Gramm-Leach-Bliley Act, Section 504 (15 U.S.C. 6804). Respondent participation in the survey is voluntary. If the Federal Reserve

contracts with an outside firm, no issue of confidentiality would arise because names and any other characteristics that would permit personal identification of respondents would not be reported to the Federal Reserve Board. However, if there is no contractual agreement between the Federal Reserve and the outside firm regarding the reporting of respondent identifying data, or if the Federal Reserve conducts the survey itself, then the information would likely be considered an agency record subject to the Freedom of Information Act (FOIA). Nevertheless, confidential treatment for consumer identifying data would be warranted under subsection (b)(6) of the FOIA. The confidentiality of the information obtained from financial institutions will be determined on a case-by-case basis when the specific questions to be asked on each particular survey are formulated, but before respondents are contacted. Depending upon the survey questions, confidential treatment could be warranted under subsection (b)(4) of the FOIA. 5 U.S.C. 552(b)(4) and (6).

*Abstract:* Congress has assigned the Federal Reserve Board the duty of implementing a number of federal laws intended to protect consumers in credit and other financial transactions and to ensure that consumers receive comprehensive information and fair treatment. The Federal Reserve is responsible for drafting regulations and interpretations to carry out the purposes of these consumer protection laws.

The Federal Reserve seeks to develop and implement regulatory policies based on information garnered from both consumers and industry entities that would enable consumers to make better financial decisions based on sound information and a clear understanding of how to use that information to meet their personal needs. Accordingly, the Federal Reserve periodically surveys consumers and financial institutions to identify key issues and review and evaluate consumer disclosures for effectiveness. Direct information about consumer knowledge and use of disclosure statements would best be obtained through studies of individuals and financial institutions that engage in consumer lending and provide other financial products.

In order to better understand consumer attitudes and knowledge of the Federal Reserve's consumer regulations and to make disclosure statements more comprehensible and usable, the Federal Reserve proposes to conduct studies of consumers and financial institutions. These studies could take the format of focus group

discussions, face-to-face interviews, telephone interviews, mall intercept testing, written questionnaires (paper or Web based), or controlled experiments. The size of consumer focus groups would vary depending on the topics being discussed and the format of the sessions. Experience has shown that focused discussions of not more than twelve to fifteen participants are most productive.

Written surveys or questionnaires could include categorical questions, yes-no questions, ordinal scale (such as Likert scale) or ranking scale questions (which ascertain respondent's views on the degree to which something fits a particular criterion; for example, on a scale of 1, "strongly agree" to 5, "strongly disagree"), and open-ended questions.

The studies could be conducted through a private firm, which would be chosen in a competitive bidding process.<sup>1</sup> The research instruments could be developed by the Federal Reserve alone or jointly with the firm selected by the Federal Reserve. The firm would be responsible for following the sampling protocol established by the Federal Reserve, conducting the study, preparing a data file containing the responses, computing analysis weights, and documenting all study procedures. Data editing and analysis of survey results would be conducted solely by the Federal Reserve or jointly with the firm.

In the subject areas covered by the studies, much of the information needs to be obtained via surveys of consumers, either because (1) personal attitudes, opinions or evidence of understanding are sought, or (2) the desired information is not compiled by financial institutions, or the information is compiled and is proprietary. In addition, the studies could survey financial institutions to obtain information about their consumer product offerings and disclosure and marketing practices with respect to those products.

Board of Governors of the Federal Reserve System, March 10, 2006.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. E6-3741 Filed 3-14-06; 8:45 am]

**BILLING CODE 6210-01-P**

<sup>1</sup> Some survey firms used by the Federal Reserve to conduct past surveys include the University of Michigan's Survey Research Center (SRC), NORC (a social science and survey research organization at the University of Chicago), and the Research Triangle Institute in Charlotte, NC.

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 30, 2006.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Bruce Hsiu-I Shen family*, Rancho Palos Verdes, California; to retain voting shares of American Premier Bancorp, Arcadia, California, and thereby indirectly control shares of American Premier Bank, Arcadia, California.

Board of Governors of the Federal Reserve System, March 10, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-3708 Filed 3-14-06; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Trade Commission (Commission or FTC).

**ACTION:** Notice.

**SUMMARY:** The FTC intends to conduct consumer research to examine the effectiveness of the FTC's current energy labeling requirements for consumer products and obtain information about alternatives to those labels. This activity is part of the Commission's efforts to examine the current labeling program, as required by section 137 of the Energy Policy Act of 2005 (Pub. L. 109-58). Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC

submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.

**DATES:** Comments must be received on or before May 15, 2006.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Appliance Labeling Survey: No. P064200” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, the comment must be filed in paper form, and the first page of the document must be clearly labeled “Confidential.”<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by clicking on the following weblink: <https://secure.commentworks.com/FTC-ApplianceSurvey> and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/FTC-ApplianceSurvey> Web link. If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>.

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3228. **SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c).

Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6291–6309, requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for a variety of products covered by the statute, including home appliances (e.g., refrigerators, dishwashers, air conditioners, and furnaces), lighting, and plumbing products. The Commission’s Appliance Labeling Rule (Rule), 16 CFR part 305, implements these requirements by directing manufacturers to disclose energy information about major household appliances. This information enables consumers to compare the energy use or efficiency of competing models. When initially published in 1979, the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Since then, the Commission has expanded the Rule’s coverage to include central air conditioners, heat pumps, fluorescent lamp ballasts, plumbing products, lighting products, pool heaters, and some other types of water heaters.

Section 137 of the Energy Policy Act of 2005 amends the EPCA (42 U.S.C. 6294(a)(2)) to require the Commission to initiate a rulemaking to consider “the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.” As part of

this effort, EPCA directs the Commission to consider “changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.”

On November 2, 2005, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comments on the effectiveness of the FTC’s energy labeling regulations for consumer products. 70 FR 66307 (November 2, 2005). In that Notice, the Commission stated that the American Council for an Energy Efficient Environment (ACEEE) released a report in 2002 summarizing its research on the EnergyGuide label’s efficacy and on alternative formats and graphical elements for the label.<sup>2</sup> More recently, the Association of Home Appliance Manufacturers (AHAM) conducted a study that also examined the current label and alternatives. AHAM submitted the study as part of its comments on the ANPR.<sup>3</sup> The conclusions reached by AHAM and ACEEE are not in accord. As part of the ongoing rulemaking on the label’s effectiveness, the Commission is considering conducting its own consumer research related to the existing label requirements and possible alternatives. As required by the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB grant the clearance for the survey.

The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC’s estimate of the burden of the proposed collections 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 collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before May 15, 2006.

<sup>2</sup> Thorne, Jennifer and Egan, Christine, “An Evaluation of the Federal Trade Commission’s EnergyGuide Label: Final Report and Recommendations,” ACEEE, August 2002. The report is available online at <http://aceee.org/pubs/a021full.pdf>.

<sup>3</sup> See AHAM Comments in FTC Matter No. R511994, (January 13, 2006) (<http://www.ftc.gov/os/comments/energylabeling/519870-00016.htm>).

**1. Description of the Collection of Information and Proposed Use**

The FTC proposes to collect information from up to 3000 consumers in order to gather data on the effectiveness of current energy labels required by the Rule and possible alternatives to those current requirements. All information will be collected on a voluntary basis. Subject to OMB approval for the collection of information, the FTC plans to contract with a consumer research firm to identify consumers and conduct the survey. The results will assist the FTC in determining the effectiveness of the consumer products labeling program in assisting consumers in their purchasing decisions and improving energy efficiency. The results also should aid the Commission in considering changes to the labeling rules that would improve the effectiveness of consumer product labels.

**2. Estimated Hours Burden**

The FTC is considering pretesting the consumer questionnaires on approximately 100 respondents to ensure that all questions are easily understood. The FTC expects that the pretest would take approximately 20

minutes on average per person and approximately 33 hours as a whole (100 respondents x 20 minutes each). Once the pretest is completed, the FTC plans to seek information from approximately 3000 respondents. Answering the FTC's information requests will require approximately 1000 hours as a whole (3000 respondents x 20 minutes each). Thus, cumulative total burden hours for the survey will be approximately 1,000 hours (rounded to the nearest thousand).

**3. Estimated Cost Burden**

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.  
**Donald S. Clark,**  
*Secretary.*  
 [FR Doc. E6-3700 Filed 3-14-06; 8:45 am]  
**BILLING CODE 6750-01-P**

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
<b>TRANSACTIONS GRANTED EARLY TERMINATION—02/21/2006</b>			
20060637 .....	SI International, Inc. ....	Donald E. Reed and Barbara M. Reed.	Zen Technology, Inc.
<b>TRANSACTIONS GRANTED EARLY TERMINATION—02/22/2006</b>			
20060512 .....	BBA Group PLC .....	Teresa Allred .....	Ontic Engineering & Manufacturing, Inc.
20060596 .....	Stork N.V .....	Ray Theodore Townsend, Jr .....	Townsend Engineering Company.
20060607 .....	Ventiv Health, Inc .....	Adheris, Inc .....	Adheris, Inc.
20060610 .....	Carlyle Venture Partners II, L.P .....	Brazos Equity Fund, L.P .....	Comark Building Systems, Inc.
20060621 .....	H.B. Fuller Company .....	William J. Kyte .....	Chicago Adhesive Products Co., Roanoke Companies Group, Inc.
20060630 .....	AmeriCredit Corp .....	Bay View Capital Corporation .....	Bay View Acceptance Corporation.
20060641 .....	Permira Europe III L.P. 2 .....	Bear Stearns Merchant Banking Partners II, L.P.	Aearo Technologies Inc.
20060642 .....	Warburg Pincus Private Equity X, L.P.	JLL Partners Fund II, L.P .....	JLL Building Products, LLC.
20060652 .....	Carlyle Europe Partners II, L.P .....	Water Pik Technologies, Inc .....	Water Pik Technologies Inc.
<b>TRANSACTIONS GRANTED EARLY TERMINATION—02/23/2006</b>			
20060544 .....	Panolam Holding Co .....	Nevamar Holdco, LLC .....	Nevamar Holdco, LLC.
20060603 .....	Crunch Equity Holding, LLC .....	Henkel KGaA .....	The Dial Corporation.
20060614 .....	Grifols, S,A .....	Michael H. Stough and Barbara O. Stough.	Plasmacare, Inc.
20060638 .....	Canfor Corporation .....	New South Companies, Inc .....	New South Companies, Inc.
20060650 .....	TETRA Technologies, Inc .....	Julie R. Rodriguez and Roger Rodriguez.	Epic Divers, Inc.; Epic Marine, LLC; Epic Oilfield Services LLC; Seahorse Services, Inc.
<b>TRANSACTIONS GRANTED EARLY TERMINATION—02/27/2006</b>			
20060575 .....	HIP Foundation, Inc .....	Group Health Incorporated .....	Group Health Incorporated.
20060584 .....	Deutsche Post AG .....	Williams Lea Group Limited .....	Williams Lea Group Limited.
20060598 .....	Goldman Sachs Group, Inc .....	Sanyo Electric Co., Ltd .....	Sanyo Electric Co., Ltd.

Trans No.	Acquiring	Acquired	Entities
20060623 .....	MMI Investments, L.P .....	ANDRX Corporation .....	ANDRX Corporation.
20060624 .....	MMI Investments, L.P .....	Dendrite Internation, Inc .....	Dendrite International, Inc.
20060657 .....	Kanbay International, Inc .....	Adjoined Consulting, Inc .....	Adjoined Consulting, Inc.
20060658 .....	ValueAct Capital Master Fund, L.P ...	Seitel, Inc .....	Seitel, Inc.
20060660 .....	Bain Capital Fund VIII, L.P .....	Texas Instruments Incorporated .....	Texas Instruments (Changzhou) Co., Ltd.; Texas Instruments (China) Company Limited; Texas Instruments de Mexico, S. de R.L. de C.V.; Texas Instruments Electronicos do Brasil Ltda.; Texas Instruments Holland B.V.; Texas Instruments Hong Kong Limited; Texas Instruments Italia S.p.A.; Texas Instruments Japan Limited; Texas Instruments Korea Limited; Texas Instruments Malaysia Sdn. Bhd.; Texas Instruments Semiconductor Tech. (Shanghai) Co., Ltd.
20060661 .....	Nuance Communications, Inc .....	Dictaphone Corporation .....	Dictaphone Corporation.
20060664 .....	Partners Limited .....	Maple Timber Acquisition LLC .....	Rumford Falls Power Company
20060669 .....	GTCR Fund VIII, L.P .....	Automatic Data Processing, Inc .....	ADP Claims Services Group, Inc.; ADP Hollander, Inc.; ADP Integrated Medical Solutions, Inc. c/o Automatic Data Processing, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—03/02/2006

20060654 .....	Toppoly Optoelectronics Corp .....	Koninklijke Phillips Electronics N.V ...	TPO Hong Kong Holding Ltd.
20060672 .....	Carlyle Venture Partners II, L.P .....	Vision Research, Inc .....	Vision Research, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—03/03/2006

20060628 .....	Emerson Electric Co .....	Artesyn Technologies, Inc .....	Artesyn Technologies, Inc.
20060639 .....	American Capital Strategies, Ltd .....	AAMCO Transmissions, Inc .....	AAMCO Transmissions, Inc.
20060649 .....	Time Warner Inc .....	The CW Network .....	The CW Network.
20060663 .....	Sumner Redstone .....	The CW Network .....	The CW Network.
20060679 .....	BASF Corporation .....	Air Products and Chemicals, Inc .....	Air Products and Chemicals, Inc.
20060683 .....	Marvell Technology Group Ltd .....	Bali Investments S.a.r.l .....	Avago Technologies Imaging IP (Singapore) Pte. Ltd.; Avago Technologies Imaging (U.S.A.) Inc.; Avago Technologies India Private Limited.
20060687 .....	Lagardere SCA .....	Time Warner Inc .....	iPublish Inc.; Little, Brown and Company (Inc.); Publisher's Advertising LLC; Time Warner Book Group Inc.; TWBG Holdings Inc.; Warner Books, Inc.
20060688 .....	Kenneth D. Peterson, Jr .....	Choice One Communications Inc .....	Choice One Communications Inc.
20060692 .....	Wolseley pic .....	Richard S. Jackson, II .....	K & A Lumber Company, Inc.
20060693 .....	Wolseley pic .....	Richard S. Jackson, III .....	K & A Lumber Company, Inc.
20060695 .....	ArLight Energy Partners Fund II, L.P.	FirstEnergy Corp .....	MYR Group, Inc.
20060703 .....	Carlyl Partners IV, L.P .....	Donald Rubin .....	MultiPlan, Inc.
20060705 .....	Darwin Deason, c/o Affiliated Computer Services, Inc.	Affiliated Computer Services, Inc .....	Affiliated Computer Services, Inc.
20060709 .....	Protective Life Corporation .....	JP Morgan Chase & Co .....	Chase Insurance Direct, Inc.; Chase Insurance Life & Annuity Company; Chase Life & Annuity Company; Chase Life & Annuity Company of New York; Investors Brokerage Services, Inc.; PMG Asset Management, Inc.; PMG Securities Corporation.
20060717 .....	MarineMax, Inc .....	Surfside 3 Marina, Inc .....	Surfside 3 Marina, Inc.

**FOR FURTHER INFORMATION CONTACT:** Sanda M. Peay, Contact Representative or Renee Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-

303, Washington, DC 20580. (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 06-2474 Filed 3-14-06; 8:45 am]

**BILLING CODE 6750-01-M**

## GENERAL SERVICES ADMINISTRATION

### Privacy Act of 1974; Proposed Privacy Act System of Records

**AGENCY:** General Services  
Administration

**ACTION:** Notice of a system of records  
subject to the Privacy Act of 1974

**SUMMARY:** The General Services Administration (GSA) is providing notice of the establishment of the record system, Federal Procurement Data System—Next Generation (FPDS-NG), (GSA/OAP-3). FPDS-NG fulfills GSA's mission to provide a comprehensive mechanism for assembling, organizing, and presenting contract procurement data for the Federal Government. The system collects, processes, and disseminates official statistical data on Federal contracting. The data is used to generate reports for the three branches of government, federal agencies and the general public.

**DATES:** This privacy notification for the Federal Procurement Data System—Next Generation (FPDS-NG) will become effective 40 days after April 24, 2006 unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Comments should be directed to the Federal Procurement Data Center Program Manager, Integrated Acquisition Environment (GSA/IAE/VSI), Office of The Chief Acquisition Officer, Suite 911, Crystal Park I, 2011 Crystal Drive, Arlington VA 22202.

**FOR FURTHER INFORMATION CONTACT:** GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington DC 20405; telephone (202) 501-1452.

Dated: March 10, 2006.

**June V. Huber,**

*Director, Office of Information Management.*

#### GSA/OAP-3

**System name:** Federal Procurement Data System—Next Generation (FPDS-NG)

**System location:** Electronic records are maintained by the FPDS-NG contractor in a secure computer facility. Contact the system manager for additional information.

**Categories of individuals covered by the system:** FPDS-NG includes information on individuals who are sole proprietors who have or had contracts with the Federal Government.

**Categories of Records in the System:** The system collects, processes, and

maintains official statistical data on Federal contracting, including:

a. Information on individual federal contractors that may include name, Duns (Data Universal Numbering System) number, and Social Security Number as the Taxpayer Identification Number (TIN).

b. Contracts that are unclassified but may be considered sensitive due to insight they may provide into federal government activities in conjunction with data from other federal contracts.

**Authorities for maintenance of the system:** P.L. 93-400 Office of Federal Procurement Policy Act, as amended; 41 U.S.C. 405, 417.

**Purpose:** To establish and maintain a system for assembling, organizing, and presenting contract procurement data for the federal government and the public sector.

**Routine uses of the system records, including categories of users and their purpose for using the system:**

Information in this system may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an individual to whom the information pertains.

d. To the Office of Management and Budget (OMB) and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To authorized officials of the agency that provided the information for inclusion in the system.

g. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant.

h. To provide recurring or special reports to the President, Congress, the Government Accountability Office, Federal Executive agencies, and the general public.

i. As a means of measuring and assessing the impact of Federal

contracting on the nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged and woman-owned small business concerns are sharing in Federal contracts.

j. To provide information for policy and management control purposes.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of system records:**

**Storage:** Information may be collected electronically and may be stored on electronic media, as appropriate. Electronic records are kept on server hard drives and electronic backup devices.

**Retrievability:** Records are retrievable by a variety of fields, the key for individual records being the unique Procurement Instrument Identifier (PIID).

**Safeguards:** System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the FPDS-NG System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted. Electronic records are protected by passwords and other appropriate security measures.

Data entry is limited to authorized users whose names and levels of access are maintained by federal agencies and the information is securely stored online. Unclassified but sensitive contract data in the system is restricted to those who have access within the federal agency. Agencies determine when their contract information may be made available for viewing by other agencies and the public.

**Retention and disposal:** Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the GSA Records Maintenance and Disposition System handbooks OAD P 1820.2A and CIO P 1820.1, and authorized GSA records schedules.

**System manager and address:** Federal Procurement Data Center Program Manager, Integrated Acquisition Environment (GSA/IAE/VSI), Office of The Chief Acquisition Officer, Suite 911, Crystal Park I, 2011 Crystal Drive, Arlington, VA 22202.

**Notification procedure:** An individual may obtain information on whether the system contains his or her record by registering with FPDS-NG as a public user and using one or more of the various search capabilities to search for the record, or by addressing the inquiry to the system manager. Requests for

system information that is releasable under the Freedom of Information Act (FOIA) may be directed to the Federal Procurement Data Center Program Manager through the FOIA Requestor Service Center, 1800 F St. NW, Room 7126, Washington DC 20405.

**Record access procedures:** Any individual may register with FPDS-NG as a public user and use one or more of the various search capabilities to search for federal contracts after they have been awarded and entered into FPDS-NG. Individuals also may request access to their information from the system manager. The public may obtain releasable information by submitting a FOIA request to the Federal Procurement Data Center Program Manager through the FOIA Requestor Service Center.

**Contesting record procedures:** GSA establishes the rules for access to federal contracts. Individuals may contest the contents of a contract by contacting the contracting office in the department or agency that awarded the contract.

**Record source categories:** Information is obtained from federal agencies who report federal contracts after award according to the reporting requirements included in the Federal Acquisition Regulation Subpart 4.6—Contract Reporting. These records may contain the names of individuals, their DUNS number, and Taxpayer Identification Number (TIN).

[FR Doc. 06-2560 Filed 3-14-06; 8:45 am]  
**BILLING CODE 6820-34-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-06-05CB]

**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) 639-5960 or send an e-mail to [omb@cdc.gov](mailto: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**

The Continuous Miner Trammig Study Interviews—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Federal Mine Safety & Health Act of 1977, section 501, enables CDC/NIOSH to carry out research relevant to the health and safety of workers in the mining industry. NIOSH is undertaking this project to investigate the hazards in

underground mines associated with the work environment and mobile face equipment. This project will show how to reduce the likelihood of these hazards through human factors design considerations and/or engineering interventions. The specific aims are to (1) determine face equipment risk to the operator, (2) define the information cues operators need to perform their job tasks, (3) identify the types of changes operators could make to reduce their exposure from each of the environmental hazards that affect their safety.

The purpose of this study is to determine which mechanisms cause injuries to operators of mobile face equipment and find new ways to reduce injuries, work-related musculoskeletal disorders, and accidents. Industry participation will help researchers in their study to improve the health and safety of employees in the mining industry, specifically those who operate and maintain mobile face mining equipment. The information for this study will be collected by conducting one-on-one structured interviews with approximately 5 managers and 15 continuous miner operators at each of 10 mines located throughout the major coal producing regions of the US. This survey will last less than 1 year.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 250.

**ESTIMATED ANNUALIZED BURDEN TABLE**

Type of responses or kinds of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Mine management (5 individuals from 10 mines) .....	50 managers .....	1	30/60
Continuous miner operators (15 individuals from 10 mines) .....	150 operators .....	2	45/60

Dated: March 6, 2006.  
**Joan F. Karr,**  
*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*  
 [FR Doc. E6-3721 Filed 3-14-06; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**National Institute for Occupational Safety and Health**

**ACTION:** Notice.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following: Availability of opportunity for the public to enter into a Cooperative Research and

Development Agreement (CRADA) to reduce noise emissions from powered hand tools.

Notice: This notice invites manufacturers of electric and pneumatic-powered hand tools to enter into a cooperative research and development agreement (CRADA) with NIOSH and some of the leading technical experts on noise control engineering in the United States to reduce noise emissions from powered hand tools. By reducing the noise emissions of electric and pneumatic powered hand tools, the risk of noise-induced hearing loss among construction workers may be lowered.

Additional efficiency in tool performance may also be realized as tool designs are optimized to reduce vibration and noise emissions.

This effort will identify sources of noise emissions in powered hand tools and will investigate ways to reduce the noise emissions through engineering noise control. NIOSH has successfully worked with university partners to analyze several classes of tools (e.g. table saws, pneumatic nail guns, and air compressors) and demonstrated that significant reductions in noise levels can be achieved through application of noise control engineering. Furthermore, NIOSH expects to partner with academic programs that have advanced technical expertise, acoustic test facilities and specialized equipment, software and data analysis necessary for such an effort. NIOSH is seeking an industrial partner in a CRADA so that particular problems of interest can be targeted for investigation. The industry partners will provide power tools for investigation of noise source identification, product life cycle testing of new designs, and nominal funding of \$50,000 to defray expenses in the effort.

NIOSH expects to provide up to \$50,000 per year over a three-year CRADA agreement. The CRADA defines the role of the various partners regarding intellectual rights, publications, and the material and financial resources that are exchanged during the period of the agreement. At this time, this announcement seeks to identify potential partners in the effort. Detailed development of the CRADA will occur over the next eight months, with the partnership beginning in October 2006.

This announcement does not obligate NIOSH to enter into an agreement with any respondent. NIOSH reserves the right to establish a partnership based on engineering analysis and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

**FOR FURTHER INFORMATION CONTACT:** Charles S. Hayden, NIOSH, Hearing Loss Prevention Team, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533-8152. Information requests can also be submitted by e-mail to [chayden@cdc.gov](mailto:chayden@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee

management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 9, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6-3720 Filed 3-14-06; 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 Panels (SEP): Studies to Understand Transmissibility of Influenza Viruses in Mammalian Species, Request for Applications (RFA) CI06-004; Replication of Pathogenic Avian Influenza Viruses in Swine, RFA CI06-005**

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): Studies to Understand Transmissibility of Influenza Viruses in Mammalian Species, RFA CI06-004; Replication of Pathogenic Avian Influenza Viruses in Swine, RFA CI06-005.

*Time and Date:* 12 p.m.-4 p.m., May 1, 2006 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Studies to Understand Transmissibility of Influenza Viruses in Mammalian Species, RFA CI06-004; Replication of Pathogenic Avian Influenza Viruses in Swine, RFA CI06-005.

*For Further Information Contact:* M. Chris Langub, Ph.D., Scientific Review Administrator, Centers for Disease

Control, 1600 Clifton Road, NE, Mailstop E-74, Atlanta, GA 30333, Telephone Number 404.498.2531.

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: March 9, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6-3722 Filed 3-14-06; 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:* Court Improvement Program.

*OMB No.:* 0970-0245.

*Description:* The Court Improvement Program provides grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes and to develop and implement a plan for system improvement. ACF proposes to collect information from the States about this program (applications, program reports) by way of a Program instruction, which (1) describes the requirements for States under the reauthorization of the Court Improvement Program; (2) outlines the programmatic and fiscal provisions and reporting requirements of the program; (3) specifies the application submittal and approval procedures for the program for Fiscal Years 2003 through 2006; and (4) identifies technical resources for use by State courts during the course of the program. This Program Instruction contains information collection requirements that are found in Pub. L. 103-66, as amended by Pub. L. 105-89 and Pub. L. 107-133; and pursuant to receiving a grant award. The agency will use the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.

*Respondents:* State Courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application .....	52	1	40	2,080
Annual Program Report .....	52	1	36	1,872
Estimated Total Annual Burden Hours: .....				3,952

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 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](mailto: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: March 7, 2006.  
**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 06-2452 Filed 3-14-06; 8:45 am]  
**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* TANF Time Limits Interview Guides for Site Visits.

*OMB No.:* New Collection.

*Description:* The Imposition of Federally imposed time limits on the receipt of cash assistance under the Temporary Assistance for Needy Families (TANF) program was a central part of welfare reform. The Task Order on "TANF Separate State Programs, Time Limits and Participation Requirements" seeks to understand how States have implemented TANF time limits and what effects they have had on families receiving TANF. Now that most States have had several years' experience with the 60-month time limit under varying economic conditions, this project will provide valuable information as to the effects of the TANF time limits and will update a previous TANF time limits study. The

project draws on qualitative research conducted through eight site visits as well as quantitative research using State administrative records.

The site visits will include interviews with State TANF administrators, local TANF office managers, and TANF caseworkers. ACF will use these interviews to understand what decisions State administrators made in designing time limit policies and how local managers and line workers implement these decisions on a daily basis. The interview guides will focus on the following topics: The basic time limit policies in each State, how information is communicated to families reaching time limits, what the process is for cases approaching time limits, under what circumstances families can continue to receive TANF benefits beyond the time limits, and whether there is any follow-up with families that have reached time limits.

The quantitative research will draw on administrative records that States routinely report to ACF. In some cases, however, it may be necessary to conduct follow-up calls to State TANF officials to ask questions about the data. In addition, in States that only report data on subsamples of TANF families to ACT, it may be necessary to request additional information that is maintained in reports that States produce for their own internal management purposes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interview Guide for State Administrators .....	8	1	1.5	12
Interview Guide for Local Office Managers .....	16	1	1	16
Interview Guide for Caseworkers .....	64	1	1	64
Questions on State Administrative Data .....	25	1	1	25
Estimated Total Annual Burden Hours .....				117

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Administration, 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 address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: [Katherine\\_T.\\_Astrich@omb.eop.gov](mailto:Katherine_T._Astrich@omb.eop.gov).

Dated: March 8, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06-2453 Filed 3-14-06; 8:45 am]

**BILLING CODE 4184-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### President's Committee for People With Intellectual Disabilities: Notice of Meeting

**AGENCY:** President's Committee for People with Intellectual Disabilities (PCPID), Administration for Children and Families, HHS.

**ACTION:** Notice of meeting.

**DATES:** The meeting will be held on Friday, March 24, 2006, from 3 p.m. to 5 p.m. Eastern Daylight Savings Time. The full committee meeting of PCPID will be conducted by telephone conference call and will be open to the public. Anyone interested in participating in the conference call should advise Ericka Alston at 202-619-0634, no later than March 17, 2006.

**ADDRESSES:** The conference call may be accessed by dialing, U.S. toll-free 1-888-395-6878, and the passcode "March 2006" on the date and time indicated.

**SUMMARY:** Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2) notice is hereby given that the President's Committee for People with Intellectual Disabilities will hold its first quarterly meeting of 2006 by telephone conference call. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, assistive listening devices, or materials in alternative format, should inform Ericka Alston, Executive Assistant, PCPID, Telephone—202-619-0634, Fax—202-205-9519, E-mail: [éalston@acf.hhs.gov](mailto:éalston@acf.hhs.gov), no later than March 10, 2006. Efforts will be made to meet special requests received after that

date, but availability of special needs accommodations to respond to these requests cannot be guaranteed.

**AGENDA:** Committee members will be briefed on the outcome of the March 22, 2006 Roundtable on Personal and Economic Freedom for People with Intellectual Disabilities: An Exploration of Asset Development for People with Intellectual Disabilities that will be jointly sponsored by PCPID, the Administration for Children and Families' Office of Community Services, and the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation (ASPE).

#### FOR FURTHER INFORMATION CONTACT:

Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Office Building, Suite 701, 901 D Street, SW., Washington, DC 20447, Telephone—202-619-0634, Fax—202-205-9519, E-mail: [satwater@acf.hhs.gov](mailto:satwater@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: March 1, 2006.

**Sally Atwater,**

*Executive Director, President's Committee for People with Intellectual Disabilities.*

[FR Doc. E6-3642 Filed 3-14-06; 8:45 am]

**BILLING CODE 4184-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2005E-0256]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; OVIDREL

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for OVIDREL 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 which 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 OVIDREL (choriogonadotropin alfa for injection). OVIDREL is indicated for the induction of final follicular maturation and early luteinization in infertile women who have undergone pituitary desensitization and who have been

appropriately treated with follicle stimulating hormones as part of an assisted reproductive technology program such as *in vitro* fertilization and embryo transfer. Ovidrel is also indicated for the induction of ovulation and pregnancy in anovulatory infertile patients in whom the cause of infertility is functional and not due to primary ovarian failure. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for OVIDREL (U.S. Patent No. 4,840,896) from Genzyme Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of OVIDREL represented the first permitted commercial marketing or use of the product. Shortly 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 OVIDREL is 1,787 days. Of this time, 1,485 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* November 1, 1995. The applicant claims October 2, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 1, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* November 24, 1999. The applicant claims November 23, 1999, as the date the new drug application (NDA) for OVIDREL (NDA 21-149) was initially submitted. However, FDA records indicate that NDA 21-149 was submitted on November 24, 1999.

3. *The date the application was approved:* September 20, 2000. FDA has verified the applicant's claim that NDA 21-149 was approved on September 20, 2000.

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 1,054 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 15, 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 September 11, 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 are to 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: February 13, 2006.

**Jane Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-3640 Filed 3-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004E-0039]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; CRESTOR

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CRESTOR 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 which 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 CRESTOR (rosuvastatin calcium). CRESTOR is indicated in the following ways: (1) As an adjunct to diet to reduce elevated total-C, LDL-C, ApoB, nonHDL-C, and TG levels and to increase HDL-C in patients with primary hypercholesterolemia (heterozygous familial and nonfamilial) and mixed dyslipidemia (Frederickson Type IIa and IIb); (2) as an adjunct to diet for the treatment of patients with elevated serum TG levels (Frederickson Type IV); and (3) to reduce LDL-C, total-C, and ApoB in patients with homozygous

familial hypercholesterolemia as an adjunct to other lipid-lowering treatments (e.g., LDL apheresis) or if such treatments are unavailable. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CRESTOR (U.S. Patent No. RE37,314) from Shionogi Seiyaku Kabushiki Kaisha, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CRESTOR represented the first permitted commercial marketing or use of the product. Shortly 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 CRESTOR is 1,831 days. Of this time, 1,053 days occurred during the testing phase of the regulatory review period, while 778 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* August 9, 1998. FDA has verified the applicant's claim that the date the Investigational New Drug application (IND) became effective was on August 9, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* June 26, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for CRESTOR (NDA 21-366) was initially submitted on June 26, 2001.

3. *The date the application was approved:* August 12, 2003. FDA has verified the applicant's claim that NDA 21-366 was approved on August 12, 2003.

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 1,304 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 or electronic comments and ask for a redetermination by May 15, 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 September 11, 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: February 13, 2006.

**Jane Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-3641 Filed 3-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003E-0146] (formerly 03E-0146)**

#### Determination of Regulatory Review Period for Purposes of Patent Extension; RELPAX

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for RELPAX 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 which 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 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 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 RELPAX (eletriptan hydrobromide). RELPAX is indicated for the acute treatment of migraine, with or without aura, in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for RELPAX (U.S. Patent No. 5,545,644) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of RELPAX represented the first permitted commercial marketing or use of the product. Shortly 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 RELPAX is 2,829 days. Of this time, 1,307 days occurred during the testing

phase of the regulatory review period, while 1,522 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* March 31, 1995. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on March 31, 1995.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* October 27, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for RELPAX (NDA 21-016) was initially submitted on October 27, 1998.

3. *The date the application was approved:* December 26, 2002. FDA has verified the applicant's claim that NDA 21-016 was approved on December 26, 2002.

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 1,230 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 or electronic comments and ask for a redetermination by May 15, 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 September 11, 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: February 13, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-3711 Filed 3-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. 2005E-0239 and 2005E-0246]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; PRIALT

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for PRIALT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of two applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of two patents which 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 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 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 PRIALT (ziconotide). PRIALT is indicated for the management of severe chronic pain in patients for whom intrathecal (IT) therapy is warranted, and who are intolerant or refractory to other treatment, such as systemic analgesics, adjunctive therapies, or IT morphine. Subsequent to this approval, the Patent and Trademark Office received two patent term restoration applications for PRIALT (U.S. Patent Nos. 5,795,864 and 5,364,842) from Elan Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PRIALT represented the first permitted commercial marketing or use of the product. Shortly 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 PRIALT is 3,801 days. Of this time, 1,973 days occurred during the testing phase of the regulatory review period, while 1,828 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* August 4, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 4, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* December 28, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for PRIALT

(NDA 21-060) was initially submitted on December 28, 1999.

3. *The date the application was approved:* December 28, 2004. FDA has verified the applicant's claim that NDA 21-060 was approved on December 28, 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 applications for patent extension, this applicant seeks 1,228 days (U.S. Patent No. 5,795,864) and 5 years (U.S. Patent No. 5,364,842) 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 or electronic comments and ask for a redetermination by May 15, 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 September 11, 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 are to 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: February 13, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-3712 Filed 3-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Science Board to the Food and Drug Administration; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Science Board to the Food and Drug Administration Science Board (Science Board).

*General Function of the Committee:* The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the Science Board provides advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

*Date and Time:* The meeting will be held on March 31, 2006, from 8 a.m. to 4 p.m.

*Location:* Food and Drug Administration, rm. 1066, 5630 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Jan Johannessen, Office of the Commissioner, Food and Drug Administration (HF-33), 5600 Fishers Lane, Rockville, MD 20857, 301-827-6687, [Jan.Johannessen@fda.hhs.gov](mailto:Jan.Johannessen@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The Science Board will conclude their discussion on drug safety from the meeting of November 4, 2005, and will hear about and discuss a request by the agency for a review of the agency's science programs. The Science Board will then hear about and discuss the agency's response to the recommendations contained in the Science Board's peer review of the Office of Regulatory Affairs Pesticide Program, plans for a Science Board peer review of the Center for Veterinary Medicine's intramural portion of the National Antimicrobial Resistance Monitoring System, and the science priorities of the agency's Office of Women's Health.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 24, 2006. Oral

presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 24, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jan Johannessen (see *Contact Person*) at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 7, 2006.

**Jason Brodsky,**

*Acting Associate Commissioner for External Relations.*

[FR Doc. E6-3639 Filed 3-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2005D-0004]

#### Guidance for Industry on Nonclinical Safety Evaluation of Drug or Biologic Combinations; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Nonclinical Safety Evaluation of Drug or Biologic Combinations." This guidance provides recommendations on nonclinical approaches to support the clinical study and approval of fixed-dose combination products (FDCs), co-packaged products, and some adjunctive therapies.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information (HFD-

240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:**

Abigail C. Jacobs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6484, Silver Spring, MD 20993-0002, 301-796-0174.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a guidance for industry entitled "Nonclinical Safety Evaluation of Drug or Biologic Combinations." This guidance provides recommendations on nonclinical approaches to support the clinical study and approval of FDCs, co-packaged products, and some adjunctive therapies. The intent of this guidance is to delineate general guiding principles.

In the **Federal Register** of January 26, 2005 (70 FR 3714), FDA announced the availability of a draft guidance entitled "Nonclinical Safety Evaluation of Drug Combinations." This notice gave interested persons an opportunity to submit comments. As a result of the comments, certain sections of this guidance have been reworded to improve clarity. Additionally, the following revisions have been made to the guidance: (1) The inclusion of combinations of biologics regulated by the Center for Drug Evaluation and Research and drugs, (2) a narrowing of the description of "adjunctive therapies" covered by the guidance, and (3) a clarification of the aspects of the developmental reproductive toxicology sections.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on nonclinical safety evaluation of drug and biologic combinations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the

requirements of the applicable statutes and regulations.

**II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**III. Electronic Access**

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: March 7, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6-3713 Filed 3-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Cancer Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

*Date:* April 9-10, 2006.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Hasnaa Shafik, MD, Ph.D., Scientific Review Administration, Division of Extramural Activities, RPRB, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8037, Bethesda, MD 20892, (301) 451-4757, [shafikh@mail.nih.gov](mailto:shafikh@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: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2523 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Isel Cell Resource SEP.

*Date:* March 30-31, 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:* Mohan Viswanathan, Ph.D., Deputy Director, Office of Review, NCCR, National Institutes of Health, 6701 Democracy Blvd., Room 1084, MSC 4874, 1 Democracy Plaza, Bethesda, MD 20892-4874, 301-435-0829, [mv10f@nih.gov](mailto:mv10f@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, National Institutes of Health, HHS)

Dated: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2524 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Eye 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 Eye Institute Special Emphasis Panel, NEI CDA Review Panel.

*Date:* March 29, 2006.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Houmam H. Araj, PhD., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892-9602, (301) 451-2020, [haraj@mail.nih.gov](mailto:haraj@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2515 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Human Genome Research Institute; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Inherited

Disease Research Access Committee, April 27, 2006, 8:30 a.m. to April 27, 2006, 5 p.m., George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on February 15, 2006, 71 FRN 7981.

The meeting of the Center for Inherited Disease Research Access Committee will also include a session on April 26, 2006, from 7 p.m. to 10 p.m. at The George Washington University Inn. The meeting is closed to the public.

Dated: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2521 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Human Genome Research Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Genome Research Institute Special Emphasis Panel, Genomic Database.

*Date:* April 10, 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:* Ken D. Nakamura, PhD., Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301-402-0838. (Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal advisory Committee Policy.*

[FR Doc. 06-2522 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Biomedical Imaging and Bioengineering; 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 Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSC-CM.

*Date:* April 10, 2006.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact of Persons:* Prabha L. Atreya, PhD., Scientific Review Administrator, Office of Scientific Review, National Institutes of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 435-8633, [atreyapr@mail.nih.gov](mailto:atreyapr@mail.nih.gov).

Dated: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2516 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Research Program Projects (P01s).

*Date:* March 29, 2006.

*Time:* 7 p.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Yan Z Wang, PhD., MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892. (301) 594-4957. [wangy1@mail.nih.gov](mailto:wangy1@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 7, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2517 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Research Program Project (P01s).

*Date:* April 7, 2006.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Leroy Worth, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30/Room 3171, Research Triangle Park, NC 27709. 919/541-0670. [worth@niehs.nih.gov](mailto:worth@niehs.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 7, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2518 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Child Health and Human Development Special Emphasis Panel; Loan Repayment Project—2006.

*Date:* April 5, 2006.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852.

*Contact Person:* Kishena C. Wadhvani, PhD., MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building Room 5B01, Bethesda, MD 20892-7510. (301) 496-1485. [wadhwan@mail.nih.gov](mailto:wadhwan@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 7, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2519 Filed 3-14-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Child Health and Human Development Special Emphasis Panel; Production of an In Vivo Nuclear Reprogramming System.

*Date:* April 6, 2006.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda,

MD 20892. (301) 435-6884.  
*ranhand@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 8, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-2520 Filed 3-14-06; 8:45 am]

BILLING CODE 4140-01-M

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**DEPARTMENT OF HOMELAND SECURITY**

Z-RIN 1660-ZA02

**Preparedness Directorate; Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents; Notice Extending the Public Comment Period**

**AGENCY:** Preparedness Directorate, Department of Homeland Security.

**ACTION:** Notice extending the public comment period.

**SUMMARY:** On January 3, 2006, the Preparedness Directorate of the Department of Homeland Security (DHS) issued "Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents" at 71 FR 173 to establish guidance for planning for and responding to an RDD or IND incident. The guidance included recommended "protective action guidelines" (PAGs) to support decisions to protect the public in response to an RDD or IND incident. The Notice invited the public to comment on the guidance from the date of publication through March 6, 2006. DHS has received requests from several organizations to extend the comment period to allow for further review of the guidance and preparation of comments. Accordingly, DHS has extended the comment period for this interim rule until April 14, 2006. This Notice informs the public that the comment period has been extended until April 14, 2006.

**DATES:** Comments on the guidance should be submitted on or before April 14, 2006.

**ADDRESSES:** You may submit comments, identified by Docket Number FEMA-2004-0004, Legacy ID DHS-2004-0029, and Z-RIN 1660-ZA02, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov). Include the Docket Number FEMA-2004-0004, Legacy ID DHS-2004-0029, and Z-RIN 1660-ZA02 in the subject line of the message.

*Fax:* 202-646-4536.

*Mail/Hand Delivery/Courier:* Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 406, 500 C Street, SW., Washington, DC 20472.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at 500 C Street, SW., Room 406, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Craig Conklin, Director, Chemical and Nuclear Preparedness and Protection Division, Preparedness Directorate, Department of Homeland Security, 1800 South Bell Street, Crystal City, VA 22202; 703-605-1228 (phone), 703-605-1198 (facsimile), or [craig.conklin@dhs.gov](mailto:craig.conklin@dhs.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:** On January 3, 2006, the Preparedness Directorate of DHS issued "Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents" at 71 FR 173 for Federal agencies, and, as appropriate, State and local governments, emergency responders, and the general public who may find it useful in planning and responding to an RDD or IND incident. The guidance recommends "protective action guidelines" (PAGs) to support decisions about actions that may need to be taken to protect the public when responding to or recovering from an RDD or IND incident. It also outlines a process to implement the recommendations and discusses operational guidelines that may be useful in the implementation of the PAGs. The full text of the document was included in the Notice. The guidance was provided for interim use and may be revised based on comments received. The Preparedness Directorate sought input on the guidance through a notice of public comment period that extended from publication of the Notice on January 3, 2006 through March 6, 2006. A number of comments have been

provided by the public to date. Several potential commenters, however, have requested additional time to prepare and submit comments. Accordingly, DHS has extended the comment period until April 14, 2006.

Dated: March 9, 2006.

**George W. Foresman,**

*Under Secretary for Preparedness.*

[FR Doc. E6-3702 Filed 3-14-06; 8:45 am]

BILLING CODE 9110-21-P

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

[USCG-2006-24106]

**Merchant Marine Personnel Advisory Committee**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, and certification of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

**DATES:** Two MERPAC working groups will meet on Monday, April 3, 2006, from 8:30 a.m. to 4:30 p.m. The full MERPAC committee will meet on Tuesday, April 4, 2006, from 8:30 a.m. to 4:30 p.m. and on Wednesday, April 5, 2006, from 8:30 a.m. to 4 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before March 24, 2006. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before March 24, 2006.

**ADDRESSES:** The MERPAC working groups will meet on April 3, 2006, in Rooms 3317 (Task Statement 53) and 3319 (Task Statement 49) of U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The full MERPAC committee will meet on April 4-5, 2006, in Room 2415 of U. S. Coast Guard Headquarters. Further directions regarding the location of Coast Guard Headquarters may be obtained by contacting (202) 267-6890. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G-PSO-1), U.S.

Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Mr. Gould, Assistant to the Executive Director, telephone 202-267-6890, fax 202-267-4570, or e-mail [mgould@comdt.uscg.mil](mailto:mgould@comdt.uscg.mil).

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92-463, 86 Stat. 770, as amended).

#### Agenda of Meetings on April 3, 2006

The working groups for Task Statement 49, concerning recommendations for use of a model sea course project in conjunction with an approved program for officer in charge of an engineering watch coming up through the hawse pipe, and Task Statement 53, concerning medical certification standards and disqualifying medical conditions for merchant mariners, will meet to conduct deliberations in preparation for delivering proposed MERPAC recommendations to the full committee.

#### Agenda of Meeting on April 4, 2006

The full committee will meet to discuss the objectives for the meeting. The working groups addressing the following task statements may meet to deliberate: Task Statement 30, concerning utilizing military sea service for STCW certifications; Task Statement 49, concerning recommendations for use of a model sea course project in conjunction with an approved program for officer in charge of an engineering watch coming up through the hawse pipe; Task Statement 51, concerning minimum standard of competence on tanker safety; Task Statement 52, concerning recommendations on the Coast Guard's draft proposals on issues that will be affected by the revisions to the 1997 Interim Rule Implementing the 1995 amendments to the STCW Convention; and Task Statement 53, concerning medical certification standards and disqualifying medical conditions for merchant mariners. In addition, new working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public. All task statements may be viewed at the MERPAC Web site at <http://www.uscg.mil/hq/gm/advisory/merpac/merpac.htm>.

At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No

action will be taken on these reports on this date.

#### Agenda of Meeting on April 5, 2006

The agenda comprises the following:

- (1) Introduction.
- (2) Working Groups' Reports
  - (a) Task Statement 30, concerning utilizing military sea service for STCW certifications;
  - (b) Task Statement 49, concerning recommendations for use of a model sea course project in conjunction with an approved program for officer in charge of an engineering watch coming up through the hawse pipe;
  - (c) Task Statement 51, concerning minimum standard of competence on tanker safety;
  - (d) Task Statement 52, concerning recommendations on the Coast Guard's draft proposals on issues that will be affected by the revisions to the 1997 Interim Rule Implementing the 1995 amendments to the STCW Convention;
  - (e) Task Statement 53, concerning medical certification standards and disqualifying medical conditions for merchant mariners; and
  - (f) Other task statements which may have been adopted for discussion and action.
- (3) Other items to be discussed:
  - (a) Standing Committee—Prevention Through People.
  - (b) Briefings concerning on-going projects of interest to MERPAC.
  - (c) Other items brought up for discussion by the committee or the public.

#### Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify Mr. Gould no later than March 24, 2006. Written material for distribution at a meeting should reach the Coast Guard no later than March 24, 2006. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to Mr. Gould no later than March 24, 2006.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Gould as soon as possible.

Dated: March 7, 2006.

**Howard L. Hime,**

*Acting Director of Standards, Assistant Commandant for Prevention.*

[FR Doc. E6-3643 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5041-N-06]

### Notice of Proposed Information Collection: Comment Request; Pre-Foreclosure Sale Procedure

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

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be 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.

**DATES:** *Comments Due Date:* May 15, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or [Lillian\\_Deitzer@hud.gov](mailto:Lillian_Deitzer@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-1672 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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:* Pre-Foreclosure Sale Procedure.

*OMB Control Number, if applicable:* 2502-0464.

*Description of the need for the information and proposed use:* The respondents are mortgage/loan servicers, homeowners, counselors, and real estate professionals who, are attempting to sell a homeowners property prior to foreclosure. The information collection records the process from the homeowner's application to participate in the program and the mortgagee's approval, to HUD's review and approval to the specifics of the sale. Homeowners participating in the program may also receive housing counseling, and a confirmation that counseling is available must be documented.

*Agency form numbers, if applicable:* HUD-90035, HUD-90036, HUD-90038, HUD-90041, HUD-90045, HUD-90051, and HUD-90052.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of hours needed to prepare the information collection is 9,544; the number of respondents is 25,025 generating approximately 52,800 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response varies from three minutes to 35 minutes.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 10, 2006.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.*

[FR Doc. 06-2506 Filed 3-14-06; 8:45 am]

**BILLING CODE 4210-67-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by April 14, 2006.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

#### SUPPLEMENTARY INFORMATION:

##### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

##### PRT-111974

*Applicant:* Danny M. Vines, Lufkin, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

##### Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the

Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

##### PRT-112162

*Applicant:* Marion E. Milstead, Shreveport, LA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Dated: March 3, 2006.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. E6-3735 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to

certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2)

the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes

and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

## ENDANGERED SPECIES

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
694126	National Institutes of Health	67 FR 20544; April 25, 2002	January 18, 2006.
079994	Steven R. Leigh	69 FR 8984; February 26, 2004	September 28, 2005.
096602	Jacksonville Zoo	69 FR 30715; May 28, 2004	July 20, 2005.
105361	Jacksonville Zoo	69 FR 30715; May 28, 2004	July 20, 2005.
090113	Lincoln Park Zoo	69 FR 55445; September 14, 2004	December 19, 2005.
058661, 058662, 058664, 058665, 058666, 058667, 058668, 058669, 058670, 058672, 058679, 058685, 058686, 058687, 058734, 058735, 058736, 058737, 058738, 058739, 058745, 058747, 058748, 058751, 058752, 058753, 058758, 058759, 058762, 058780, 059163.	Hawthorn Corporation	70 FR 44679; August 3, 2005	September 13, 2005.
106016	National Zoo	70 FR 46184; August 9, 2005	January 12, 2006.
105498	Minnesota Zoo	70 FR 46183; August 9, 2005	October 25, 2005.
090287	Harvard University, Museum of Comparative Zoology.	70 FR 54958; September 19, 2005	October 24, 2005.
819573	Peregrine Fund	70 FR 58234; October 5, 2005	November 15, 2005.
700309	National Zoo	70 FR 58736; October 7, 2005	November 14, 2005.
108484	Woodland Park Zoo	70 FR 70090; November 21, 2005	January 12, 2006.
109051	Richard Lawler, Boston Uni- versity.	70 FR 72644; December 6, 2005	January 9, 2006.
108766	Pittsburgh Zoo	70 FR 70090; December 6, 2005	January 30, 2006.
060470, 060471, 060472, 060473, and 060474.	Hollywood Animals	70 FR 75214; December 19, 2005	January 20, 2006.
091943	Clyde R. Robinson, Jr	69 FR 61261; October 15, 2004	May 20, 2005.
092526	Rosamond Gifford Zoo	69 FR 61261; October 15, 2004	January 11, 2005.
093860	Cincinnati Zoo	69 FR 65213; November 10, 2004	March 22, 2005.
094867	Caroline Stahala	69 FR 65213; November 10, 2004	January 5, 2006.
096771	Field Museum of Natural History.	70 FR 1455; January 7, 2005	July 7, 2005.
097298	Dallas Zoo	70 FR 3222; January 21, 2005	May 24, 2005.
097156	Los Angeles Zoo	70 FR 1455; January 7, 2005	May 3, 2005.
098187	San Antonio Zoo	70 FR 5203; February 1, 2005	June 3, 2005.
102941	Omaha's Henry Doorly Zoo	70 FR 38190; July 1, 2005	August 22, 2005.
116076	Robert E. Pitts	70 FR 75213; December 19, 2005	January 24, 2006.
115741	Winston C. Stalcup	70 FR 75472; December 20, 2005	January 24, 2006.
115665	Keith A. Platter	70 FR 75213; December 19, 2005	January 24, 2006.
114211	John D. Smith	70 FR 70090; November 21, 2005	December 27, 2005.
113932	Edward J. Beattie	70 FR 75214; December 19, 2005	January 24, 2006.
112069	Stephen A. Grove	70 FR 75214; December 19, 2005	January 24, 2006.
111561	Glen D. Holcomb	70 FR 72644; December 6, 2005	January 18, 2006.
111554	Paul J. Barstad	70 FR 72644; December 6, 2005	January 18, 2006.
111449	Jerry K. Davis	70 FR 62321; October 31, 2005	December 1, 2005.
111547	Tommy B. Haas	70 FR 75214; December 19, 2005	January 24, 2006.
110976	John C. Wirth, Jr	70 FR 58736; October 7, 2005	December 1, 2005.
110977	Linda C. Donaho	70 FR 72644; December 6, 2005	January 18, 2006.
107416	Matthew Yap	70 FR 41782; July 20, 2005	September 1, 2005.
107181	Robert B. Fay Jr	70 FR 54958; September 19, 2005	October 20, 2005.
106850	Joseph S. Brannen	70 FR 51838; August 31, 2005	October 20, 2005.
106840	Gary L. Sharkey	70 FR 58234; October 5, 2005	November 8, 2005.
106636	Albert A. Wolfe, IV	70 FR 51838; August 31, 2005	November 18, 2005.
106635	Brett A. Nelson	70 FR 51838; August 31, 2005	November 8, 2005.
105859	Gino A. Harrison	70 FR 44679 August 3, 2005	August 19, 2005.
105808	James F. Gerlach	70 FR 41782; July 20, 2005	August 18, 2005.
105804	August S. Haugen	70 FR 44679; August 3, 2005	September 13, 2005.
104703	George F. Gehrman	70 FR 39786; July 11, 2005	August 18, 2005.
103046	Eugene W.C. Yap	70 FR 34791; June 15, 2005	September 1, 2005.
100457	Floyd H. Gillenwater	70 FR 12495; March 14, 2005	April 15, 2005.
100281	Bret D. Overturf	70 FR 19778; April 14, 2005	June 6, 2005.
107396	Texas Tech University	70 FR 62321; October 31, 2005	January 27, 2006.
097801	Blair R. Hamilton	70 FR 7294; February 11, 2005	April 13, 2005.
090956	Marilyn K. Baxter	69 FR 51703; August 20 2004	October 26, 2004.

## ENDANGERED SPECIES—Continued

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
085125 .....	Lance E. Novak .....	69 FR 21858; April 22, 2004 .....	May 27, 2004.

## MARINE MAMMALS

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
093627 .....	William D. Hober .....	70 FR 61261; October 15, 2004 .....	January 27, 2005.
096951 .....	John C. Mackay .....	70 FR 5203; February 1, 2005 .....	March 15, 2005
101095 .....	Lloyd D. Whaley .....	70 FR 30772; May 27, 2005 .....	July 20, 2005.
102929 .....	Darrel E. Gusa .....	70 FR 41783; July 20, 2005 .....	August 30, 2005.
104056 .....	John D. Teeter .....	70 FR 44679; August 3, 2005 .....	October 4, 2005.
104141 .....	Charles W. Lewensten .....	70 FR 44679; August 3, 2005 .....	September 13, 2005.
105668 .....	Terry L. Shupe .....	70 FR 44679; August 3, 2005 .....	September 13, 2005.
106486 .....	Jerri Frehner .....	70 FR 51838; August 31, 2005 .....	November 4, 2005.
106526 .....	Raymond L. Howell .....	70 FR 51838; August 31, 2005 .....	January 11, 2006.
106532 .....	Garth E. Frehner .....	70 FR 51838; August 31, 2005 .....	November 4, 2005.
109700 .....	Michael L. Gill .....	70 FR 54958; September 19, 2005 .....	February 15, 2006.
111562 .....	Marshall G. Varner .....	70 FR 75214; December 19, 2005 .....	February 14, 2006.
112072 .....	Rodney M. Brush .....	70 FR 75214; December 19, 2005 .....	February 1, 2006.

Dated: March 3, 2006.

**Monica Farris,**

Senior Permit Biologist, Branch of Permits,  
Division of Management Authority.

[FR Doc. E6-3737 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Meeting of the Trinity Adaptive Management Working Group

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: 2006 flow schedule; Trinity River Restoration Program science framework; Trinity River Restoration Program strategic plan; Federal tribal trust responsibilities; Exceedence criteria for water-year-type forecasting; Trinity River fishing regulations; request for special appropriation to complete floodplain preparations; reports from work groups; Executive director's report; education outreach; travel expense reimbursement; and Election of TAMWG officers. Completion of the agenda is dependent on the amount of time each item takes. The meeting could

end early if the agenda has been completed. The meeting is open to the public.

**DATES:** The Trinity Adaptive Management Working Group will meet from 1 p.m. to 5 p.m. on Wednesday, March 22, 2006, and from 8:30 a.m. to 5 p.m. on Thursday, March 23, 2006.

**ADDRESSES:** The meeting will be held at the Veteran's Memorial Hall, 101 Memorial Lane, Weaverville, CA 96093. Telephone: (530) 623-1319.

**FOR FURTHER INFORMATION CONTACT:**

Randy Brown of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822-7201. Randy Brown is the working group's Designated Federal Official.

**SUPPLEMENTARY INFORMATION:** For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623-1800.

Dated: March 6, 2006.

**John Enbring,**

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. E6-3723 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability, Draft Study Plan

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Study Plan for an avian egg injection study for the Hudson River Natural Resource Damage Assessment (NRDA). The Draft Study Plan describes the Trustees' proposed approach to conducting this investigation and seeks public feedback on the proposed approach.

**DATES:** Written comments must be submitted on or before April 14, 2006.

**ADDRESSES:** Requests for copies of the Draft Study Plan may be made to: Ms. Kathryn Jahn, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.

Written comments or materials regarding the Draft Study Plan should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:**

Kathryn Jahn, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045. Interested parties may also call 607-753-9334, send e-mail to [kathryn\\_jahn@fws.gov](mailto:kathryn_jahn@fws.gov), or visit the Service's Hudson River NRDA Web site (<http://www.fws.gov/contaminants/restorationplans/HudsonRiver/HudsonRiver.cfm>) where this document and others are posted, for further information.

**SUPPLEMENTARY INFORMATION:** The Draft Study Plan is being released for public review and comment in accordance with the Trustees' NRDA Plan for the Hudson River issued in September

2002. That NRDA Plan was released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part 11.

Interested members of the public are invited to review and comment on the Draft Study Plan. Copies of the Draft Study Plan are available from the U.S. Fish and Wildlife Service's New York Field Office at 3817 Luker Road, Cortland, New York 13045.

Additionally, the Draft Study Plan is available on the FWS Hudson River NRDA Web site at: <http://www.fws.gov/contaminants/restorationplans/HudsonRiver/HudsonRiver.cfm>. All comments received on the Draft Study Plan will be considered and a response provided either through revision of the Study Plan and incorporated into the Final Study Plan or by letter to the commentor. The Trustees will also prepare a Responsiveness Summary responding to public comments that will be released to the public.

**Author:** The primary author of this notice is Ms. Kathryn Jahn, New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045.

**Authority:** The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, as amended, 42 U.S.C. 9601 *et seq.*).

Dated: February 21, 2006.

**Marvin E. Moriarty,**

*Regional Director, Region 5, U.S. Fish and Wildlife Service.*

[FR Doc. E6-3724 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UTU-84198]

#### Notice of Invitation To Participate in a Coal Exploration Program

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is an invitation to participate in a Coal Exploration program. Ark Land Company has filed the application for the Muddy Canyon Tract. All qualified parties are invited to participate with Ark Land Company on a pro rata cost sharing basis in its program for the exploration of certain Federal coal deposits in the following described lands in Sevier County, Utah:

T. 20 S., R. 5 E., SLM, Utah  
Sec. 31, W $\frac{1}{2}$ SW $\frac{1}{4}$ ;

T. 21 S., R. 4 E., SLM, Utah  
Sec. 1, all;  
Sec. 11, E $\frac{1}{2}$ E $\frac{1}{2}$ ;  
Sec. 12, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 13, W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ ;  
Sec. 14, E $\frac{1}{2}$ NE $\frac{1}{4}$ ;

T. 21 S., R. 5 E., SLM, Utah  
Sec. 6, all.

Containing 1,848.62 acres.

**FOR FURTHER INFORMATION CONTACT:** Bill Buge, Salt Lake City, Bureau of Land Management, (801) 539-4086.

**SUPPLEMENTARY INFORMATION:** Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, and to Mark Bunnell, Mine Geologist, Ark Land Company, Skyline Mine, HC 35 Box 380, Helper, Utah 84526. BLM must receive your written notice within thirty days after the date of publication of this notice in the **Federal Register**. Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Ark Land Company, detailing the scope and timing of this exploration program is available for public review during normal business hours in the public room of the BLM State Office, 440 W. 200 S., Suite 500, Salt Lake City, Utah, under serial number UTU-84198.

**Kent Hoffman,**

*Deputy State Director, Lands and Minerals.*

[FR Doc. E6-3749 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-DK-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-610-1610-DP]

#### Notice of Availability of the Record of Decision, West Mojave Plan, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act, the Federal Land Policy and Management Act and Bureau of Land Management (BLM) management policies, the BLM announces approval of the West Mojave (WEMO) Plan and Record of Decision (ROD). The approved WEMO Plan/ROD amends the California Desert Conservation Area (CDCA) Plan by providing management direction for approximately 3.3 million acres of public lands administered by the BLM's

California Desert District, located in Inyo, Kern, Los Angeles, and San Bernardino Counties in southern California. Approval of the WEMO Plan/ROD terminates all interim measures identified in the *Consent Decree in Center for Biological Diversity, et al. v. BLM* (C-00-0927 WHA (JCS)) with regard to the West Mojave Planning area.

**DATES:** The approved WEMO Plan is effective upon signing of the ROD.

**ADDRESSES:** The WEMO Plan/ROD is available on the BLM Web site, <http://www.ca.blm.gov>. Copies of the WEMO Plan/ROD are also available upon request from the District Manager, California Desert District Office, located at 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553. Copies may be examined at the District Office in Moreno Valley, and at BLM's Ridgecrest Field Office, located at 300 S. Richmond Road, Ridgecrest CA 93555, and Barstow Field Office located at 2601 Barstow Road, Barstow CA 92311, during regular business hours from 7:45 a.m. to 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Stephen Razo, California Desert District, at (951) 697-5217.

**SUPPLEMENTARY INFORMATION:** The approved WEMO Plan is associated with a multi-jurisdictional habitat conservation plan (HCP), encompassing 9.3 million acres in Inyo, Kern, Los Angeles, and San Bernardino counties, to be conducted under the lead jurisdiction of San Bernardino County and the City of Barstow. The ROD approves only the WEMO Plan, which applies to the Federal lands managed by BLM. Approval of the HCP is dependent on future local government actions.

An approved WEMO Plan and HCP will provide a streamlined program for public agencies and private parties to comply with requirements of the State and Federal Endangered Species Acts.

BLM, San Bernardino County, the City of Barstow, and many other entities cooperated or participated in the WEMO Plan's development. Those entities include three other counties, 10 other cities, the California Department of Fish and Game, the California Department of Transportation, the U.S. Fish and Wildlife Service, four U.S. military bases, and numerous non-governmental organizations and businesses. Extensive public involvement occurred during scoping, draft WEMO Plan/EIS, and proposed WEMO Plan/Final EIS reviews.

BLM's approval of the WEMO Plan/ROD enables BLM, its partners, and its stakeholders to begin implementing

actions that will protect and conserve species and their habitats while providing for appropriate use of desert resources and the future growth and development of desert communities.

Dated: January 27, 2006.

**John S. Mills,**

*Acting Deputy State Director, Natural Resources Division.*

[FR Doc. E6-3758 Filed 3-14-06; 8:45 am]

BILLING CODE 4310-40-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-920-1310-06; NMNM 112261; NMNM 112262]

#### Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 112261 and NMNM 112262

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reinstatement of terminated oil and gas leases.

**SUMMARY:** Under the provisions of Public Law 97-451, Elk Oil Company timely filed a petition for reinstatement of oil and gas leases NMNM 112261 and NMNM 112262 for lands in Chaves County, New Mexico, and was accompanied by all required rentals and royalties accruing from October 1, 2005, the date of the terminations.

**FOR FURTHER INFORMATION CONTACT:** Becky C. Olivas, BLM, New Mexico State Office, (505) 438-7609.

**SUPPLEMENTARY INFORMATION:** No valid lease has been affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof and 16<sup>2</sup>/<sub>3</sub> percent, respectively. The lessee has paid the required \$500.00 administrative fees and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the leases as set out in Sections 31(d) and (e) of the Mineral Lease Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the leases effective October 1, 2005, subject to the original terms and conditions of the leases and the increased rentals and royalty rates cited above.

**Becky C. Olivas,**

*Land Law Examiner, Fluids Adjudication Team 1.*

[FR Doc. E6-3710 Filed 3-14-06; 8:45 am]

BILLING CODE 4310-FB-P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010-0071).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 203, "Relief or Reduction in Royalty Rates."

**DATES:** Submit written comments by May 15, 2006.

**ADDRESSES:** You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010-0071 as an identifier in your message.

- Public Connect on-line commenting system, <https://occonnect.mms.gov>. Follow the instructions on the Web site for submitting comments.

- E-mail MMS at [rules.comments@mms.gov](mailto:rules.comments@mms.gov). Identify with Information Collection Number 1010-0071 in the subject line.

- Fax: 703-787-1093. Identify with Information Collection Number 1010-0071.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Information Collection 1010-0071" in your comments.

**FOR FURTHER INFORMATION CONTACT:**

Cheryl Blundon, Rules Processing Team at (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 203, Relief or Reduction in Royalty Rates.

*OMB Control Number:* 1010-0071.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended by Public Law 104-58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production. The DWRRA also authorized the

Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic without royalty relief. The Secretary must then determine the volume of production on which no royalty would be due in order to make the new production from the lease economically viable. This determination must be done on a case-by-case basis. Production from leases in the same water depth and area issued after November 28, 2000, also can qualify for royalty suspension in addition to any that may be included in their lease terms.

In addition, federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A-25, and the Omnibus Appropriations Bill (Pub. L. 104-133 110 Stat. 1321, April 26, 1996) authorize MMS to collect these fees to reimburse us for the cost to process applications or assessments.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. Section 30 CFR 203.3 states that, "We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief."

MMS uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

We will protect information from respondents considered proprietary

under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 203.63(b) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The currently approved annual reporting burden for this collection is 8,911 hours. The following chart details the

individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 203 and NTLs	Reporting or recordkeeping requirement 30 CFR part 203	Hour burden
43(a); 46(a)	Notify MMS of intent to begin drilling	1.
43(b)(1), (2); (d); (e)	Notify MMS that production has begun, request extension, request confirmation of the size of RSV.	2.
46	Provide data from well to confirm and attest well drilled was an unsuccessful certified well and request supplement.	8.
48(b)	Notify MMS of decision to exercise option to replace one set of deep gas royalty suspension terms for another set of such terms.	2.
51; 83; 84	Application—leases that generate earnings that cannot sustain continued production (end-of-life lease).	100. Application 1 × \$8,000.* Audit 1 × \$12,500.
55	Renounce relief arrangement (end-of-life) (seldom, if ever will be used; minimal burden to prepare letter).	1.
61; 62; 64; 65; 71; 83; 85–89.	Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	2,000. Application 1 × \$19,500.
61; 62; 64; 65; 71; 83; 85–89.	Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-act or post-2000 deep water leases).	2,000. Application 1 × \$34,000.* Audit 1 × \$37,500.
61; 62; 64; 65; 71; 83; 85–89.	Application—preview assessment (seldom if ever will be used as applicants generally opt for binding determination by MMS instead).	900. Application 1 × \$34,000.
74; 75	Redetermination	500. Application 1 × \$16,000.*
70; 81; 90; 91	Submit fabricator's confirmation report	20.
70; 81; 90; 92	Submit post-production development report	50.
70; 79(a)	Request reconsideration of MMS field designation	400.
77	Renounce relief arrangement (deep water) (seldom, if ever will be used; minimal burden to prepare letter).	1.
79(c)	Request extension of deadline to start construction	2.
80	Application—apart from formal programs for royalty relief for marginal producing lease (expect less than 1 per year).	250. Application 1 × \$8,000.** Audit 1 × \$10,000.
80	Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (expect less than 1 per year).	1,000. Application 1 × \$19,500.** Audit 1 × \$20,000.
81; 83–89	Required reports	Burden included with applications.
83	Application—short form to add or assign pre-Act lease	40. Application 1 × \$1,000.
91	Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	8.

\* CPA certification expense burden also imposed on applicant.

\*\* These applications currently do not have a set fee since they are done on a case-by-case basis. In the past 11 years, three unique applications have been submitted and the respondents were charged approximately \$8,000 per application, and \$19,500 respectively.

**Note:** Applications include numerous items such as: transmittal letters, letters of request, modifications to applications, reapplications, etc.

*Estimated Reporting and Recordkeeping "Non-Hour Cost"*

*Burden:* There are two non-hour costs associated with this information collection. The currently approved non-hour cost burden is \$355,000. This estimate is based on:

(a) Application and audit fees. The total annual estimated cost burden for these fees is \$220,000 (refer to burden chart).

(b) Cost of reports prepared by independent certified public accountants. Under § 203.81, a report prepared by an independent certified public accountant (CPA) must accompany the application and post-production report (expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. We estimate approximately three submissions,

during the information collection extension, at an average cost of \$45,000 per report, for a total estimated annual cost burden of \$135,000.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult

with members of the public and affected agencies concerning each proposed collection of information \* \* \* \*”.

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the “non-hour cost” burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

**Public Comment Procedures:** MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

made available for public inspection in their entirety.

**MMS Information Collection Clearance Officer:** Arlene Bajusz (202) 208-7744.

Dated: February 27, 2006.

**E.P. Danenberger,**

*Chief, Office of Offshore Regulatory Programs.*

[FR Doc. E6-3705 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a new information collection (1010-NEW).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for review and approval of the paperwork requirements in the regulations under “30 CFR 256, Subparts J and K, and 30 CFR 250, Subpart J,” and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by April 14, 2006.

**ADDRESSES:** You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: ([OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov)); or by fax (202) 395-6566; identify with (1010-NEW).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, <https://occonnect.mms.gov>. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at [rules.comments@mms.gov](mailto:rules.comments@mms.gov). Use Information Collection Number 1010-NEW in the subject line.
- Fax: 703-787-1093. Identify with Information Collection Number 1010-NEW.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules

Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference “Information Collection 1010-NEW” in your comments.

#### FOR FURTHER INFORMATION CONTACT:

Cheryl Blundon, Rules Processing Team, (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

#### SUPPLEMENTARY INFORMATION:

**Title:** 30 CFR 256, Subparts J and K, and 30 CFR 250, Subpart J.

**Forms:** MMS-149, MMS-150, MMS-151, and MMS-152.

**OMB Control Number:** 1010-NEW.

**Abstract:** The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) under which MMS issues regulations governing oil and gas and sulphur operations in the OCS. This information collection request (ICR) addresses the regulations at 30 CFR part 250, Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR part 256, Leasing of Sulphur or Oil and Gas in the OCS, and the associated supplementary Notices to Lessees (NTLs) and operators intended to provide clarification, description, or explanation of these regulations. This ICR concerns the use of new forms to process the transfer of interest in lease and rights-of-way per 30 CFR part 250, subpart J, Pipelines and Pipeline Rights-of-Way, 30 CFR 256, subpart J, Assignments, Transfers and Extensions, and the filing of relinquishments per 30 CFR 256, subpart K, Termination of Leases.

We will protect information from respondents considered proprietary

under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public," and 30 CFR part 252, "OCS Oil and Gas Information Program." No items of a sensitive nature are collected. Responses are mandatory.

The MMS uses the information required by 30 CFR part 250, subpart J, "Pipelines and Pipeline Rights-of-Way," and 30 CFR part 256, subpart J, "Assignments, Transfers and Extensions," to track the ownership of

leases as to record title, operating rights, and pipeline right-of-ways. MMS will use this information to update the corporate database which is used to determine what leases are available for a Lease Sale and the ownership of all OCS leases. Non-proprietary information is also publicly available from the MMS corporate database via the internet.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 200 Federal oil and gas or sulphur OCS lessees.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The estimated annual "hour" burden for this information collection is a total of 1,512 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

30 CFR 256 Subparts J and K; 30 CFR 250, Subpart J and related NTLs	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart J: 256.62, 256.64, 256.65, 256.67.	File application and required information for assignment or transfer for approval/comment on filing fee (forms MMS-150 and MMS-151).	1/2	2,500 applications.	1,250
Subpart K: 256.76 .....	File written request for relinquishment (form MMS-152) .....	1/2	323 relinquishments.	1162
Subpart J: 250.1018 .....	File application and required information for assignment or transfer for approval/comment on filing fee (form MMS-149).	1/2	200 applications	100
<b>Total Burden</b> .....	.....	.....	<b>3,023</b> .....	<b>1,512</b>

<sup>1</sup> Rounded.

*Estimated Reporting and Recordkeeping "Non-Hour Cost"*

*Burden:* We have identified no paperwork "non-hour cost" burdens associated with the collection of information. The fees associated with the applications have been covered and approved under OMB Control Number 1010-0006, expiration 3/31/07.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of

automated collection techniques or other forms of information technology.

The regulations also inform the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received 14 different sets of comments from trade associations, as well as, oil and gas companies in response to the **Federal Register** notice from respondents covered under these regulations or who will be submitting these forms. Their names were: American Petroleum Institute, National Ocean Industries Association, Domestic Petroleum Council, Independent Petroleum Association of America (IPAA), U.S. Oil and Gas Association, Offshore Operators Committee, NCX Company, L.L.C., El Paso Production Company.

MMS's response to industry comments on the Assignment Forms were the following:

*IPAA, et al. Letter:* Respondents suggested that MMS develop a transmittal sheet to be attached to the assignment instrument. The transmittal sheet would include the information needed by MMS to monitor ownership in leases, but would not alter the rights and obligations being conveyed in the assignment documents prepared by industry.

MMS disagrees with this suggestion. The purpose of the proposed forms is to streamline and reduce the time necessary to adjudicate assignments,

which are requested by industry on a frequent basis. MMS's past experience indicates oversights in careful review and preparation by industry, thereby slowing the approval process and the return of documents unapproved for correction. All aspects of the approval letter have been incorporated into the assignment forms. When the forms are approved by MMS, they are signed by an authorized MMS representative and will be returned with a computer generated print-out of the ownership as it exists after the assignment has been approved.

MMS recognizes that industry assignments are unique. In order to accommodate this need, MMS has identified Exhibit A for this purpose (Exhibit A is later deleted based on another comment). The reason for this is to allow the companies to subject their assignments to other legal contracts for which MMS is not a participating party while providing pertinent information on the approved form in a format that can accommodate an electronic filing in the future, and provides information in the exact same format each time.

*IPAA, et al. Letter:* If MMS continues to use the proposed forms, Part A should define the term "record title" and "operating rights" interests, and the conveyance language should be revised to clearly state the conveyed right, title and interest.

The term "operating rights" is defined in 30 CFR 250.105. The term "record title" is well understood in the oil and gas industry to include all property interests in a lease that the lessee has not transferred to others. It is not the intent of the form to change these meanings and there is no reference in the forms to indicate otherwise. MMS agrees that the conveyance language in the proposed forms was not clear and did not follow standard legal protocol in its current form. Therefore, the language has been changed in the form.

*IPAA, et al. Letter:* Respondents conclude that the interest columns on the proposed forms are confusing and they have concern for the "Final Ownership" percentage when there are multiple transactions between the parties affecting the same properties that would cause a different ownership based on the time of the receipt of the assignment.

MMS processes assignments in the order of date received. Therefore, multiple transactions can be accepted and processed in order without affecting the final ownership of the assignment. MMS has reconsidered the necessity of the interest columns and has concluded that the columns can be confusing and has predicted that assignments would be rejected due to common errors and misunderstandings. Therefore, MMS has eliminated the columns and has provided a "blank" after the words "Assignor(s) does hereby sell, assign, transfer, and convey unto Assignee(s) the following undivided right, title, and interest." This blank will contain the decimal interest that is being conveyed and will always be a full 8/8ths number and will eliminate the guess work on fractions. MMS will continue to require that decimals be carried out to the fifth decimal place. Exhibit "A" has also been deleted. We have provided for two Assignors and two Assignees. If more than two are needed, industry may duplicate the signature block and attach to the assignment form.

*IPAA, et al. Letter:* Respondents argue that the assignment forms not provide that the assignees shall fully comply with all future regulations, but only those "for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights." Respondents argue that anything more exceeds MMS's statutory authority and constitutes an alteration of lease terms. But the same respondents suggest that only the first sentence of the acceptance of lease terms be required because "the Act and regulations apply without including reference to either in the assignment".

We agree that the regulations apply without recital in the assignment, but choose to retain the statement to avoid the type of confusion reflected in the former comment. All MMS regulations are binding on all lessees and operators, unless they are expressly inconsistent with the terms of the lease contract or the regulation itself limits its application.

*IPAA, et al. Letter:* Respondents argue that Part B of the proposed forms (all the forms) contain unnecessary certification, that further certifications constitute warranties and risk misapplication of the regulations and lease terms. In particular, the certification of ownership is a warranty that frequently is limited between the parties to a transaction. As a result the certification would often be inconsistent with Exhibit "B-1" which includes the additional assignment terms of the parties.

MMS does not agree. This statement is not a warranty, but a statement that you own the interest. The language used in the proposed forms does not say "Assignor hereby warrants its interest in the lease"; it simply states that the Assignor certifies that they own the interest conveyed by the assignment. MMS does not agree that this would be inconsistent with the provisions of Exhibit B-1.

*IPAA, et al. Letter:* The debarment language in the proposed forms is unnecessary, would require excessive due diligence, and is already maintained in MMS lease sale files. It was further recited that the recently published government-wide debarment regulations (68 FR 66534) suggesting that additional certifications are inappropriate. Reference is made to the preamble in those regulations calling for the elimination of assurances that are found to be unnecessary or where technology has eliminated the need by Federal agencies to obtain debarment certifications. Respondents further interpret this ruling to mean that further use of debarment certifications after an initial filing, are disfavored.

MMS has reviewed the recent debarment regulations and concludes that the proposed form language is burdensome. However, MMS feels the language is necessary and should be included in the approved forms. MMS has recently corresponded with industry in this regard for Sale Notice issues and has redrafted the language for use in the proposed forms. MMS feels that this reduced language is appropriate and eliminates the administrative burden on the parties.

*IPAA, et al. Letter:* The Equal Opportunity Clause is redundant

inasmuch as there are Equal Opportunity provisions in the lease.

MMS disagrees. Under Labor Department regulations at 41 CFR 60-1.4, a party who contracts with the United States, such as a lessee, must incorporate the Equal Opportunity Clause of section 202 of Executive Order 12146 in every subcontract. Accordingly, the clause is required in subleases of operating rights and MMS is including it in these forms. It is not required for assignments in which the assignor retains no interest in the lease, but MMS does not believe that the fact warrants creating separate forms for two types of transfers.

*IPAA, et al. Letter:* Respondents suggest that only the first sentence of paragraph four (page two), Part B—Certification and Acceptance of the forms, be required. Respondents claim that additional language is a restatement of lease terms, to which the assignee is bound by the first sentence; and the Act and regulations apply without including reference to either assignment. Respondents state that restating lease terms and regulations in an assignment inherently includes a risk of contractually modifying lease terms and regulations. Respondents state that reference to compliance with all applicable regulations now or in the future under the Act clearly exceeds the statutory authority granted to MMS, and this language should be removed from the proposed assignment forms.

The draft language restates without alteration the terms of the underlying lease. As noted above, all lessees and operators are subject to all MMS regulations, regardless of when the lease was issued, unless they are expressly inconsistent with the terms of the lease contract or the regulation itself limits its application. That section 5(a) of the Act makes some regulations expressly applicable to existing leases doesn't constitute a prohibition of other regulations which, as duly promulgated regulations under the Administrative Procedures Act, have the force and effect of law. For the very reason that some question MMS authority to enforce some regulations as to preexisting leases, it is important that the application for approval of the assignment of such leases includes the new lessee's agreement to comply with duly promulgated regulations to protect public safety and insure accountability for royalties. Based on this reasoning, the language remains in the forms.

*IPAA, et al. Letter:* The requirement that assignors and assignees comply with the qualification requirements of 30 CFR part 256 is covered by the regulations, independent of the

assignment. Respondents state that MMS monitors both compliance with the regulations and corporate authority to sign documents by requiring listings of corporate officers and filing powers of attorneys. Respondents claim that paragraph five, Part B—Certification and Acceptance of the forms, is unnecessary and should be removed.

MMS recognizes that the qualification requirements are covered in the regulations. However, MMS is considering the issue of self-certification to eliminate the need for updating of qualification files. If MMS were to approve such an action, then this statement will need to be incorporated on every existing and future form that MMS uses in administration of its programs. Therefore, the language will remain in the assignment forms as preparation for future utility.

*IPAA, et al. Letter:* Respondents claim, as a general comment, that standardization would help but not eliminate the need for some MMS analysis because of the necessary inclusion of Exhibit “B-1”, which includes the parties’ unique terms negotiated for each transaction.

MMS is not privy to the special terms and conditions between the parties and rarely reviews such language. MMS records are most impacted by the information on the forms. The format is structured to save time in reading the document seeking information that is transposed to the approval letter. Again, the form is designed to include all information that is on the approval letters as well as conveyance language to serve two purposes—streamlining of review and approval and the accommodation of electronic filing in the future. Exhibit B-1 has been changed to Exhibit “A” because we have eliminated multiple Assignors and Assignees, as stated above, which were identified on the original Exhibit “A”.

*El Paso and NCX Letter:* The relinquishment form is only executed by the record title interest owners, which could cause issues with any operating rights owners. The relinquishment form contains language to disallow relinquishments of record title where there are producing operating rights so as to preclude termination of producing operating rights. MMS’s policies of encouraging exploration and development and of increasing revenues, and the principle of respecting the integrity of property interests require refusal of relinquishment of record title where there are producing operating rights. Just as the assignment forms bind the assignee of operating rights to the lease terms and conditions, the integrity of

those rights conveyed should be respected by MMS.

While MMS recognizes the issue, MMS does not have a contract with the operating rights owners. This contractual right exists with the record title owners as they are the signatory parties to the lease instrument. Therefore, the proposed relinquishment form will remain as proposed and only need execution from the record title owners of the lease.

*NCX Letter:* The assignment forms do not contain conveyance language and are not in a form that is recordable in adjacent county/parish record; that there is not enough space at the top of the forms to be accepted for recordation; that so many elements would be required to be added in Exhibit “B-1” that the common practice will become to prepare a standard assignment and then attach the entire assignment as Exhibit B-1. This will lead to a duplication effort requiring Exhibit B-1 to be executed whether it is an exhibit or full assignment, along with the MMS form assignment, that “B-1” would be recorded in the adjacent county/parish records and the MMS form would not.

As stated above, MMS has reworded the language to make the instrument a formal conveyance. The comment on space for recordation on the front of the document is not valid. Most county/parish Clerk of Court offices stamp recording information on the back page of the document. However, in lieu of that, MMS feels there is ample space on the signature page for the recordation information of the county/parish.

Specific instructions are given for the completion of the assignment forms. Attaching the entire assignment as Exhibit “A” will be unacceptable to MMS and will be returned unapproved. Such an exercise will defeat the purpose of this streamlining effort for industry and Exhibit B-1 has been changed to Exhibit “A” as set forth above.

*NCX Letter:* The columns for interest decimals are confusing and should be clarified.

MMS concurs and, as mentioned above, deleted the columns and replaced same with standard conveyance language. Please see the above comments.

*NCX Letter:* Commenter was confused over the effective date of the assignment versus the effective date of the lease and the location of this information. Further, it was commented that the proposed forms do not take the place of the transmittal letter required by the MMS Adjudication Unit, which the commenter claims, contains much of the same information as the proposed forms.

The forms are clear in this regard and MMS feels the commenter did not thoroughly review the form before making this statement; therefore, the comment is invalid.

As to the transmittal letter issue, MMS disagrees. The transmittal letter does not contain the same information as the assignment form. Upon preparation of transmittal letters, industry should be careful not to repeat information contained in the assignment forms. Such transmittal letters should notify MMS of such issues as the submittal of Designation of Operator forms, Bonds, Oil Spill Financial Responsibility Forms, or any other information the submitter desires in assisting with the review process; and whether such information is included with the assignment or the reasons it is not included, which would facilitate the initial review process by MMS staff. Should this become a major issue, MMS will consider recommending to industry a standard format letter to utilize with the transmittal of the assignment.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 14, 2006.

*Public Comment Procedures:* MMS’s practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208-7744.

Dated: December 9, 2005.

**E.P. Danenberger,**

*Chief, Office of Offshore Regulatory Programs.*  
[FR Doc. E6-3706 Filed 3-14-06; 8:45 am]

**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR****Minerals Management Service****Notice of Additional Public Scoping Meeting on the Environmental Impact Statements for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007–2012; and Western and Central Gulf of Mexico, Oil and Gas Lease Sales for Years 2007–2012**

**SUMMARY:** Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), the Minerals Management Service (MMS) will hold a Public Scoping Meeting in Florida on the Environmental Impact Statements (EISs) for both the 2007–2012 Proposed 5-Year OCS Oil and Gas Leasing Program, and the tentatively scheduled 2007–2012 oil and gas leasing proposals in the Western and Central Gulf of Mexico off the States of Texas, Louisiana, Mississippi, and Alabama. The purpose of this meeting will be to solicit comments on the scope of both EISs. The meeting is in addition to the meetings announced in the **Federal Register** on March 3, 2006 and March 7, 2006.

*Date and Location for Public Scoping Meeting in Florida:* Thursday, April 6, 2006 “ Tallahassee-Leon County Civic Center, 505 Pensacola Street, Tallahassee, Florida, 1–3 p.m.

*Contact:* Mr. Dennis Chew, 504–736–2793. Information concerning the 5-year program and EIS can be accessed at: <http://www.mms.gov/5-year/2007–2012main.htm>.

Dated: March 9, 2006.

**Keith Good,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 06–2556 Filed 3–14–06; 8:45 am]

**BILLING CODE 4310–MR–P**

**DEPARTMENT OF THE INTERIOR****National Park Service****Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Two Hundred Fifty-Seventh Notice of Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on April 10, 2006.

The Commission was reestablished pursuant to Public Law 87–126 as

amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. in the meeting room at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (February 13, 2006)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
  - Salt Pond Visitor Center Update
  - Highlands Center Update
  - Update on Dune Shack Report
  - ORV's
  - Herring River Restoration Project
  - Hunting EIS
  - Wind Turbines/Cell Towers
  - News from Washington
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: February 24, 2006.

**George E. Price, Jr.,**

*Superintendent.*

[FR Doc. E6–3740 Filed 3–14–06; 8:45 am]

**BILLING CODE 4310–70–P**

**DEPARTMENT OF THE INTERIOR****National Park Service****Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting Location Change**

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park

Advisory Commission will be held at 9:30 a.m. on Friday, April 21, 2006, at St. Patrick's Church, Father Demetrius A. Gallitzin Parish Center, 209 N. Centre Street, Cumberland, Maryland.

The original notice was published in the **Federal Register** on February 17, vol. 71 Page 8615. This is a location change notice.

Dated: March 7, 2006.

**Kevin D. Brandt,**

*Superintendent, Chesapeake and Ohio Canal National Historical Park.*

[FR Doc. 06–2500 Filed 3–14–06; 8:45 am]

**BILLING CODE 4310–6V–M**

**DEPARTMENT OF THE INTERIOR****National Park Service****Flight 93 National Memorial Advisory Commission**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of April 29, 2006 meeting.

**SUMMARY:** This notice sets forth the date of the April 29, 2006 meeting of the Flight 93 Advisory Commission.

**DATES:** The public meeting of the Advisory Commission will be held on April 29, 2006, from 3 p.m. to 4:30 p.m. Additionally, the Commission will attend the Flight 93 Memorial Task Force meeting the same day from 1 p.m. to 2:30 p.m., which is also open to the public.

*Location:* The meeting will be held at the Somerset County Courthouse, Courtroom #1; 2nd Floor; 111 East Union Street, Somerset, Pennsylvania, 15501. The Flight 93 Memorial Task Force meeting will be held in the same location.

*Agenda:* The April 29, 2006, Commission meeting will consist of:

- (1) Opening of Meeting and Pledge of Allegiance.
- (2) Review and Approval of Minutes from February 18, 2006.
- (3) Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.
- (4) Old Business.
- (5) New Business.
- (6) Public Comments.
- (7) Closing Remarks.

**FOR FURTHER INFORMATION CONTACT:**

Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any

member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: February 22, 2006.

**Joanne M. Hanley**,  
Superintendent, Flight 93 National Memorial.  
[FR Doc. 06-2502 Filed 3-14-06; 8:45 am]  
BILLING CODE 4312-25-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 4, 2006. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by March 30, 2006.

**John W. Roberts**,  
*Acting Chief, National Register/National  
Historic Landmarks Program.*

### ALASKA

#### Lake and Peninsula Borough-Census Area

Bly, Dr. Elmer, House, Hardenburg Bay, Port Alsworth, 06000240  
Proenneke, Richard, Site, SE end of upper Twin Lakes, Port Alsworth, 06000241

### CALIFORNIA

#### Alameda County

St. Raymond's Church, 6600 Donion Way, Dublin, 06000242

### FLORIDA

#### Bay County

Vamar Shipwreck Site, 3.7 mi. offshore Mexico Beach, Mexico Beach, 06000243

### LOUISIANA

#### St. Landry Parish

Montet House (Louisiana's French Creole Architecture MPS), 157 Shady Ln., Arnaudville, 06000244

### MISSISSIPPI

#### Sunflower County

Dockery Farms Historic District, MS 8 E, Dockery, 06000250

### MISSOURI

#### Butler County

Wright-Dalton-Bell-Anchor Department Store Building (Poplar Bluff MPS), 201-205 S. Main, Poplar Bluff, 06000247

#### St. Louis County

Greenwood Historic District, 3500-3540 Greenwood and 7518 St. Elmo, Maplewood, 06000246

#### St. Louis Independent City

Haas, Elias, Building (Auto-Related Resources of St. Louis, Missouri MPS), 2223 Locust St., St. Louis (Independent City), 06000248  
South Fourth Street Commercial District, 740-908 S. Fourth St., 319 Gratiot, 317-321 Lombard, Saint Louis (Independent City), 06000245

### MONTANA

#### Glacier County

Babb-Piegan, Montana, Inspection Station, US 89 near United States and Canada Border, Babb, 06000252

### NEW YORK

#### Cayuga County

Hosmer, William and Mary, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS), 29 Washington St., Auburn, 06000262  
Howland, Slocum and Hannah, House, 1781 Sherwood Rd., Sherwood, 06000263

#### Columbia County

Van Valkenburgh-Isbister Farm, 1129-1142 Columbia County Rte 22, Ghent, 06000268

#### Delaware County

Galli-Curci Theatre, 801 Main St., Margaretville, 06000254

#### Erie County

First Church of Evans Complex, 7431 Erie Rd., Derby, 06000257

#### Essex County

Mount Adams Fire Observation Station (Fire Observation Stations of New York State Forest Preserve MPS), Mount Adams, Newcomb, 06000253

#### Herkimer County

Goodsell House, 2993 Main St., Old Forge, 06000265  
Sanders, James, House, 546 Garden St., Little Falls, 06000255

#### Kings County

Brooklyn Academy of Music, 30 Lafayette Ave., Brooklyn, 06000251

#### Livingston County

Geiger, Elias H., House, 10693 Geiger Rd., Dansville, 06000267

#### Oneida County

Bridgewater Railroad Station, US 20, Bridgewater, 06000264

### Onondaga County

Morehouse, Jeremiah, House, 11 Hathorn Rd., Warwick, 06000259

### Sullivan County

Liberty Downtown Historic District, Main, Chestnut, Academy, School, Church, Maple, John, Edgar Sts., and Darbee Ln., Liberty, 06000266  
Munson Diner, Lake St. (NY 55), Liberty, 06000256

### Warren County

Stower, Asa, House, 693 Ridge Rd., Queensbury, 06000261

### Westchester County

Ford Administration Building, 1031 Elm St., Peekskill, 06000258  
St. Peter's Episcopal Church, 19 Smith St., Port Chester, 06000260

### NORTH DAKOTA

#### Walsh County

St. Catherine's Church of Lomice, North Dakota, 4 mi. W and 2 mi. S of jct. ND 35 and Cty Rte 15, Whitman, 06000249

### OHIO

#### Cuyahoga County

Franklin Boulevard—West Clinton Avenue Historic District (Boundary Increase), 5207-7625 Franklin Blvd., 5802-07325 W. Clinton Ave., 6801-7003, 7319-7405 Detroit Ave., Cleveland, 06000269  
Lilly House, 27946 Center Ridge Rd., Westlake, 06000270  
Look About Lodge, 37374 Miles Rd., Bentleyville, 06000271  
St. Joseph Convent and Academy Complex, 12215 Granger Rd., Garfield Heights, 06000272

#### Montgomery County

Dayton Power and Light Building Group (Webster Station Area, Dayton, Ohio MPS), 601, 607-609, 613-645 E. Third St., Dayton, 06000273

#### Trumbull County

Niles Masonic Temple, 22 W. Church St., Niles, 06000274

### PENNSYLVANIA

#### Adams County

Eisenhower National Historic Site, 200 Eisenhower Farm Ln, Cumberland Township, 06000275

### WISCONSIN

#### Clark County

Hein, John and Maria, House, 824 Hewett St., Neillsville, 06000277

#### Dane County

Lincoln Street Historic District, W. Lincoln St., bet. Main St. and Market St., Oregon, 06000276

A request for a move has been made for the following resources:

**FLORIDA****Manatee County**

Lamb House, Contributing resource in the Palmetto Historic District along the Manatee River, Palmetto, 86003166

**IDAHO****Ada County**

Beck, Albert, House (Tourtellotte and Hummel Architecture TR), 1101 Fort St., Boise, 82000179

A request for removal has been made for the following resources:

**OKLAHOMA****Johnston County**

Murray, Gov. William H., House, Off OK 78, Tishomingo, 84003066

**Okfuskee County**

Guthrie, Woody, House 301 S 1st St., Okemah, 75001569

[FR Doc. E6-3744 Filed 3-14-06; 8:45 am]

**BILLING CODE 4312-51-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places; Notification of Pending Nominations and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 25, 2006.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by March 30, 2006.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**FLORIDA****Leon County**

Lichgate on High Road, 1401 High Rd., Tallahassee, 06000211

**KENTUCKY****Cumberland County**

Baker, James, House, Columbia Rd., Burkesville, 06000212

**Fayette County**

Cadentown School, 705 Caden Ln., Lexington, 06000213  
Russell School, 201 W. Fifth St., Lexington, 06000215

**Mason County**

Russell Theatre, 9 E. Third St., Maysville, 06000216

**Oldham County**

Wildwood Farm, 3901 Axton Ln., Skylight, 06000214

**MISSOURI****Jefferson County**

Rozier, Louis J. and Harriet, House, 322 W. Clement, DeSoto, 06000221

**St. Louis County**

Bopp, William, House (Kirkwood MPS), 12120 Old Big Bend Rd., Kirkwood, 06000218  
Rockwood Court Apartments, 330 W. Lockwood, Webster Groves, 06000222  
Wildwood House, 40 Dames Court, Ferguson, 06000234  
St. Louis Independent City, Chouteau Building, 4030 Chouteau (also 1029 S. Vandeventer), St. Louis (Independent City), 06000220  
Council Plaza, 300 S. Grand Blvd., 212 S. Grand Blvd., 310 S. Grand Blvd., St. Louis (Independent City), 06000217

**NORTH CAROLINA****Edgecombe County**

Batts House and Outbuildings, E side of U.S. 258 N, 2.05 mi. S of NC 1513 5098 U.S. 258 N, Tarboro, 06000226

**Forsyth County**

Dyer, James B. and Diana M., House, 1015 W. Kent Rd., Winston-Salem, 06000227

**Gaston County**

Loray Mill Historic District (Boundary Increase), Roughly bounded by S. Vance St., RR right-of-way, S. Hill St. and W. Franklin Blvd., Gastonia, 06000228

**Person County**

House of Wagstaff Farm, NE side NC 57, 1.4 mi. NW of jct. with NC 1300, Roxboro, 06000229

**Polk County**

Charlton Leland, 229 Greenville St., Saluda, 06000225

**Scotland County**

Evans, E. Hervey, House, 400 W. Church St., Laurinburg, 06000224

**Wake County**

Ivey, Rufus J., House, (Wake County MPS), 6115 Louisburg, Raleigh, 06000223

**TENNESSEE****Giles County**

Bodenham (Colored) School, 830 Gimlet Creek Rd., Bodeham, 06000219

**UTAH****Davis County**

First National Bank of Layton, 50 W. Gentile St., Layton, 06000232

**Garfield County**

Henderson, William Jasper, Jr., and Elizabeth, House, 87 N. Main St. (Kodachrome Hwy), Cannonville, 06000230

**Uintah County**

Siddoway, William and Emily, House, (Vernal—Maeser, Utah MPS), 1055 N. Vernal Ave., Vernal, 06000231

**WISCONSIN****Grant County**

Courthouse Square Historic District, Cherry, Jefferson, Madison, and Maple Sts., Lancaster, 06000233

A request for REMOVAL has been made for the following resource:

**TENNESSEE****Williamson County**

Pointer, Henry, House (Williamson County MRA), US 31 S of Thompsons Station Thomsons Station vicinity, 88000332

[FR Doc. E6-3745 Filed 3-14-06; 8:45 am]

**BILLING CODE 4312-51-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Mesa Verde National Park, Mesa Verde, CO**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, National Park Service, Mesa Verde National Park, Mesa Verde, CO. The human remains and associated funerary objects were found in Mesa Verde National Park's collections, mailed anonymously, removed from unknown locations and Montezuma County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d) (3). The determinations in this notice are the sole responsibility of the superintendent, Mesa Verde National Park.

Mesa Verde National Park professional staff identified the cultural items and assessed the cultural affiliation of the cultural items in

consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico. The Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; and Ysleta Del Sur Pueblo of Texas were unable to attend the Native American consultation meetings, but they requested and received the minutes of these proceedings.

In 1926, human remains representing a minimum of five individuals were received as part of a large collection of prehistoric and ethnographic items donated to Mesa Verde National Park by a private citizen from Durango, CO. The human remains are from an unknown provenience. Osteological data cannot identify cultural affiliation. No known individuals were identified. The one associated funerary object is a faunal bone.

In 1948, human remains representing a minimum of two individuals were received at Mesa Verde National Park from a private citizen from Mancos, CO. The human remains were reportedly removed from a burial site about five miles north of Mesa Verde National Park's entrance in Montezuma County, CO. Exact provenience is unknown. Osteological data cannot identify cultural affiliation. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing a minimum of five individuals were anonymously mailed to Mesa Verde National Park. The provenience for the human remains is unknown. Osteological data cannot identify cultural affiliation. No known individuals were identified. The cultural items that were commingled with the human remains are undiagnostic. The 49 associated

funerary objects are 47 faunal bone fragments and 2 small pieces of wood.

In 1989, human remains representing a minimum of three individuals were received from Centuries Research in Montrose, CO, by Mesa Verde National Park. The provenience of the human remains is unknown. Osteological data cannot identify cultural affiliation. No known individuals were identified. No associated funerary objects are present.

In 1991, human remains representing a minimum of three individuals were received at Mesa Verde National Park from an anonymous donor. Information with the material indicated that the human remains were collected during the early 1900s by the donor's grandfather who worked for the Montezuma County Road Department. The provenience for the human remains is unknown. Osteological data cannot identify cultural affiliation. No known individuals were identified. No associated funerary objects are present.

In 1995, human remains representing a minimum of three individuals were found by curatorial staff conducting NAGPRA inventory in the Mesa Verde Research Center. The provenience for the human remains is unknown. Osteological data cannot identify cultural affiliation. No known individuals were identified. No associated funerary objects are present.

In 2001, human remains representing a minimum of three individuals were found in the Mesa Verde Research Center during the storage upgrade project. One item had been transferred to Mesa Verde Research Center by the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; the other two individuals had no documentation. The provenience for the human remains is unknown. Osteological data cannot identify cultural affiliation. No known individuals were identified. No associated funerary objects are present.

Officials of Mesa Verde National Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 24 individuals of Native American ancestry. Officials of Mesa Verde National Park also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 50 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Mesa Verde National Park have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and

associated funerary objects and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In February 2006, Mesa Verde National Park requested that the Review Committee recommend repatriation of the 24 culturally unidentifiable human remains and 50 associated funerary objects to the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. These 22 Indian tribes had requested the human remains and have demonstrated a cultural relationship to the region. The Review Committee considered the proposal at its March 3, 2006 meeting via teleconference, and recommended disposition of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. The National Park Service intends to convey the 50 associated funerary objects to the tribes pursuant to 16 U.S.C. 18f–2.

A March 3, 2006, letter from the Designated Federal Official on behalf of the chair of the Review Committee to the superintendent of Mesa Verde National Park transmitted the Review

Committee's recommendation that the park effect disposition of the physical remains of 24 culturally unidentifiable individuals and 50 associated funerary objects to the 22 Indian tribes listed above contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Larry Wiese, superintendent, Mesa Verde National Park, PO Box 8, Mesa Verde, CO 81330, telephone (970) 529-4600, before April 14, 2006. Disposition of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

Mesa Verde National Park is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: March 7, 2006.

**Sherry Hutt**,

*Manager, National NAGPRA Program.*

[FR Doc. E6-3704 Filed 3-14-06; 8:45 am]

**BILLING CODE 4312-50-S**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-1103 (Preliminary)]**

### Certain Activated Carbon From China

**AGENCY:** International Trade Commission.

**ACTION:** Institution of antidumping investigation and scheduling of a preliminary phase investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1103 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain activated carbon,<sup>1</sup> provided for in subheading

<sup>1</sup>For purposes of this investigation, the product covered is certain activated carbon defined as a powdered, granular or pelletized carbon product obtained by "activating" with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO<sub>2</sub>) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO<sub>2</sub> gas) activation process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon. This definition covers all forms of activated carbon that are activated by steam or CO<sub>2</sub>, regardless of raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, this definition covers all physical forms of certain activated carbon, including powdered activated carbon ("PAC"), granular activated carbon ("GAC"), and pelletized activated carbon.

Excluded from this definition are chemically-activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid or zinc chloride sulfuric acid, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to

3802.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 24, 2006. The Commission's views are due at Commerce within five business days thereafter, or by May 1, 2006.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

### SUPPLEMENTARY INFORMATION:

**Background.**—This investigation is being instituted in response to a petition filed on March 8, 2006, by Calgon Carbon Corporation, Pittsburgh, PA, and Norit Americas, Inc., Marshall, TX.

activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO<sub>2</sub> gas) activated carbons are within this definition, and those containing more than 50 percent chemically activated carbons are outside this definition.

Also excluded from this definition are reactivated carbons and activated carbon cloth. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from this definition is included within the definition.

*Participation in the investigation and public service list.*—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 30, 2006, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than March 27, 2006, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 4, 2006, a written brief containing information and arguments pertinent to the subject matter of the investigation.

Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 10, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-3756 Filed 3-14-06; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-401 and 731-TA-853-854 (Review)]

### Structural Steel Beams From Japan and Korea

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping order on structural steel beams from Japan and revocation of the antidumping and countervailing duty orders on structural steel beams from Korea would not be likely to lead to

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

#### Background

The Commission instituted these reviews on May 2, 2005 (70 FR 22696) and determined on August 5, 2005 that it would conduct full reviews (70 FR 48440, August 17, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 19, 2005 (70 FR 54962).<sup>3</sup> The hearing was held in Washington, DC, on January 12, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in this investigation to the Secretary of Commerce on March 9, 2006. The views of the Commission are contained in USITC Publication 3840 (March 2006), entitled *Structural Steel Beams from Japan and Korea*: Investigation Nos. 701-TA-401 and 731-TA-853-854 (Review).

By order of the Commission.

Issued: March 9, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-3718 Filed 3-14-06; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on February 24, 2006, a proposed Consent Decree in *United States v. Coffee County, et al.*, Civil Action Number 4:05-CV-5, was lodged with the United States District Court for the Eastern District of Tennessee.

In this action the United States sought, under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, recovery of response costs incurred by the Air Force in response to releases of hazardous substances at the Coffee County Landfill located on the Arnold Air Force Base in Tennessee. The City of Manchester, City

<sup>2</sup> Commissioner Charlotte R. Lane dissenting.

<sup>3</sup> The revised schedule for the subject reviews was published on November 4, 2005 (70 FR 67193).

of Tullahoma, and Coffee County Tennessee (the "Defendants") are paying \$225,000 collectively. This settlement is based on the Defendants' ability to pay.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Coffee County, et al.* DOJ Ref. #90-11-2-08477.

During the public comment period, the proposed settlement agreement may be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood, [tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov), Fax No. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$0.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, to obtain a copy of the Consent Decree.

**Ellen M. Mahan,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06-2511 Filed 3-14-06; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Donald Lee Prow, et al.*, Civil Action No. 05-1452-RHK (D. Minn.), was lodged with the United States District Court for the District of Minnesota on March 2, 2006.

This proposed Consent Decree concerns a complaint filed by the United States against Donald Lee Prow, individually and d/b/a/ Rochester Topsoil, Inc.; Donald Bryce Prow, individually and d/b/a/ Rochester Topsoil, Inc.; and Rochester Topsoil, Inc., pursuant to section 309(b), 309(d), and 404 of the Clean Water Act ("CWA"), 33 U.S.C. 1319(b), 1319(d) and 1344, to obtain injunctive relief from and impose civil penalties against

the Defendants for violating the Clean Water Act by discharging pollutants without a permit, and in violation of a permit, into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, perform mitigation and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Joshau M. Levin, Senior Attorney, U.S. Department of Justice, Environmental and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026-3986, and refer to *United States v. Don Prow, et al.*, DJ #90-5-1-16552.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, at either of two addresses: 202 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or 180 E. Fifth Street, St. Paul, MN 55101. In addition, the proposed Consent Decree may be viewed at <http://www.usdoj.gov/enrd/open.html>.

Dated: March 3, 2006.

**Scott A. Schachter,**

*Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 06-2509 Filed 3-14-06; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on February 14, 2006, a proposed consent decree in *United States v. Edward Kraemer & Sons, Inc.*, Civil No. CIV-06-0480-PHX-NWV, was lodged with the United States District Court for the District of Arizona.

This Consent Decree will address claims asserted by the United States in a complaint filed contemporaneously with the Consent Decree against Edward Kraemer & Sons, Inc. (Kraemer) for civil penalties and injunctive relief under Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. 7413(b), for failure to install suitable trackout control devices, failure to immediately clean up trackout and failure to comply with their dust control plan in violation of Rule 2 Regulation 1, and Rule 310 of Regulation 3 of the Maricopa County Air Quality Department (MCAQD) which are part of the federally approved and federally enforceable State

Implementation Plan (SIP) submitted to EPA by the State of Arizona pursuant to Section 110 of the Act, 42 U.S.C. 7410.

The proposed Consent Decree provides for the payment of \$190,000 in civil penalties. The Consent Decree also includes measures designed to abate fugitive dust emissions which include installation of trackout control devices at its work sites; employing a dust control monitor at sites with 50 acres or more of surface; and requiring dust control training for employees and certain employees of sub-contractors whose job responsibilities involve dust generating operations.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Edward Kraemer & Sons, Inc.*, D.J. Ref. 90-5-2-1-08544.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Arizona, Two Renaissance Square, 40 N. Central Avenue, Suite 1200, Phoenix, Arizona 85004-4408, and at U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax number (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.75 (.25 cents per page reproduction cost) payable to the U.S. Treasury.

**Ellen M. Mahan,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06-2510 Filed 3-14-06; 8:45 am]

BILLING CODE 4410-15-M

**DEPARTMENT OF JUSTICE****Notice of Settlement Agreement Under the Park System Resources Protection Act**

Under 28 CFR 50.7, notice is hereby given of a proposed settlement agreement, *In Re: NTS/Virginia Development Corporation*, for the recovery of damages by the Department of the Interior ("DOI"), under the Park System Resources Protection Act, 16 U.S.C. 191j.

The proposed settlement agreement resolves claims against NTS/Virginia Development Corporation with respect to certain Civil War era earthworks that are part of the Fredericksburg and Spotsylvania National Military Park, a unit of the National Park System, in Spotsylvania County, Virginia. DOI alleges that in an "Incident" on or about July 11, 2001, a maintenance worker employed by NTS/Virginia drove a small tracked BobCat over the earthworks, creating ruts and damaging the earthworks.

Under the proposed settlement agreement, NTS/Virginia will pay \$88,351 for costs and damages. In exchange, DOI will provide a covenant not to sue NTS/Virginia for the incident. DOI intends to use a portion of the settlement funds to define, through accepted archaeological methodology, the scope and condition of Wilderness Cemetery No. 2, and would use at least \$30,821 of the settlement funds to further develop and complete certain interpretive trail facilities along the Orange Plank Corridor in the Wilderness Battlefield.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *In Re: NTS/Virginia Development Corporation*, DOJ Ref. #90-5-1-1-08788.

During the public comment period, the proposed settlement agreement may be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood, [tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov), Fax No. (202) 514-0097, phone confirmation number (202) 512-1547. In requesting a

copy from the Consent Decree Library, please enclose a check in the amount of \$1.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, to obtain a copy of the settlement agreement.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06-2512 Filed 3-14-06; 8:45 am]

**BILLING CODE 4410-15-M**

**DEPARTMENT OF JUSTICE****Notice of Lodging of Consent Decree; Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")**

Pursuant to 28 CFR § 50.7, notice is hereby given that on September 13, 2005, a Consent Decree in the case of *United States of America v. Raymond and Donniss Holbrook Trust*, Civil Action No. CV05-6723 (GHK) (VBKx) was lodged in the United States District Court for the Central District of California. This is the second public notice and comment period for this Consent Decree. The first notice was published in the **Federal Register** on October 13, 2005, Volume 70, Number 197, page 59773, and no comments were received.

In this action, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the "WDI Site").

The Settlor owns a small portion of the WDI Site, less than 1.5 acres, and the purpose of the settlement is to provide to the United States the access and institutional control which are required to perform the remedial action at the Site. In addition, the Settlor has agreed to pay the United States \$280,000 over a two year time period in partial reimbursement of response costs. In return, the United States has given the Settlor covenants not to sue and contribution protection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of

Justice, P.O. Box 7811, Washington, DC 20044-7611; and refer to *United States of America v. Raymond and Donniss Holbrook Trust*, DOJ #90-11-2-1000/2. The proposed settlement agreement may be examined at the United States Environmental Protection Agency, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94107, ATTN: Taly Jolish. During the comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>.

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 512-0097, phone confirmation number (202) 514-1547. In requesting a copy of the Decree from the Consent Decree Library, please enclose a check in the amount of \$56.00 (25 cents per page reproduction cost for 224 pages) payable to the U.S. Treasury.

**Ellen M. Mahan,**

*Assistant Section Chief, Environmental Enforcement Section.*

[FR Doc. 06-2513 Filed 3-14-06; 8:45 am]

**BILLING CODE 4410-15-M**

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****Petitions for Modification**

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. FMC Corporation**

[Docket No. M-2006-001-M]

FMC Corporation, Box 872, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its FMC Westvaco Mine (MSHA I.D. No. 48-00152) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit a submersible mine pump to be operated in a flooded area of the mine, and installed and operated through a borehole from the surface. The petitioner asserts that the proposed alternative method will not reduce the safety of the miners.

**2. Laurel Creek Company, Inc.**

[Docket No. M-2006-007-C]

Laurel Creek Company, Inc., P.O. Box 57, Dingess, West Virginia 25671 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its No. 5 Mine (MSHA I.D. No. 46-09132) located in Mingo County, West Virginia. The petitioner proposes to use high-voltage (2400-volt) continuous mining machines in and inby the last open crosscut of the No. 5 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via E-mail: [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov); Fax: (202) 693-9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before April 14, 2006. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 9th day of March 2006.

**Robert F. Stone,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. E6-3748 Filed 3-14-06; 8:45 am]

BILLING CODE 4510-43-P

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-341]

**Detroit Edison Company; Notice of Withdrawal of Application for Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Detroit Edison Company (the licensee) to withdraw its March 17, 2005, application for proposed amendment to Facility Operating License No. NPF-43 for Fermi 2, located in Monroe County, Michigan.

The proposed amendment would have revised the facility technical specifications (TSs) pertaining to TS 3.3.6.1, "Primary Containment Isolation Instrumentation," to correct a formatting error introduced during conversion to Improved Technical Specifications by replacing "1" per room with "2" per

room for the required channels per trip system for the reactor water cleanup area ventilation differential temperature high primary containment isolation instrumentation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 26, 2005 (70 FR 21449). However, by letter dated January 31, 2006, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 17, 2005, and the licensee's letter dated January 31, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 7th day of March, 2006.

For the Nuclear Regulatory Commission.

**David H. Jaffe,**

*Sr. Project Manager, Plant Licensing Branch III-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6-3717 Filed 3-14-06; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION****Advisory Committee on the Medical Uses of Isotopes: Call for Nominations**

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Call for Nominations.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of radiation oncology physician, specialized in gamma stereotactic radiosurgery on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

**DATES:** Nominations are due on or before May 15, 2006.

**ADDRESSES:** Submit four copies of your resume or curriculum vitae to the Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Mohammad S. Saba, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415-7608; e-mail [mss@nrc.gov](mailto:mss@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC, for appropriate action.

ACMUI members possess the medical or technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; and (k) health care administrator.

NRC is inviting nominations for the radiation oncologist physician appointment to the ACMUI. The term of the individual currently occupying this position will end September 30, 2006. Committee members will serve a 4-year term. Committee members may be considered for reappointment to one additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

**Security Background Check:** Nominees will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACMUI members. This check will include a requirement to complete

financial disclosure statements to avoid conflict-of-interest issues. The security background check will involve the completion and submission of paperwork to NRC and will take approximately four weeks to complete.

Dated at Rockville, Maryland this 9th day of March, 2006.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E6-3716 Filed 3-14-06; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-08838]

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the Department of the Army's Facility at Jefferson Proving Ground

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

#### FOR FURTHER INFORMATION CONTACT:

Thomas McLaughlin, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone: (301) 415-5869; fax number: (301) 415-5398; e-mail: [tgm@nrc.gov](mailto:tgm@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to the Department of the Army (Army or licensee) for License No. SUB-1435. The amendment would authorize an alternate decommissioning schedule pursuant to 10 Code of Federal Regulations (CFR) part 40.42(g)(2), for the Army to conduct site characterization and prepare and submit a decommissioning plan for its facility at Jefferson Proving Ground, Madison, Indiana. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

#### II. EA Summary

The purpose of this proposed action is to amend Radioactive Materials License SUB-1435 to allow the Army to

decommission its Jefferson Proving Ground facility using an alternate schedule for submittal of a decommissioning plan pursuant to 10 CFR part 40.42(g)(2). The Army is requesting a 5-year period to characterize the site and submit a decommissioning plan. The Army's request is contained in a letter to NRC dated May 25, 2005.

The NRC staff has determined that all steps in the proposed site characterization could be accomplished in compliance with the NRC public and occupational dose limits and effluent release limits. In addition, the staff has concluded that approval of the alternate decommissioning schedule would not result in a significant adverse radiological or non-radiological impact on the environment.

If the NRC approves the license amendment, the authorization will be documented in an amendment to NRC License No. SUB-1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report in addition to the EA.

#### III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the Army's proposed alternate schedule for submittal of a decommissioning plan. The NRC staff has concluded that there will be no significant adverse environmental impacts associated with approving the Army's license amendment request. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

#### IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agency-wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the documents related to this notice are: The Army's letter to NRC dated May 25, 2005, ML051520319; the EA prepared for this action, ML053130257; **Federal Register** Notice for Amendment No. 13, ML053220289.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Any questions should be referred to Thomas McLaughlin, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington DC 20555, Mailstop T-7E18, telephone (301) 415-5869, fax (301) 415-5397.

Dated at Rockville, Maryland, this seventh day of March, 2006.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6-3715 Filed 3-14-06; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-17]

### Portland General Electric; Trojan Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a License Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Jill S. Caverly, Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-6699; Fax number: (301) 415-8555; E-mail: [jsc1@nrc.gov](mailto:jsc1@nrc.gov).

#### Introduction

The U.S. Nuclear Regulatory Commission (NRC, or the staff) is considering issuance of a license amendment to the Portland General Electric Company (PGE, or the licensee) for Special Nuclear Materials License SNM-2509. An Environmental Assessment was issued at the time of the application for the license and a determination of a Finding of No Significant Impact was finalized on November 11, 1996. The current amendment request was submitted to the NRC under letter dated May 23, 2005, [ADAMS Accession Number ML051460408]. The request is in

accordance with 10 *Code of Federal Regulations* (CFR) 72.48(c)(2) and 10 CFR 72.56 for a license amendment that would approve a change that would result in a departure from a method of evaluation described in the Trojan Independent Spent Fuel Storage Installation (ISFSI) Safety Analysis Report (SAR). An ISFSI is defined in 10 CFR part 72 as "a complex designed and constructed for the interim storage of spent nuclear fuel, solid reactor related waste \* \* \* and other radioactive materials associated with spent fuel. \* \* \*" The result of the amendment would be revised methodology used to determine the controlled area boundary for the ISFSI, which would reduce the controlled area (controlled area as defined in 10 CFR part 20) from 300 meters from the edge of the concrete storage pad to 200 meters from the edge of the pad.

## Environmental Assessment (EA)

### I. Identification of Proposed Action

The Trojan ISFSI is located at PGE's former Trojan Nuclear Plant near Rainier, Oregon. The proposed action before the NRC is the approval of methodology for determining the controlled area at the ISFSI that will result in moving the boundary of the controlled area. PGE has requested a license amendment in accordance with 10 CFR 72.48(c)(2) and 10 CFR 72.56 to revise the method of evaluation used in the SAR for determining the controlled area of the Trojan ISFSI. The current Trojan ISFSI Controlled Area boundary was established at 300 meters based on the results of the Trojan ISFSI shielding and confinement analyses and the requirements of 10 CFR 72.104 and 72.106. The current shielding analysis was performed prior to loading the ISFSI storage casks to conservatively predict dose rates. For the proposed license amendment, PGE revised the shielding calculation to include actual direct radiation measurements. The revised calculations show that the requirements of 10 CFR part 72 are met if the controlled area is reduced from 300 meters from the edge of the pad to 200 meters to the edge of the pad. The proposed action will not require any physical changes to fences or construction at the site but will relocate dosimeters to 200 meters from the edge of the pad.

### II. Need for the Proposed Action

PGE is seeking this reduction of the Trojan ISFSI Controlled Area primarily to facilitate the efficient long-term management and security of the spent nuclear fuel and fuel-related materials

stored in the ISFSI. This change would eliminate the Trojan ISFSI's program and procedural requirements for access controls on site areas for which such controls are not necessary or warranted to ensure the protection of the health and safety of the public and the environment. PGE has completed decommissioning of the adjoining 10 CFR part 50 site and seeks to consolidate the remaining area of its responsibility. The area between the current and revised controlled area has been analyzed for contamination under the Trojan Nuclear Plant's decommissioning program. A final radiologic survey will be required at the time of ISFSI decommissioning.

### III. Environmental Impacts of the Proposed Action

The staff has determined that although the proposed action will result in a reduction in the current controlled area boundary, the ISFSI will continue to meet the requirements of 10 CFR part 72. The proposed action does not involve a significant increase in the probability or consequences of an event or accident previously evaluated nor does it create a possibility of a new or different kind of event. The staff concludes that there is reasonable assurance that the proposed changes in the methodology will have no impact on off-site radiation doses. Additionally, the staff has determined that there would be no impacts to the environment from the proposed action.

### IV. Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the amendment request (i.e., the "no-action" alternative). Thus, the no action alternative would leave the current controlled area boundary in place at 300 meters from the edge of the concrete storage pad. No environmental impacts would result from the no action alternative.

### V. Agencies and Persons Consulted

The NRC staff prepared this environmental assessment (EA). The U.S. Fish and Wildlife Service's Threatened and Endangered Species System was consulted and reviewed as well the species analysis in the EA conducted for the original ISFSI license (November 1996). Based on the very limited activity of moving dosimeters and the staff's overall analysis, involvement of the human environment is minimal for this proposed action and essentially the same as the current environmental conditions. Hence, this action does not warrant consultation for further input and analysis under section

7 of the Endangered Species Act or section 106 of the National Historic Preservation Act.

### VI. Conclusions

The staff analysis of the PGE proposed amendment concludes that issuing the amendment to allow for a revised methodology to calculate the boundary of the controlled area in the SAR will not result in significant environmental consequences. Hence, the staff recommends a Finding of No Significant Impact.

### VII. Sources

NRC, Environmental Assessment dated November 1996.

PGE, application dated May 23, 2005.

PGE, Safety Analysis Report, Rev 6., dated July 21, 2005.

U.S. Fish and Wildlife Service, Threatened and Endangered Species System (<http://www.fws.gov>).

### Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the proposed action of approving the amendment to the license will not significantly impact the quality of the human environment. Accordingly, the NRC has determined that an environmental impact statement for the proposed amendment is not warranted.

### Further Information

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action, including the amendment request dated May 23, 2005, are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 6th day of March 2006.

For the Nuclear Regulatory Commission.  
**Jill Caverly**,  
*Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*  
 [FR Doc. E6-3714 Filed 3-14-06; 8:45 am]  
**BILLING CODE 7590-01-P**

**PENSION BENEFIT GUARANTY CORPORATION**

**Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in March 2006. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2006.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the

"premium payment year"). (After a five-year hiatus, the Treasury Department issued 30-year securities during February 2006. To take yields on the new securities into account, the Internal Revenue Service has determined the annual yield on 30-year Treasury securities for February 2006 to be the average of the yield on the 30-year Treasury bond maturing in February 2031 determined each business day in February 2006 through February 8, 2006, and the yield on the 30-year Treasury bond maturing in February 2036 determined each business day for the balance of February 2006. The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in March 2006 is 3.89 percent (*i.e.*, 85 percent of the 4.58 percent Treasury securities rate for February 2006).

The Pension Funding Equity Act of 2004 ("PFEA")—under which the required interest rate is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid—applies only for premium payment years beginning in 2004 or 2005. Congress is considering legislation that would extend the PFEA rate for one more year. If legislation that changes the rules for determining the required interest rate for plan years beginning in March 2006 is adopted, the PBGC will promptly publish a **Federal Register** notice with the new rate.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between April 2005 and March 2006.

For premium payment years beginning in:	The required interest rate is:
April 2005 .....	4.78
May 2005 .....	4.72
June 2005 .....	4.60
July 2005 .....	4.47
August 2005 .....	4.56
September 2005 .....	4.61
October 2005 .....	4.62
November 2005 .....	4.83
December 2005 .....	4.91
January 2006 .....	3.95
February 2006 .....	3.90
March 2006 .....	3.89

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281)

prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2006 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register** Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of March 2006.

**Vincent K. Snowbarger**,  
*Deputy Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E6-3699 Filed 3-14-06; 8:45 am]  
**BILLING CODE 7709-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 1-31227]

**Issuer Delisting; Notice of Application of Cogent Communications Group, Inc. To Withdraw Its Common Stock, \$.001 Par Value, From Listing and Registration on the American Stock Exchange LLC**

March 9, 2006.

On March 3, 2006, Cogent Communications Group, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Board of Directors ("Board") of the Issuer approved resolutions on July 11, 2005, and confirmed such authorization on February 7, 2006 to withdraw the Security from listing on Amex and register and list the Security on the Nasdaq National Market ("Nasdaq"). The Board believes that Nasdaq will provide greater exposure of the Security to investors, especially as more members of the Issuer's peer group of communications companies have a Nasdaq listing rather than an exchange listing. The Issuer stated that on February 28, 2006, Nasdaq approved the Issuer's application to list the Security on Nasdaq. The Issuer expects the Security to trade on Nasdaq on or about March 6, 2006.

<sup>1</sup> 15 U.S.C. 78j(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before April 3, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-31227 or;

#### *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 1-31227. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-3690 Filed 3-14-06; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[File No. 1-14625]

### **Issuer Delisting; Notice of Application of Host Marriott Corporation To Withdraw Its Common Stock, \$.01 Par Value and Purchase Share Rights for Series A Junior Participating Preferred Stock, \$.01 Par Value, From Listing and Registration on the Chicago Stock Exchange, Inc.**

March 9, 2006.

On March 3, 2006, Host Marriott Corporation, a Maryland corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value, and purchase share rights for series A junior participating preferred stock, \$.01 par value (collectively "Securities"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The Board of Directors ("Board") approved resolutions on February 9, 2006 to delist the Securities from listing and registration on CHX. The Issuer stated that the following reasons factored into the Board's decision: (i) There is very little activity in the Securities on CHX; (ii) the low trading volume of the Securities on CHX does not justify the expense of continued listing, and such continued listing is considered by the Board to be a misuse of corporate resources; and (iii) the Securities are listed on the New York Stock Exchange, Inc. ("NYSE") and will continue to be listed on NYSE.

The Issuer stated in its application that it has complied with applicable rules of CHX by complying with all applicable laws in effect in the State of Maryland, the state in which it is incorporated, and by providing CHX with the required documents governing the withdrawal of securities from listing and registration on CHX.

The Issuer's application relates solely to the withdrawal of the Securities from listing on CHX and shall not affect their

continued listing on NYSE, the Pacific Exchange, Inc. ("PCX"),<sup>3</sup> or their obligation to be registered under Section 12(b) of the Act.<sup>4</sup>

Any interested person may, on or before April 3, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-14625 or;

#### *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 1-14625. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-3692 Filed 3-14-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>3</sup> The Issuer filed an application with the Commission to withdraw the Securities from listing and registration on PCX on March 3, 2006. Notice of such application will be published separately.

<sup>4</sup> 15 U.S.C. 78l(b).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 1-14625]

**Issuer Delisting; Notice of Application of Host Marriott Corporation To Withdraw Its Common Stock, \$.01 Par Value and Purchase Share Rights for Series A Junior Participating Preferred Stock, \$.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc.**

March 9, 2006.

On March 3, 2006, Host Marriott Corporation, a Maryland corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value, and purchase share rights for series A junior participating preferred stock, \$.01 par value (collectively "Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("Board") approved resolutions on February 9, 2006, to delist the Securities from listing and registration on PCX. The Issuer stated that the following reasons factored into the Board's decision: (i) There is very little activity in the Securities on PCX; (ii) the low trading volume of the Securities on PCX does not justify the expense of continued listing, and such continued listing is considered by the Board to be a misuse of corporate resources; and (iii) the Securities are listed on the New York Stock Exchange, Inc. ("NYSE") and will continue to be listed on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by complying with all applicable laws in effect in the State of Maryland, the state in which it is incorporated, and by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX and shall not affect their continued listing on NYSE, the Chicago Stock Exchange, Inc. ("CHX"),<sup>3</sup> or their obligation to be registered under Section 12(b) of the Act.<sup>4</sup>

Any interested person may, on or before April 3, 2006, comment on the

facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

*Electronic Comments*

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-14625 or;

*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 1-14625. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-3696 Filed 3-14-06; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53454; File No. SR-BSE-2006-01]

**Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish Fees for Options on Certain Exchange Traded Funds**

March 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 4, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. On February 1, 2006, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 6, 2006, the BSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fee Schedule of the BOX to establish fees for transactions in options on certain ETFs effected by a broker-dealer through its proprietary accounts. The text of the proposed rule change is below. Proposed new language is in

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 was withdrawn on February 2, 2006.

<sup>4</sup> Amendment No. 2 made changes to the filing to supplement the names of certain of the underlying exchange traded funds ("ETFs") to reflect their full titles as used by their respective sponsors and clarified that (1) the fees will be charged only to Boston Options Exchange ("BOX") Participants, (2) the products in this filing constitute "Fund Shares" as defined in the BOX Rules, and (3) the surcharge fee for trading in options on the products in this filing is equal to the cost charged to BOX by the licensor in the associated licensing agreement. The changes in Amendment No. 2 do not affect the fees for transactions in options on the ETFs covered by this filing.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>1</sup> 15 U.S.C. 78j(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> The Issuer filed an application with the Commission to withdraw the Securities from listing and registration on CHX on March 3, 2006. Notice of such application will be published separately.

<sup>4</sup> 15 U.S.C. 78j(b).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

*italics*; proposed deletions are in [brackets].

## Boston Options Exchange Facility

### Fee Schedule

[[as of October 2005]]

(as of January 2006)

Sec. 1 No Change.

Sec. 2 Trading Fees Broker Dealer Proprietary Accounts

Subsections (a) and (b) No Change.

c. Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX. The applicable surcharges are as follows:

(1) \$0.10 per contract for options on the ETF Nasdaq 100 ("QQQQs").

(2) \$0.10 per contract for options on the Standard & Poor's Depository Receipts (SPY).

(3) \$0.10 per contract for options on the iShares Nasdaq Biotechnology Index Fund (IBB).

(4) \$0.10 per contract for options on the iShares Russell 2000 Index Fund (IWM).

(5) \$0.10 per contract for options on the iShares Russell 2000 Growth Index Fund (IWO).

(6) \$0.09 per contract for options on the S&P Energy Select Sector SPDR Fund (XLE).

(7) \$0.09 per contract for options on the S&P Financial Select Sector SPDR Fund (XLF).

Sec. 3-6 No Change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

BSE is proposing to amend the BOX's Fee Schedule to establish surcharge fees for certain ETF option transactions effected through broker-dealer proprietary accounts. Currently, BOX assesses a surcharge fee for options on the ETF Nasdaq 100 ("QQQQ") that are effected through broker-dealer

proprietary accounts.<sup>7</sup> BOX is proposing to establish similar surcharge fees for transactions in options on Standard & Poor's Depository Receipts ("SPY"), the iShares Nasdaq Biotechnology Index Fund ("IBB"), the iShares Russell 2000 Index Fund ("IWM"), the iShares Russell 2000 Growth Index Fund ("IWO"), the S&P Energy Select Sector SPDR Fund ("XLE"), and the S&P Financial Select Sector SPDR Fund ("XLF").<sup>8</sup> The amount of the surcharge fee will vary, as specified in the Fee Schedule, depending on the ETF, and will range from nine (9) cents to ten (10) cents per contract. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

The Exchange has entered into a license agreement with each ETF issuer in connection with the listing and trading of options on SPY, IBB, IWM, IWO, XLE, and XLF. As with licensed options on the QQQQ, the Exchange is adopting a surcharge fee for trading in these options to defray the licensing costs.<sup>9</sup> The Exchange believes that charging the Participants that trade these instruments is the most equitable means of recovering the costs of the license.

<sup>7</sup> BSE represents that fees will be charged only to BOX Participants. The Commission notes that, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, the BSE filed with the Commission a proposed rule change to enact various fees for the BOX facility, including a fee for trades executed via the InterMarket Linkage, which fee was approved on a pilot basis and which is "equivalent to the regular trading fee for Market Maker and broker-dealer accounts on BOX." See Securities Exchange Release Nos. 48787 (November 14, 2003), 68 FR 65477 (November 20, 2003) (SR-BSE-2003-17) (Notice of filing of proposed rule change); 49066 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2003-17) (Order approving the fee schedule and approving the Linkage fees on a pilot basis until January 31, 2004). Specifically, the Commission notes that, under this pilot program, inbound Principal and Principal as Agent orders sent to BOX via InterMarket Linkage are subject to a \$0.20 per contract fee and, where applicable, BOX passes-through a surcharge for options on certain ETFs. These pilot fees are currently set to expire on July 31, 2006. See Securities Exchange Release Nos. 49300 (February 23, 2004), 69 FR 9655 (March 1, 2004) (SR-BSE-2004-07) (extending the pilot until July 31, 2004); 50124 (July 30, 2004), 69 FR 47963 (August 6, 2004) (SR-BSE-2004-32) (extending the pilot until July 31, 2005); and 52147 (July 28, 2005), 70 FR 44706 (August 3, 2005) (SR-BSE-2005-28) (extending the pilot until July 31, 2006).

<sup>8</sup> BSE represents that SPY, IBB, IWM, IWO, XLE, and XLF constitute "Fund Shares" as defined in Chapter IV, Section 3(i) of the BOX Rules.

<sup>9</sup> The surcharge fee for trading in the options listed in Section 2(c) of the BOX Fee Schedule is equal to the cost charged to BOX by the licensor in the associated licensing agreement.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such amended 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.<sup>14</sup>

### 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:

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 19b-4(f)(2).

<sup>14</sup> The effective date of the original proposed rule is January 4, 2006. The effective date of Amendment No. 2 is February 6, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 6, 2006, the date on which the BSE submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

*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](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2006-01 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-BSE-2006-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2006-01 and should be submitted on or before April 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-3697 Filed 3-14-06; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53449; File No. SR-Phlx-2005-45]

**Self-Regulatory Organizations;  
Philadelphia Stock Exchange, Inc.;**  
**Order Approving Proposed Rule  
Change and Notice of Filing and Order  
Granting Accelerated Approval of  
Amendment No. 1 Thereto Relating to  
the Automatic Execution of Option  
Transactions During Crossed Markets**

March 8, 2006.

**I. Introduction**

On July 12, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the automatic execution of options transactions during crossed markets. The proposed rule change was published for comment in the **Federal Register** on July 27, 2005.<sup>3</sup> The Exchange filed Amendment No. 1 to this proposal on December 9, 2005.

The Commission received no comments regarding the proposal. This notice and order approve the proposed rule change and solicit comments from interested persons on Amendment No. 1, and approve Amendment No. 1 on an accelerated basis.

**II. Description of the Proposal**

Currently, Phlx Rule 1080(c)(iv)(A) states that an order otherwise eligible for automatic execution will instead be manually handled by the specialist when the Exchange's disseminated market is crossed or crosses the disseminated market of another options exchange.<sup>4</sup> The proposed rule change would limit the specialist's manual handling of orders during crossed markets to situations where the market is crossed by more than one minimum trading increment (*i.e.*, 2.10 bid, 2 offer). The proposed rule would provide that an order otherwise eligible for automatic execution would instead be handled manually by the specialist when the Exchange's disseminated market is crossed by more than one minimum

trading increment, or crosses the disseminated market of another options exchange by more than one minimum trading increment. Thus, the effect of the proposal is that orders would be eligible for automatic execution when the Exchange's disseminated market is crossed or crosses another exchange's market by just one minimum trading increment (and where the Exchange's disseminated market is the NBBO).<sup>5</sup>

In Amendment No. 1, the Exchange proposes to amend Phlx Rule 1085, Order Protection, to provide a new exception to liability for the satisfaction of trade-throughs. Specifically, the Exchange proposes to add as a new exception to liability the situation when a trade-through is the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange by not more than one minimum trading increment.

Lastly, as a housekeeping matter, the Exchange proposes to delete Phlx Rule 1080(c)(iv)(G), a reference to an expired pilot program relating to the disengagement of AUTO-X for "non-Streaming Quote Options."<sup>6</sup> There are no longer any non-Streaming Quote Options traded on the Exchange; therefore Phlx Rule 1080(c)(iv)(G) is no longer applicable.

**III. Discussion**

The Commission finds that the proposal is consistent with the requirements of the Act.<sup>7</sup> In particular, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(5),<sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the

<sup>5</sup> Orders otherwise eligible for automatic execution will instead be handled manually by the specialist when the Exchange's disseminated market is not the NBBO. See Exchange Rule 1080(c)(iv)(E). Therefore, for an order to be eligible for automatic execution during a crossed market, the Exchange's disseminated market must be the NBBO.

<sup>6</sup> A "non-Streaming Quote Option" was previously defined as an option that is not traded on the Exchange's electronic trading platform for options, "Phlx XL." See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-hlx-2003-59). All options traded on the Exchange are now traded on Phlx XL.

<sup>7</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 52082 (July 20, 2005), 70 FR 43493.

<sup>4</sup> Eligible orders are currently executed automatically on the Exchange during locked markets (*i.e.*, 2 bid, 2 offer). See Securities Exchange Act Release No. 47359 (February 12, 2003), 68 FR 8322 (February 20, 2003) (SR-Phlx-2003-03).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

mechanism of a free and open market and national market system.

The Commission recognizes that markets that are crossed by only one minimum trading increment in today's increasingly electronic marketplace reflect the number and speed of electronic quotations and the number of market makers submitting such quotations, and, therefore, do not necessarily indicate system errors that may result in unusual risk to market makers, making automatic execution undesirable.

The Commission believes that by permitting automatic executions during crossed markets in such limited situations as proposed by the Exchange, orders should be handled more promptly and Exchange specialists and Registered Options Traders ("ROTs") should still have sufficient ability to manage their market risk during times of crossed markets. A market crossed by an amount greater than one minimum trading increment may be an indication that one or more options market(s) or market makers may be experiencing quotation system issues that do not reflect current market conditions and consequently orders on the Exchange would be handled manually by the specialist in such circumstances.

The Commission notes, however, that in the event Phlx automatically executes orders when the Exchange's disseminated market is crossed, or crosses the disseminated market of another options exchange, by one minimum trading increment, the Exchange would be permitting trade-throughs<sup>9</sup> in contravention of Section 8(c) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") and Exchange Rule 1085.<sup>10</sup> The Commission believes that it is appropriate and in the public interest for Phlx to except members from trade-through liability in the event that the trade-through occurred as a result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange by not more than one minimum trading increment. The Commission believes that, in this limited circumstance, the benefit of

providing an automatic execution outweighs the harm of the resultant trade-through. Therefore, concurrent with this order, the Commission is granting Phlx an exemption from the requirement under Exchange Act Rule 608(c) that Phlx comply with, and enforce compliance by its members with, Section 8(c) of the Linkage Plan, which provides that, "absent reasonable justification and during normal market conditions, members in [Participants'] markets should not effect Trade-Throughs"<sup>11</sup> and from Section 4(b) of the Linkage Plan, which requires the Exchange to enforce compliance by its members with Section 8(c) of the Linkage Plan.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, the Exchange proposes to modify Phlx Rule 1085 to include a new exception to liability for the satisfaction of trade-throughs under the Linkage Plan. Specifically, the Exchange proposes that when a trade-through is the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange by not more than one minimum trading increment, the Exchange member that effected the trade-through should not be liable for satisfaction of such trade-through. Because the Phlx's proposal, which was published for comment, to permit automatic executions in certain, limited crossed market situations would inevitably result in trade-throughs and the proposal, therefore, could not be implemented without the changes to Phlx Rule 1085 proposed in Amendment No. 1, the Commission finds that good cause exists to accelerate approval of Amendment No. 1 to permit the proposed rule change to be implemented on an expedited basis.

Therefore, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 19(b)(2) of the Act.<sup>12</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the Amendment 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-45 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-Phlx-2005-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-45 and should be submitted on or before April 5, 2006.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Phlx-2005-45) is approved, and Amendment No. 1 thereto is approved on an accelerated basis.

<sup>9</sup> A "Trade-Through" is defined in Section 2(29) of the Linkage Plan as "a transaction in an options series at a price that is inferior to the NBBO."

<sup>10</sup> The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Exchange Act Rule 608. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>11</sup> See letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, Commission, to Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, dated March 8, 2006.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-3698 Filed 3-14-06; 8:45 am]  
BILLING CODE 8010-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #10422 and #10423]

**Florida Disaster #FL-00012**

**AGENCY:** Small Business Administration.  
**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Florida dated 03/09/2006.

*Incident:* Severe Storms and Flooding  
*Incident Period:* 02/03/2006.  
*Effective Date:* 03/09/2006.  
*Physical Loan Application Deadline Date:* 05/08/2006.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/11/2006.

**ADDRESSES:** Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Pinellas.  
Contiguous Counties:  
Florida: Hillsborough and Pasco.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere .....	5.750
Homeowners without credit available elsewhere .....	2.875
Businesses with credit available elsewhere .....	7.408
Businesses & Small Agricultural Cooperatives without credit available elsewhere .....	4.000
Other (Including Non-Profit Organizations) with credit available elsewhere .....	5.000

	Percent
Businesses and Non-Profit Organizations without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 10422 6 and for economic injury is 10423 0.

The States which received an EIDL Declaration # are Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 9, 2006.

**Hector V. Barreto,**  
Administrator.

[FR Doc. E6-3747 Filed 3-14-06; 8:45 am]  
BILLING CODE 8025-01-P

**DEPARTMENT OF STATE**

[Public Notice 5341]

**Advisory Committee on Private International Law**

**SUMMARY:** The Advisory Committee's study group on investment securities will hold a meeting Friday, March 31 from 1 p.m. until 5 p.m. e.s.t. to review the results of the second intergovernmental meeting at UNIDROIT on a draft multilateral treaty (convention) on harmonization of certain aspects of investment securities transactional law. The meeting will examine in particular provisions on clearing and settlement of securities transactions through or involving intermediaries, as well as provisions on the relation of intermediaries and issuers of securities and collateral useages including netting of securities transactions.

**Background**

UNIDROIT (the International Institute for the Unification of Private Law, an international organization headquartered in Rome, Italy, which the United States participates actively in as a member state) has initiated a project to prepare a multilateral treaty (convention) on certain aspects of investment securities transactional law. Preliminary studies and proposals were initiated in 2002, and the first intergovernmental meeting held in May 2005. The second meeting will take place in mid-March 2006, and the Advisory Committee meeting is intended to be an initial review of revisions, if any, to the draft convention, and to assess prospects for future negotiations as well as objectives that should be sought. The latter will need to take into account the differences in legal systems, existing laws on

investment securities transactions, and differences in securities markets as well as regulatory systems of the fifty or so countries that participate.

**Scope**

The subject matter of the preliminary draft convention is "Harmonized Substantive Rules Regarding Intermediated Securities" and at this point includes rights and obligations associated with transactions or dispositions of investment securities such as crediting of securities to a securities account, instructions by an account holder, the role and obligations of intermediaries, effect of rules of clearing and settlement systems, whether upper-tier attachment is permissible, priority among competing interests, protection of bona fide acquirers, effect on insolvency proceedings, intermediaries relationship to issuers of securities, rights of setoff, and provisions with respect to collateral transactions such as use of or substitution of collateral, netting, and other matters. The foregoing matters are largely subjects in the United States of uniform securities transaction laws as set out in Uniform Commercial Code Articles 8 and 9. Conclusion of a text, if that is achieved, which is unlikely to occur before 2007, does not obligate any country to adopt or implement its provisions in any way.

**Agenda**

The Advisory Committee's Study group agenda will review viewpoints of various participating countries and financial associations or other organizations that participate in the process, as well as revisions if any to the draft text. It will also cover, time permitting, related developments in international investment securities regulation and practice. The Advisory Committee offers an opportunity for interested members of the public or entities, associations and others to comment on these developments and to make recommendations for future proposals.

**Public Participation**

Advisory Committee Study group meetings are open to the public. The meeting will be at the offices of the Federal Reserve Bank of New York, 33 Liberty Street, NYC. Persons wishing to attend need to provide in advance, not later than Wednesday, March 29 their name, address, contact numbers, including e-mail address if available, and affiliation(s) to [smeltzertk@state.gov](mailto:smeltzertk@state.gov).

Additional meeting information can be obtained from Ms. Smeltzer at 202-

<sup>14</sup> 17 CFR 200.30-3(a)(12).

776-8423. Persons who cannot attend but who wish to comment on any of the topics referred to are welcome to do so in writing or by e-mail to [Joyce.Hansen@ny.frb.org](mailto:Joyce.Hansen@ny.frb.org) or [BurmanHS@State.gov](mailto:BurmanHS@State.gov).

#### Documents

Documents on this project, including the current and prior drafts of the convention, background, and proposals of participants are available at <http://www.Unidroit.org>. Additional documents may be available following the mid-March meeting on that site or by request to Ms. Smeltzer. For further information on UNIDROIT generally please contact Hal Burman at the State Department at the above e-address or by fax at 202-776-8482.

Dated: March 9, 2006.

**Mary Helen Carlson**,  
Attorney Advisor, Advisory Committee,  
Department of State.

[FR Doc. E6-3733 Filed 3-14-06; 8:45 am]

BILLING CODE 4710-08-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Proposed Advisory Circular 25-17A Revision, Transport Airplane Cabin Interiors Crashworthiness Handbook

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability of proposed advisory circular (AC) 25-17A and request for comments; extension of comment period.

**SUMMARY:** This notice announces the extension of the comment period for proposed advisory circular (AC) 25-17A, which was published in the **Federal Register** on November 16, 2005 (70 FR 69623), and closes on March 16, 2006. In that notice, the FAA invited public comment on a proposed AC which provides guidance on a means, but not the only means, of compliance with Title 14, Code of Federal Regulations concerning the crashworthiness requirements as applied to cabin interiors. This extension of the comment period is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATES:** Comments must be received on or before May 1, 2006.

**ADDRESSES:** Send all comments on proposed AC to: Federal Aviation Administration, Attention: Jayson Claar, Airframe/Cabin Safety Branch, ANM-115, Transport Airplane Directorate,

Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98055-4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Jayson Claar at the above address, telephone (206) 227-2194; facsimile (425) 227-1232; or e-mail at: [jayson.claar@faa.gov](mailto:jayson.claar@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25-17A, and submit comments, in duplicate, to the address specified above. The Transport Standards Staff will consider all communications received on or before the closing date for comments before issuing the final AC. The AC can be found and downloaded from the Internet at: <http://www.airweb.faa.gov/rgl> under "Draft Advisory Circulars." A paper copy or a CD ROM of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

##### Background

This proposed AC revision contains guidance pertinent to the cabin safety and crashworthiness type certification requirements of part 25 as amended by Amendments 25-1 through 25-112. Previously, two ACs on this subject have been available to the public:

- AC 25-17 was issued on 7/15/91. It covers Amendments 25-1 through 25-59.
- A proposed AC 25-17A revision was published on 10/7/99, for public comment. It covered Amendments 25-1 through 25-70. That revision was never issued as a final document.
- To assist in reviewing the proposed AC, the FAA identifies the additions/changes made to the guidance by highlighting the text changes the first time they appear. The baseline for identifying the changes to the guidance is the existing AC 25-17, dated 7/15/91.

##### Extension of Comment Period

Since publication of the notice, the FAA has received a request that the comment period for the notice be extended past its original closing date of March 16, 2006, to allow more time in which to study the proposal and to prepare comments on this very important issue.

The FAA has reviewed the request for consideration of an additional amount

of time to comment on proposed AC 25-17A, and has determined that extending the comment period would be in the public interest and that good cause exists for taking this action.

Accordingly, the comment period of proposed AC 25-17A is extended until May 1, 2006.

Issued in Renton, Washington, on March 7, 2006.

**Kalene C. Yanamura**,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06-2446 Filed 3-14-06; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Request Approval From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Fractional Aircraft Ownership Programs

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a "pool" of other shared aircraft and to lease their aircraft to another owner in that pool. The aircraft owners use a common management company to maintain the aircraft and administer the leasing of the aircraft among the owners.

**DATES:** Please submit comments by May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895, or by e-mail at: [Judy.Street@faa.gov](mailto:Judy.Street@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Federal Aviation Administration (FAA)

*Title:* Fractional Aircraft Ownership Programs.

*Type of Request:* Approval of a currently approved collection.

*OMB Control Number:* 2120-0684.

*Forms(s):* NA.

*Affected Public:* An estimated 3,672 Respondents.

*Frequency:* The information is collected as needed.

*Estimated Average Burden Per Response:* Approximately 10 hours per response.

*Estimated Annual Burden hours:* An estimated 38,128 hours annually.

*Abstract:* Fractional ownership is a new program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a "pool" of other shared aircraft and to lease their aircraft to another owner in that pool. The aircraft owners use a common management company to maintain the aircraft and administer the leasing of the aircraft among the owners.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Judy Street, Room 1033, Federal Aviation Administration, Standards and Information Division, ABA-20, 800 Independence Ave., SW., Washington, DC 20591.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 9, 2006.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.*

[FR Doc. 06-2492 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Request Approval From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Revisions to Digital Flight Data Recorders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA invites public comments about our intention to request

the Office of Management and Budget (OMB) to approve a current information collection. This rule request that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions require additional information to be collected to enable more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident happens.

**DATES:** Please submit comments by May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895, or by e-mail at: *Judy.Street@faa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Federal Aviation Administration (FAA)

*Title:* Revisions to Digital Flight Data Recorders.

*Type of Request:* Approval of a currently approved collection.

*OMB Control Number:* 2120-0616.

*Form(s):* NA.

*Affected Public:* An estimated 2,960 Respondents.

*Frequency:* This is a passive information collection.

*Estimated Average Burden Per Response:* This is a passive information collection activity. Responses are recorded automatically in the aircraft's digital flight data recorder.

*Estimated Annual Burden Hours:* 1 hour annually.

*Abstract:* This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions require additional information to be collected to enable more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modification before an accident or incident happens.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Judy Street, Room 1033, Federal Aviation Administration, Standards and Information Division, ABA-20, 800 Independence Ave., SW., Washington, DC 20591.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 9, 2006.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.*

[FR Doc. 06-2493 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Request Approval From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Recording of Aircraft Conveyances and Security Documents

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information collected includes mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

**DATES:** Please submit comments by May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895, or by e-mail at: *Judy.Street@faa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Federal Aviation Administration (FAA)

*Title:* Recording of Aircraft Conveyances and Security Documents.

*Type of Request:* Approval of a currently approved collection.

*OMB Control Number:* 2120-0043.

*Form(s):* AC Form 8050-41.

*Affected Public:* An estimated 55,968 Respondents.

*Frequency:* The records are kept on occasion.

*Estimated Average Burden Per Response:* Approximately 1 hour per response.

*Estimated Annual Burden Hours:* An estimated 55,968 hours annually.

*Abstract:* The information collected includes mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Judy Street, Room 1033, Federal Aviation Administration, Standards and Information Division, ABA-20, 800

Independence Ave., SW., Washington, DC 20591.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 9, 2006.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.*

[FR Doc. 06-2494 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Request Approval From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request Comments; Bird/Other Wildlife Strike

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in service data on aircraft component failure. The FAA form 5200-7, Bird/Other Wildlife Strike Report, is most often completed by the pilot in charge of an aircraft involved in wildlife collision or by Air Traffic Control Tower personnel, or other airline or airport personnel who have knowledge of the incident.

**DATES:** Please submit comments by May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895, or by e-mail at: [Judy.Street@faa.gov](mailto:Judy.Street@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Federal Aviation Administration (FAA)

*Title:* Bird/Other Wildlife Strike.

*Type of Request:* Approval of a currently approved collection.

*OMB Control Number:* 2120-0045.

*Form(s):* FAA Forms 5200-7.

*Affected Public:* An estimated 6,100 Respondents.

*Frequency:* The information is collected as needed.

*Estimated Average Burden Per Response:* Approximately 5 minutes per response.

*Estimated Annual Burden Hours:* An estimated 488 hours annually.

*Abstract:* Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in service data on aircraft component failure. The FAA form 5200-7, Bird/Other Wildlife Strike Report, is most often completed by the pilot in charge of an aircraft involved in wildlife collision or by Air Traffic Control Tower personnel, or other airline or airport personnel who have knowledge of the incident.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Judy Street, Room 1033, Federal Aviation Administration, Standards and Information Division, ABA-20, 800 Independence Ave., SW., Washington, DC 20591.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 9, 2006.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.*

[FR Doc. 06-2495 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Request Approval From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Flight Plans (Domestic/International)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Title 49 U.S.C., paragraph 40103(b) authorizes regulations governing the flight of aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide services to aircraft in flight and protection of persons/property on the ground.

**DATES:** Please submit comments by May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895, or by e-mail at: [Judy.Street@faa.gov](mailto:Judy.Street@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Federal Aviation Administration (FAA)

*Title:* Flight Plans (Domestic/International).

*Type of Request:* Approval of a currently approved collection.

*OMB Control Number:* 2120-0026.

*Form(s):* FAA Forms 7233-1 and 7233-4.

*Affected Public:* An estimated 631,762 respondents.

*Frequency:* The information is collected as needed.

*Estimated Average Burden Per Response:* Approximately 1 minute per response.

*Estimated Annual Burden Hours:* An estimated 279,402 hours annually.

*Abstract:* Title 49 U.S.C., paragraph 40103(b) authorizes regulations governing the flight of aircraft. 14 CFR part 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide services to aircraft in flight and protection of persons/property on the ground.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Judy Street, Room 1033, Federal Aviation Administration, Standards and Information Division, ABA-20, 800 Independence Ave., SW., Washington, DC 20591.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 9, 2006.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.*

[FR Doc. 06-2496 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Request Approval From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Passenger Facility Charge (PFC) Application

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. 49 U.S.C. 40117 authorizes airports to impose passenger facility charges (PFC). This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the FAA. This program provides additional funding for airport development, which is needed now and in the future. This collection is covered by Federal Aviation Regulation (FAR) Part 158, including subsections 158.25, 158.35, 158.37, 158.43, 158.63, 158.65, 158.67, and 158.69.

**DATES:** Please submit comments by May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895, or by e-mail at: [Judy.Street@faa.gov](mailto:Judy.Street@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Federal Aviation Administration (FAA)

*Title:* Passenger Facility Charge (PFC) Application.

*Type of Request:* Approval of a currently approved collection.

*OMB Control Number:* 2120-0557.

*Form(s):* FAA Form 5500-1.

*Affected Public:* An estimated 450 respondents.

*Frequency:* The information is collected on occasion.

*Estimated Average Burden Per Response, per subsection of FAR Part 158:*

158.25: Estimated 100 applications per year at an estimated 50 hours per response.

158.35: Estimated 1 response per year at an estimated 10 hours per response.

158.37: Estimated 250 responses per year at an estimated 16 hours per response.

158.43: Estimated 100 responses per year at an estimated 2 hours per response.

158.63: Estimated 1,200 responses per year at an estimated 10 hours per response, and 59 responses at an estimated 2 hours per response.

158.65: Estimated 600 responses per year at an estimated 2 hours per response.

158.67: Estimated 310 responses per year at an estimated 2 hours per response, and 20 responses per year at an estimated 40 hours per response.

158.69: Estimated 450 responses at an estimated 5.8 hours per response.

*Estimated Annual Burden Hours:* An estimated 26,548 hours annually.

*Abstract:* 49 U.S.C. 40117 authorizes airports to impose passenger facility charges (PFC). This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the FAA. This program provides additional funding for airport development, which is needed now and in the future.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Judy Street, Room 1033, Federal Aviation Administration, Standards and Information Division, ABA-20, 800 Independence Ave., SW., Washington, DC 20591.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 9, 2006.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.*

[FR Doc. 06-2497 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2006-06]

#### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before April 4, 2006.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA-2006-23778, FAA-2006-23865, and FAA-2006-24045] by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

*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 am and 5 pm, Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** John Linsenmeyer (202) 267-5174 or Tim Adams (202) 267-8033, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 8, 2006.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

#### Petitions For Exemption

*Docket No.:* FAA-2006-23778.

*Petitioner:* Groen Brothers Aviation USA, Inc.

*Section of 14 CFR Affected:* 14 CFR 21.191(i)(3), 14 CFR 21.193(e)(1), and 14 CFR 65.107(3).

*Description of Relief Sought:* To allow Groen Brothers Aviation USA, Inc. to sell gyroplanes certificated as Experimental Light-Sport aircraft. For maintenance of light-sport gyroplanes, the petitioner also seeks an exemption permitting certification of repairmen for this purpose.

*Docket No.:* FAA-2006-23865.

*Petitioner:* IndUS Aviation Inc.

*Section of 14 CFR Affected:* 14 CFR 21.190(b)(2).

*Description of Relief Sought:* To allow IndUS Aviation Inc. to change the airworthiness certification of two airplanes from a special airworthiness certificate in the experimental category to a special airworthiness certificate in the light-sport category.

*Docket No.:* FAA-2006-24045.

*Petitioner:* Elbert H. Baker.

*Section of 14 CFR Affected:* 14 CFR 21.190(b)(2).

*Description of Relief Sought:* To allow Elbert H. Baker to apply for a special airworthiness certificate in the light-sport category for an aircraft previously certificated and registered by a foreign country.

[FR Doc. E6-3734 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2006-04]

#### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before April 4, 2006.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA-2006-23779] by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *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.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** John Linsenmeyer (202) 267-5174 or Tim Adams (202) 267-8033, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 8, 2006.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

#### Petitions for Exemption

*Docket No.:* FAA-2006-23779.

*Petitioner:* Image Air.

*Section of 14 CFR Affected:* 14 CFR 135.411(a)(1).

*Description of Relief Sought:* To allow Image Air to add a CL-600 aircraft to its part 135 certificate and maintain it under the applicability of § 135.411(a)(1) even though its type certificated passenger seating configuration is "10 or more."

[FR Doc. E6-3736 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highways in Wisconsin

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Wisconsin. Those actions grant licenses, permits, and approvals for the projects.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before September 11, 2006. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Lawton, Environmental Programs Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Suite 100, Madison, WI 53719. Office Hours are 7:30 a.m. to 4:15 p.m. Central Time, (608) 829-7517,

[Jaclyn.Lawton@fhwa.dot.gov](mailto:Jaclyn.Lawton@fhwa.dot.gov) or Eugene Johnson, Director, Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, WI 53707-7965, Office Hours 8 a.m.-4:30 p.m. Central Time, (608) 267-9527, [eugene.johnson@dot.state.wi.us](mailto:eugene.johnson@dot.state.wi.us).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Wisconsin that are listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the environmental

impact statement (EIS) or Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI), issued in connection with the project, and in other documents in the FHWA administrative record for the project. The FEIS, EA/FONSI and other documents from the FHWA administrative record files for the listed projects are available by contacting the FHWA or the Wisconsin Department of Transportation at the addresses provided above. FEIS and Record of Decision (ROD) documents can be viewed at the FHWA Division Office, viewed at public libraries in the relevant project area, or when available at <http://www.dot.wisconsin.gov>. This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act, 16 U.S.C. 1451–1465; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency

Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

9. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

#### The Projects Subject to This Notice Are:

1. *Project Location*: Sauk County, USH 12, I–90/94 to Ski Hi Road. Project Reference Number: FHWA–WIS–EIS–96–02–F, WisDOT ID 1674–00–00. *Project type*: USH 12, Lake Delton to Sauk City is an 11.6 mile section which includes an ultimate four-lane expansion of the highway with on-alignment and bypass elements for this principal east-west connector route across south-central Wisconsin. Areas of particular concern include potential effects to the adjacent Baraboo Hills and the Baraboo Range National Natural Landmark. NEPA document: FEIS October 21, 2004, ROD February 10, 2005. <http://www.dot.wisconsin.gov/projects/d1/docs/us12news0505.pdf>.

2. *Project Location*: State Trunk Highways 36, 11, and 83; Racine and Walworth Counties, Burlington Bypass. Project Reference Number: FHWA–WIS–EIS–96–01–F, WisDOT ID3180–08–00. *Project type*: The recommended 11.0 mile alternative will provide a rural four-lane divided expressway on new alignment for two principle arterial, and two minor arterial and two major collector highways around the west, south, and east sides of the City of Burlington. NEPA document: FEIS June 1, 2004, ROD March 1, 2005. <http://www.dot.wisconsin.gov/projects/d2/burl/index.htm>.

3. *Project Location*: STH 26, Janesville to Watertown; Rock, Jefferson and Dodge Counties. Project Reference Number: FHWA–WIS–EIS–00–01–F, WisDOT ID1390–04–00. *Project type*:

STH 26 is located in south-central Wisconsin. The project begins on the north side of Janesville at IH 90 and extends north about 48 miles to north of Watertown at STH 60-East. Existing highway corridors will be used to the extent practical using expressway standards. Freeway access control standards will be used for the bypass portions of the route. NEPA document: FEIS June 15, 2005 ROD September 27, 2005. <http://www.dot.wisconsin.gov/projects/d1/wis26/index.htm>.

4. *Project Location*: USH 10, Trestik Road—CTH K; Portage County, Steven's Point Bypass. Project Reference Number: FHWA–WIS–EIS–00–01–F, WisDOT ID 6351–00–00. *Project type*: This project is part of a Tiered EIS. USH 10 is a major east-west highway. The Steven's Point Bypass section extends for about 26 miles and will be built to 4-lane divided expressway standards. Locating the crossing of the Wisconsin River and associated wetlands was an important issue. NEPA document: FEIS November 15, 2004, ROD May 17, 2005.

5. *Project Location*: USH 41, Oconto to Peshtigo; Marinette and Oconto Counties. Project Reference Number: FHWA–WIS–EIS–2005–02–F, WisDOT ID 1154–01–00. *Project type*: USH 41 is a principal arterial highway providing a vital north-south-transportation link between southeastern Wisconsin and Michigan. The route extends for about 21 miles and will be built to 4-lane divided expressway standards. Effects on wetlands was of special concern. NEPA document: FEIS September 13, 2005, ROD December 15, 2005. <http://www.dot.wisconsin.gov/projects/d3/us41oconto/index.htm>.

6. *Project Location*: City of Sturgeon Bay, Crossings of Ship Canal; Door County. Project Reference Number: WisDOT ID 4997–00–17, 18, 38. *Project type*: New crossing of Sturgeon Bay Ship Canal on Maple-Oregon Corridor to meet additional capacity needs, and later rehabilitation of historic bridge crossing on Michigan Street, and approaches. NEPA document: Environmental Assessment November 8, 2001, Finding of No Significant Impact February 7, 2006. <http://www.dot.wisconsin.gov/projects/d3/michigan/index.htm>.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority**: 23 U.S.C. 139(l)(1) and (2).

Issued on: March 9, 2006.

**Jaclyn Lawton,**

*Environmental Programs Engineer, Madison, Wisconsin.*

[FR Doc. E6-3725 Filed 3-14-06; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-23099]

#### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 17 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSR). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41 (b)(10).

**DATES:** The exemptions are effective March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, [maggi.gunnels@fmcsa.dot.gov](mailto:maggi.gunnels@fmcsa.dot.gov), FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

You may see all the comments online through the Document Management System (DMS) at <http://dmses.dot.gov>.

##### Background

On January 25, 2006, FMCSA published a notice of receipt of exemption applications from 17 individuals, and requested comments from the public (71 FR 4194). The 17 individuals petitioned FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: John R. Alger, Gene Bartlett, Jr., Raymond C. Becker, Marland L. Brassfield, Walter M. Brown, Rodney D. Curtis, Troy S. David, Norman J. Day, John M. Doney, Dale Fields, Billy R. Jeffries, Brian E. Monaghan, Roberto G. Serna, Robert V. Sloan, Raymond C. Smith, Gary N. Wilson, and William B. Wilson.

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 17 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on February 24, 2006. Two comments were received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

#### Vision and Driving Experience of the Applicants

The vision requirement in the FMCSR provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the Agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70 to 120 degrees, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Pual Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FMCSA-98-4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 17 exemption applicants listed in this notice fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, corneal scar and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but four of the applicants were either born with

their vision impairments or have had them since childhood. The four individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 20 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 17 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 49 years. In the past 3 years, none of the drivers have had any convictions for traffic violations and none of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 25, 2006 notice (71 FR 4194).

#### Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision

standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) Experienced monocular drivers with good driving records in the waiver program have demonstrated their ability to drive safely. This supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the

experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 17 applicants receiving an exemption, we note that the applicants have had no collisions and no traffic violations among them in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, The Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 17 applicants listed in the notice of January 25, 2006 (71 FR 4194).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 17 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the

following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

Two letters of recommendation were received in favor of granting the Federal vision exemption to two of the applicants. The first was concerning Robert V. Sloan and it was written by the General Teamsters Local Union No. 61. The second letter was regarding Raymond Becker and it was written by Baumberger & Sons, Inc. Both letters suggest that these applicants be granted Federal vision exemption due to their high level of professionalism and safety while driving.

#### Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts John R. Alger, Gene Bartlett, Jr., Raymond C. Becker, Marland L. Brassfield, Walter M. Brown, Rodney D. Curtis, Troy S. David, Norman J. Day, John M. Doney, Dale Fields, Billy R. Jeffries, Brian E. Monaghan, Roberto G. Serna, Robert V. Sloan, Raymond C. Smith, Gary N. Wilson, and William B. Wilson from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

If the exemption is still effective at the end of the 2-year period, the person may

apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 8, 2006.

**Rose A. McMurray,**  
Associate Administrator, Policy and Program Development.

[FR Doc. E6-3739 Filed 3-14-06; 8:45 am]

BILLING CODE 4910-EX-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than May 15, 2006.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number \_\_\_\_\_." Alternatively, comments may be transmitted via facsimile to

(202) 493-6230 or (202) 493-6170, or E-mail to Mr. Brogan at [robert.brogan@fra.dot.gov](mailto:robert.brogan@fra.dot.gov), or to Mr. Angelo at [victor.angelo@fra.dot.gov](mailto:victor.angelo@fra.dot.gov). Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6470). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to

minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*OMB Control Number:* 2130-0035.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form Number(s):* N/A.

*Abstract:* The collection of information is due to the railroad operating rules set forth in 49 CFR part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their systems headquarters. Also, 49 CFR 220.21(b) prescribes the collection of information which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be made available to FRA upon request.

*Reporting Burden:*

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
271.7-Copy-FRA-operating rules, timetables, Class I & II RRs .....	*1	1	1.00	1	\$35
-Amendments .....	32	96	0.33	32	1,120
-Copy of operating rules-Class III .....	20	20	0.92	18	630
-Amendments .....	632	1,896	0.25	474	16,590
217.9-Copy-Prog. for Perf. of Operational Tests .....	*20	20	9.92	198	6,930
-Amendments .....	50	150	1.92	288	10,080
-Oper. Test Rclds .....	632	9,180,000	0.08	765,000	34,425,000
-Summary Tests .....	55	55	1.00	55	1,925
271.11-Copy-Instr. Prog.-Employees .....	*20	20	8.00	160	5,600

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
–Amendments .....	632	220	0.92	202	7,070
220.21(b)–Copy–Op. Rules–Radio .....	(1)	(1)	(1)	(1)	(1)
–Amendments .....	(1)	(1)	(1)	(1)	(1)

\*New.  
 † Include under 217.7

*Total Estimated Responses:* 9,182,478.  
*Total Estimated Annual Burden:* 766,428 hours.  
*Status:* Regular Review.  
*Title:* Filing of Dedicated Cars.  
*OMB Control Number:* 2130–0502.  
*Abstract:* Title 49, Part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words “Dedicated Service” must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. See 49 CFR 215.5(c)(2), 215.5(d).  
*Form Number(s):* N/A.  
*Affected Public:* Businesses.  
*Respondent Universe:* 685 railroads.  
*Frequency of Submission:* On occasion.  
*Total Estimated Responses:* 4.  
*Total Estimated Annual Burden:* 4 hours.  
*Status:* Regular Review.  
*Title:* Bad Order and Home Shop Card.  
*OMB Control Number:* 2130–0519.  
*Abstract:* Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a “bad order” tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged “bad order” so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the “bad order” tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective

cars presenting an immediate hazard are being moved in transportation.  
*Form Number(s):* N/A.  
*Affected Public:* Businesses.  
*Frequency of Submission:* On occasion.  
*Respondent Universe:* 685 railroads.  
*Total Estimated Responses:* 165,000 tags/notifications/records.  
*Total Estimated Annual Burden:* 6,750 hours.  
*Status:* Regular Review.  
*Title:* Stenciling Reporting Mark on Freight Cars.  
*OMB Control Number:* 2130–0520.  
*Abstract:* Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.  
*Form Number(s):* N/A.  
*Affected Public:* Businesses.  
*Frequency of Submission:* On occasion.  
*Respondent Universe:* 685 railroads.  
*Total Estimated Responses:* 20,000 cars stenciled.  
*Total Estimated Annual Burden:* 15,000 hours.  
*Status:* Regular Review.  
*OMB Control Number:* 2130–0523.  
*Title:* Rear-End Marking Devices.  
*Type of Request:* Extension of a currently approved collection.  
*Affected Public:* Businesses.  
*Form Number(s):* N/A.  
*Abstract:* The collection of information is set forth under 49 CFR part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current “Guidelines for Testing of Rear End Marking Devices.” Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

*Respondent Universe:* 685 railroads.  
*Frequency of Submission:* On occasion.  
*Total Estimated Responses:* 2.  
*Total Estimated Annual Burden:* 4 hours.  
*Status:* Regular Review.  
*Title:* Locomotive Certification (Noise Compliance Regulations).  
*OMB Control Number:* 2130–0527.  
*Type of Request:* Extension of a currently approved collection.  
*Affected Public:* Businesses.  
*Form Number(s):* N/A.  
*Abstract:* Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA’s noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.  
*Respondent Universe:* 2 Locomotive Manufacturers.  
*Frequency of Submission:* On occasion.  
*Total Estimated Responses:* 2,040.  
*Total Estimated Annual Burden:* 3,520 hours.  
*Status:* Regular Review.  
*Title:* Grade Crossing Signal System Safety Regulations.  
*OMB Control Number:* 2130–0534.  
*Abstract:* FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA’s regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate

accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing

standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the

grade crossing until repairs have been made.  
*Form Number(s):* FRA F 6180.83.  
*Affected Public:* Businesses.  
*Frequency of Submission:* On occasion; recordkeeping.  
*Reporting Burden:*

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
234.7-Telephone Notification .....	685	4	15	1	\$35
234.9-Grade crossing signal system failure reports .....	685	600	15	150	5,250
234.9-Notification to train crew and highway traffic control authority .....	685	24,000	5	2,000.	70,000
234.9-Recordkeeping .....	685	12,000	10	2,000	70,000

*Total Estimated Responses:* 36,604.  
*Total Estimated Annual Burden:* 4,151 hours.  
*Status:* Regular Review.  
*OMB Control Number:* 2130-0535.  
*Type of Request:* Extension of a currently approved collection.  
*Affected Public:* Businesses.  
*Form Number(s):* N/A.  
*Abstract:* Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for "bridge safety equipment" such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce Federal regulations. The information that is maintained at the job site promotes safe bridge worker practices.  
*Frequency of Submission:* On occasion.  
*Total Estimated Responses:* 6.  
*Total Estimated Annual Burden:* 1 hour.  
*Status:* Regular Review.  
*Title:* Railroad Police Officers.  
*OMB Control Number:* 2130-0537.  
*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads and States.  
*Form(s):* None.  
*Abstract:* Under 49 CFR part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.  
*Total Estimated Responses:* 80,060.  
*Total Annual Estimated Burden Hours:* 155 hours.  
 Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.  
*Authority:* 44 U.S.C. 3501-3520.  
 Issued in Washington, DC on March 7, 2006.  
**D.J. Stadtler,**  
*Director, Office of Budget, Federal Railroad Administration.*  
 [FR Doc. E6-3693 Filed 3-14-06; 8:45 am]  
**BILLING CODE 4910-06-P**

(ICR) listed below. FRA requests that OMB authorize the collection of information identified below on or before March 31, 2006, for a period of 180 days after the date of issuance of this notice in the **Federal Register**. While pursuing the normal rulemaking process to permanently address operational practice deficiencies related to hand-operated main track switches in non-signaled territory, FRA is seeking emergency approval for this information collection because the safety of affected railroad employees and the general public will be seriously jeopardized if the requirements of Emergency Order No. 24 can not be enforced.  
**DATES:** Comments must be received no later than March 29, 2006.  
**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-0568." Alternatively, comments may be transmitted via facsimile to (202) 493-6230 or (202) 493-6170, or E-mail to Mr. Brogan at [robert.brogan@fra.dot.gov](mailto:robert.brogan@fra.dot.gov), or to Mr. Angelo at [victor.angelo@fra.dot.gov](mailto:victor.angelo@fra.dot.gov). Please refer to the assigned OMB control number in any correspondence submitted.  
**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington,

**DEPARTMENT OF TRANSPORTATION**  
**Federal Railroad Administration**  
**Agency Request for Emergency Processing of Collection of Information by the Office of Management and Budget**  
**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).  
**ACTION:** Notice.  
**SUMMARY:** FRA hereby gives notice that it is seeking emergency approval processing from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) for the information collection request

DC 20590 (telephone: (202) 493-6292) or Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6470). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** Below is a brief summary of the currently approved information collection activities that FRA is submitting for clearance by OMB:

OMB Control Number: 2130-0568.

*Title:* FRA Emergency Order No. 24, Notice No. 1.  
*Type of Request:* Emergency approval.  
*Affected Public:* Businesses.  
*Form Number(s):* N/A .  
*Abstract:* Emergency Order No. 24—and its associated collection of information—is FRA’s direct and proactive response to a series of train accidents that occurred throughout the country in 2005 caused by railroad workers improperly setting hand-operated main track switches in non-signalized territory. The collection of

information under Emergency Order No. 24 is aimed at ensuring that railroads and their employees take prescribed extra safety measures to raise awareness and increase compliance regarding following proper operating rules and practices in setting and reversing hand-operated main track switches in non-signalized territory in order to prevent the type of human factor caused accidents and corresponding casualties that occurred in 2005.

*Reporting Burden:*

Emergency order item No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
(1) Instruction On Railroad Operating Rule—Operation of manual main track switches in non-signal territory.	685 Railroads; 100,000 employees.	Already fulfilled .....	N/A .....	N/A .....	N/A.
—New Employees	8,000 employees .....	8,000 sessions .....	60 minutes .....	8,000 hours .....	\$400,000.
—Instruction Records.	685 Railroads .....	8,000 records .....	2 minutes .....	267 hours .....	\$10,680.
(2) Hand-Operated Main Track Switches—Confirmation of Switch Position.	6,000 Dispatchers .....	60,000 verbal confirmations.	30 seconds .....	500 hours .....	\$21,000.
—Review of SPAF by Train Dispatcher.	6,000 Dispatchers .....	15,000 reviews .....	10 seconds .....	42 hours .....	\$2,100.
(3) Switch Position Awareness Form (SPAF).	100,000 employees ..	20,000 forms .....	3 minutes .....	1,000 hours .....	\$50,000.
(4) Job Briefings .....	100,000 employees ..	60,000 briefings .....	1 minute .....	1,000 hours .....	\$50,000.
(5) Radio Communication—Crewmember communication with engineer.	100,000 employees ..	60,000 verbal communications.	15 seconds .....	250 hours .....	\$12,500.
—Notation of Inoperable Radio on SPAF.	90,000 Crew members.	500 form entries .....	5 seconds .....	1 hour .....	\$50.
(6) Operational Tests and Inspections.	685 Railroads .....	Burden Covered Under OMB No. 2130-0035.			
(7) Distribution of Emergency Order—Copies to New Employees.	685 Railroads; 8,000 Employees.	8,000 copies .....	2 seconds .....	4 hours .....	\$160.
—Written Receipt and Acknowledgment of Copy.	685 Railroads; 8,000 Employees.	8,000 receipts + 8,000 records.	1 second + 1 second	4 hours .....	\$140.
(8) Relief—Petitions For Special Approval.	685 Railroads .....	10 petitions .....	60 minutes .....	10 hours .....	\$400.

*Form Number(s):* N/A.  
*Respondent Universe:* 685 Railroads; 100,000 Railroad Employees.  
*Frequency of Submission:* One-time; On occasion.  
*Total Responses:* 255,510.  
*Total Annual Estimated Burden:* 11,078 hours.  
*Status:* Emergency Review.  
 Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may

not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501-3520.

Issued in Washington, DC, on March 8, 2006.

**D.J. Stadler,**  
 Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6-3695 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-06-P**

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration**

[Docket No. FTA-2006-24037]

**Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, New Freedom Programs and Coordinated Public Transit-Human Services Transportation Plans: Notice of Public Meeting, Interim Guidance for FY06 Implementation, and Proposed Strategies for FY07****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Guidance for FY06 Implementation; notice and request for comment for FY07 implementation; and announcement of public meeting.

**SUMMARY:** The Federal Transit Administration (FTA) is developing guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities Program, the Job Access and Reverse Commute Program, and the New Freedom Program beginning in FY07.

FTA solicited public comment in 2005 through a **Federal Register** Notice (Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 70 FR 71950, November 30, 2005) and public listening sessions held in five locations around the country.

Drawing on the public comment received, FTA developed proposed strategies, described in this Notice, for implementation of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs, including the cross-cutting requirement to develop a coordinated public transit-human services transportation plan for FY07. By this Notice, FTA seeks additional public comment to assist us in developing circulars for these programs. This notice also includes guidance for FY06 implementation for those requirements that go into effect immediately.

**DATES:** Comments should be submitted by April 21, 2006. Late-filed comments will be considered to the extent practicable.

**Public Meeting Date**

FTA will host a public meeting on March 23, 2006 from 9 a.m.–5 p.m. at the Hilton Hotel (1767 King Street, Alexandria, VA, 22314). This meeting is intended to further define program strategies discussed in today's Notice.

Anyone interested in attending the March meeting should RSVP to Easter Seals Project ACTION at 1-800-659-6428 or via e-mail at (stibbs@easterseals.com). A summary of the meeting will be posted in the docket. Attendees, in order to have their comments fully considered by FTA, should post their comments to the public docket either before or immediately after the meeting.

**ADDRESSES:** You may submit comments identified by the docket number [FTA-2006-24037] by any of the following methods:

1. Web site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

2. Fax: 202-493-2251.

3. Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

4. 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.

**Instructions:** You must include the agency name (Federal Transit Administration and Docket number (FTA-2006-24037) for this Notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

**Docket:** For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Henrika Buchanan-Smith or Bryna Helfer, Office of Program Management, Federal Transit Administration, 400 Seventh Street SW., Room 9114, Washington, DC 20590, phone: (202) 366-4020, fax: (202) 366-7951, or e-mail, [Henrika.Buchanan-Smith@fta.dot.gov](mailto:Henrika.Buchanan-Smith@fta.dot.gov); [Bryna.Helfer@fta.dot.gov](mailto:Bryna.Helfer@fta.dot.gov); or Bonnie

Graves, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC 20590, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, [Bonnie.Graves@fta.dot.gov](mailto:Bonnie.Graves@fta.dot.gov).

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- A. Will previously funded JARC projects be continued?
- B. What other projects may be eligible for JARC funding?
- C. Can designated recipients transfer JARC funds to the Urbanized Area Formula program?
- D. Are there funding limitations for reverse commute projects?
- XIII. Elderly Individuals and Individuals with Disabilities Program
- A. Will FTA impose § 5333(b) labor protection requirements?
- B. What are the sliding scale match requirements for grant recipients?

#### I. Overview

FTA requested comments in several specific areas in the November 30, 2005 Notice (70 FR 71950) related to the Elderly Individuals and Individuals with Disabilities (§ 5310), Job Access and Reverse Commute (§ 5316), and New Freedom (§ 5317) FTA funded programs. Commenters raised several other key questions and concerns throughout the comment process, both in the docket and during listening sessions. These included: (1) Aspects of the coordinated planning processes; (2) the relationship between public transit-human service plans and other planning processes; (3) the competitive selection process; (4) technical assistance and

training that would be helpful to grantees; (5) strategies and performance measures that could be employed to evaluate the successes of these programs; (6) management of the administrative aspects of these programs; (7) types of projects that should be considered for eligibility under New Freedom as they relate to new public transportation services and alternatives to public transportation beyond the Americans with Disabilities Act (ADA); and (8) types of projects that are eligible under the Job Access and Reverse Commute (JARC) Program. The public comment period and listening sessions assisted FTA with developing the strategies proposed in this Notice for addressing the above areas. Commenters included public and private transportation providers, trade associations, State departments of transportation, metropolitan planning organizations, advocacy groups, human service providers, and individuals with disabilities.

This document includes several items. First, this document provides details on the public meeting, designed to inform final guidance to implement programs beginning in FY07. Second, it establishes interim program guidance for FY06 funds for the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs. These requirements are based on provisions in the statute as well as issues raised and commented on during public comment and listening sessions held in December 2005. Finally, FTA solicits further comments on cross cutting and program specific elements of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs.

#### II. Public Meeting

FTA will host a public meeting on March 23, 2006 from 9 a.m.–5 p.m. at the Hilton Hotel (1767 King Street, Alexandria, VA 22314). This meeting is intended to further define program strategies discussed in today's Notice. Anyone interested in attending the March meeting should RSVP to Easter Seals Project ACTION at 1–800–659–6428 or via e-mail at ([stibbs@easterseals.com](mailto:stibbs@easterseals.com)). A summary of the meeting will be posted in the docket. Attendees, in order to have their comments fully considered by FTA, should post their comments to the public docket either before or immediately after the meeting.

#### III. Interim Guidance for the Elderly Individuals and Individuals With Disabilities, JARC, and New Freedom Grants for FY 2006

FTA received questions asking how the coordinated planning provisions under the three programs should be addressed in FY 2006 and about grant awards in advance of the issuance of final program guidance for the JARC and New Freedom programs. Based on statutory provisions and in response to comments received to date, FTA is adopting the following guidelines for JARC and New Freedom grants for FY 2006.

##### *Coordinated Plan*

For the New Freedom and Elderly Individuals and Individuals with Disabilities programs, SAFETEA–LU requires that projects selected be derived from a coordinated plan beginning in FY 2007. This requirement allows time for the development of a coordinated plan and permits projects to be funded in FY 2006 even if a coordinated plan is not yet in place. FTA encourages designated recipients to conduct coordinated planning activities and consultation with planning partners before the selection of FY 2006 projects, but it is not required in FY 2006 that the projects selected be derived from a completed coordinated public transit-human services transportation plan.

For JARC programs, however, there is no delay in the requirement that projects be derived from a coordinated plan, since a similar requirement was in place for JARC under TEA–21. For areas that previously received JARC discretionary funding, the previously required JARC plan may satisfy the coordinated planning requirement for FY 2006. In areas with no current JARC plan, for FY 2006, the planning partners should at a minimum be consulted about projects and where possible expressions of support should be obtained and documented. Each grant application must describe activities undertaken to reach out to stakeholders, including providers and users of service, to identify community-wide needs and to begin to catalog available resources.

Beginning in FY 2007, the requirement for a coordinated plan will apply fully to all three programs.

##### *Designated Recipient*

As discussed later in this document in Section VI(A), the Governor must designate recipients for JARC and New Freedom funds. In the **Federal Register** Notice of November 30, 2005, FTA indicated that the Governor must

designate the recipient for JARC and New Freedom funds allocated to the State before the first grant application is submitted. For funds allocated to large urbanized areas, FTA will accept FY 2006 grant applications for JARC and New Freedom from the designated recipient for urbanized areas (§ 5307), pending formal designation by the Governor. However, if the designated recipient for JARC and New Freedom will not be the same agency as the designated recipient for § 5307, the new recipient must be officially designated before applying for FY 2006 funds.

#### *Competitive Selection*

The requirement that the designated recipient competitively select the projects for funding under JARC and New Freedom is effective in FY 2006. An applicant for funds before the issuance of final guidance for the programs must at a minimum include in the application a description explaining the steps taken to assure that the projects were selected consistent with a competitive process established at the statewide level (for funds apportioned to the State) or for the large urbanized area.

#### *Final Guidelines*

If FTA subsequently establishes more specific criteria for the coordinated planning or competitive selection process, or for project eligibility, that were not met by early applicants for FY 2006 funds, the requirements will not be applied retroactively to grants awarded prior to the issuance of the guidance.

#### *Administrative Costs*

Designated recipients may apply for the administrative funds allowed under the program in advance of selecting projects in order to support the planning and selection process.

#### *Project and Subrecipient Eligibility*

Projects selected prior to the issuance of guidance should conform to the basic statutory eligibility requirements; specifically, in the case of JARC, access to jobs and reverse commute projects, and in the case of New Freedom, new public transportation services and public transportation alternatives beyond those required by the ADA that assist individuals with disabilities with transportation. Subrecipient eligibility is defined in statute. Guidance exists for the Elderly Individuals and Individuals with Disabilities (§ 5310) program in FTA Circular 9070.1E.

#### *Certifications and Assurances*

FTA's FY 2006 Certifications and Assurances include basic program

requirements for the Elderly Individuals and Individuals with Disabilities (category 17); JARC (category 19); and New Freedom (category 20) programs. These certifications and assurances must be signed prior to submission of an application.

#### **IV. Aspects of the Coordinated Public Transit-Human Services Transportation Plan**

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), (Pub.L. No. 109-59, August 10, 2005) requires that projects selected for funding under the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs be "derived from a locally developed, coordinated public transit-human services transportation plan" and that the plan be "developed through a process that includes representatives of public, private, and nonprofit transportation and human services providers and participation by the public."

Commenters requested clarification of the coordinated public transit-human services transportation planning process with regard to: (1) Elements of a coordinated public transit-human services transportation plan ("coordinated plan"); (2) participation in the coordinated planning process; and (3) the relationship of the coordinated planning process to the metropolitan and statewide transportation planning processes. In addition to requesting clarification, comments submitted included specific questions on and proposed strategies for the coordinated public transit-human services transportation planning process. Commenters' questions, strategies, and requests for clarification are addressed below.

##### *A. What are the elements of a coordinated public transit-human services transportation plan?*

SAFETEA-LU requires that formula programs for the Elderly Individuals and Individuals with Disabilities, Job Access and Reverse Commute (JARC), and New Freedom, be derived from a coordinated plan. However, SAFETEA-LU does not define coordinated plan. From comments received and FTA's experience, we propose to define the coordinated plan as a unified, comprehensive strategy for public transportation service delivery that identifies the transportation needs of individuals with disabilities, older adults, and individuals with limited incomes, lays out strategies for meeting these needs, and prioritizes services. FTA suggests that a coordinated plan

should maximize the programs' collective coverage by minimizing duplication of services. Further, a coordinated plan should be developed through a process that includes representatives of public, private and nonprofit transportation and human services providers, and participation by the public. In addition, FTA proposes that a coordinated plan should incorporate activities offered under other programs sponsored by Federal, State, and local agencies to greatly strengthen its impact.

SAFETEA-LU also does not specify the required elements for a coordinated plan. Again, drawing on feedback from stakeholder meetings as well as FTA experience through the United We Ride initiative and the JARC program, FTA proposes that the key elements of a coordinated plan include the following:

- An assessment of transportation needs for individuals with disabilities, older adults, and persons with limited incomes;
- An inventory of available services that identifies areas of redundant service and gaps in service;
- Strategies to address the identified gaps in service;
- Identification of coordination actions to eliminate or reduce duplication in services and strategies for more efficient utilization of resources; and,
- Prioritization of implementation strategies.

FTA suggests that States and communities utilize the United We Ride Framework for Action when developing a coordinated plan. The Framework for Action (available at <http://www.unitedweride.gov>) is a self assessment tool for communities and States. It addresses each of the core elements of a fully coordinated transportation system.

FTA further suggests that States and communities utilize the Facilitator's Guide that accompanies the Framework for Action. The Facilitator's Guide enables leaders at the Federal, State and community levels to guide a coordinating council, interagency working group, local group of human service agencies, public and private transit providers and stakeholders through a transportation coordination assessment and a plan for action by offering detailed advice on how to choose an existing group or construct an ad hoc group. In addition, it describes how to develop key elements of a plan, such as identifying the needs of targeted populations, assessing gaps and duplications in services, and developing strategies to meet needs and coordinate services. While the Framework for

Action and the Facilitator's Guide will not produce the coordinated plan, they will serve as useful tools in the development of a coordinated plan. The components and related overview of the sections included in the Framework for Action are outlined below:

*Making Things Happen by Working Together:* This section addresses the process for establishing leadership and partnerships. It recommends that coordinators view individuals and organizations as catalysts for envisioning, organizing, and sustaining a coordinated system that provides mobility and access to transportation for all.

*Taking Stock of Community Needs and Moving Forward:* This section assesses the capacity of human service agencies to coordinate transportation services. The assessment, used for planning and action, is a completed and regularly updated community transportation evaluation process that identifies assets, expenditures, services provided, duplication of services, specific mobility needs of the various target populations, and opportunities for improvement.

*Putting Customers First:* This section provides elements to consider for implementation that addresses consumer needs. For example, one element to consider is that customers, including people with disabilities, older adults, and low-income riders, have a convenient and accessible means of accessing information about transportation services. Another element to consider is that customers are regularly engaged in the evaluation of services and identification of needs.

*Adapting Funding for Greater Mobility:* This section provides that coordinators should and often do employ innovative accounting procedures to support transportation services by combining various Federal, State, and local funds. This strategy creates customer friendly payment systems while maintaining consistent reporting and accounting procedures across programs.

*Technology:* This section recognizes that technology is a tool that is being used to design and manage coordinated transportation systems in real time with greater efficiency and effectiveness. Technology is also an integrated component of many of the other sections included in the Framework for Action.

*Moving People Efficiently:* This section discusses creating multimodal and multi-provider transportation networks that are seamless for the customer and operationally and organizationally sound for the

providers. This involves setting up a "family of services" that includes but is not limited to fixed route, flex route, demand response, and volunteer services.

In addition to clarification of the elements of a coordinated plan, some commenters asked which agency should be the lead agency in developing the coordinated plan. FTA proposes that choosing a lead agency is a local decision. Further, some commenters questioned how FTA would define "local" in "locally developed, coordinated public transit-human services plan." FTA proposes that this decision be made at the State, regional, and local levels.

FTA received comments from stakeholders that already have a local planning process in place for human services transportation coordination. FTA recognizes the importance of local flexibility in developing plans for human service transportation and strongly supports current planning processes in human service transportation conducted with stakeholders and partners. FTA notes, however, that all new Federal requirements must be met. Therefore, FTA proposes that communities modify their plans or processes as necessary to meet these requirements. FTA also encourages communities to consider inclusion of new partners, new outreach strategies, and new activities related to the targeted programs and populations.

*B. How do we ensure participation in the coordinated public transit-human services transportation planning process?*

Many commenters expressed concern about participation in the planning process. These concerns were particularly focused on issues regarding: (1) Ensuring adequate outreach; (2) recognition of outreach efforts; and (3) participation from non-DOT funded partner agencies and organizations. Drawing on suggestions from the public docket and listening sessions, FTA proposes the following possible strategies:

1. Adequate Outreach to Allow for Participation

SAFETEA-LU requires recipients to certify that the coordinated plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers, and participation by the public. Many commenters asked FTA to ensure that they and others would be given sufficient notice and an opportunity to participate in the development of

coordinated plans. Some requested that FTA establish specific outreach requirements, while others asked FTA to refrain from establishing such requirements.

FTA recognizes that outreach strategies and potential participants will vary from area to area. Potential outreach strategies could include notices or flyers in centers of community activity, newspaper or radio announcements, e-mail lists, Web postings, and invitation letters to other government agencies, transportation providers, and advocacy groups. Conveners should note that not all potential participants have access to the Internet and they should not rely exclusively on electronic communications. FTA recommends allowing many ways to participate, including in-person testimony, mail, e-mail, and teleconference. Additionally, accessible formats such as interpreters and large print should be provided upon request and as required by law.

Some commenters suggested that specific types of groups and organizations be included in the coordinated planning process. FTA proposes to provide illustrative examples in the guidance of who should be involved in the planning process. FTA recommends that the lead agency developing the coordinated plan would invite the participants, and proposes that the lead agency include the following groups and organizations in the coordinated planning process:

- Area transportation planning agencies;
- Transit riders and potential riders, including both general and targeted populations—those individuals with lower incomes, a representational cross-section of individuals with disabilities, and older Americans;
- Public transportation providers;
- Private transportation providers, including private transportation brokers, ADA paratransit providers, taxi services, intercity bus operators, etc.;
- Non-profit transportation providers;
- Human service agencies funding and/or supporting access for transportation services;
- Other government agencies that administer health, employment, or other support programs for targeted populations. Examples of such programs include Temporary Assistance for Needy Families (TANF), Workforce Investment Act (WIA), Vocational Rehabilitation, Medicaid, Community Action (CAP), Independent Living Centers, and Agency on Aging (AoA) programs;

- Non-profit organizations that serve the targeted populations intended for transportation services;
- Advocacy organizations working on behalf of targeted populations;
- Security and emergency management agencies;
- Any other appropriate local or State officials;
- Tribes and tribal representatives;
- Representatives of the business community (e.g., employers);
- Community-based organizations;
- Economic development agencies;
- Job training and placement agencies; and
- Elected officials.

FTA recognizes that this proposed list would not limit participation by other groups, or require participation by every group listed. FTA expects that planning participants will have an active role in the development and implementation of the plan.

#### 2. Recognition of Outreach Efforts for Inclusion

Several comments received through both the listening sessions and the public docket noted the lack of participation from some targeted groups. Specifically, commenters indicated that recipients did not want to be penalized in an FTA oversight review for lack of participation from targeted stakeholders when they made an effort to include these groups at the table.

FTA recognizes that participation may remain low even though a good faith effort is made by the lead agency to involve the public, representatives of public, private, and nonprofit transportation and human services providers, and others. FTA proposes that the lead agency convening the coordinated planning meeting(s) document the efforts they utilized, such as those suggested above, to solicit involvement.

#### 3. Participation From Partner Agencies and Organizations

Commenters from all regions of the country expressed concern about the lack of participation from targeted partner agencies and organizations. These comments specifically expressed concern about the lack of participation by government funded partners. For example, some commenters noted they have had difficulty engaging other agencies that support and/or provide human services transportation, especially when these agencies have no requirements or incentive to participate. Some commented that it is incumbent upon FTA, as the leader of the United We Ride initiative, to coordinate with other Federal agencies to ensure that government and non-profit agencies that receive Federal assistance from sources

other than the U.S. Department of Transportation to participate in the coordinated planning process.

FTA will continue to work with its Federal partners through the United We Ride initiative to encourage agencies that receive Federal funding to participate in the coordinated planning process. In addition, FTA proposes that State DOT offices work closely with their partner agencies to educate policy makers about the importance of partnering with human services transportation programs and the opportunities that are available when building a coordinated system. FTA also proposes that States work with their partner agencies to provide information to their local constituents regarding the importance of a coordinated public transit and human services transportation system.

In addition, Federal, State, regional, and local policy makers, providers, and advocates need to consistently engage in outreach efforts that enhance the coordinated process, because it is important that all stakeholders identify the opportunities that are available in building a coordinated system. Therefore, FTA encourages States, regional and local communities to utilize the Framework for Action and other tools to build relationships and dialogue with partner agencies. FTA further proposes that recipients demonstrate a good faith effort to reach out to specific targeted partners by maintaining copies of notices, newspaper ads, letters, etc., to document their outreach efforts. FTA recipients should also continue to work with those partners who are interested in coordinating efforts in the interim.

#### V. The Relationship of the Coordinated Plan to the Metropolitan and Statewide Transportation Planning Processes

FTA received a number of questions and proposed strategies from commenters concerning the relationship of the coordinated human services transportation planning process to the broader transportation planning process. These comments addressed: (1) The relationship of the coordinated plan to the metropolitan and statewide planning process regulations specified in 23 CFR part 450 and 49 CFR part 613; (2) the incorporation of the public transit-human services coordinated plan into the metropolitan and statewide plan; (3) the ability to build on current planning processes in human services transportation at the local and State level; (4) the process for including projects from the coordinated plan in the Transportation Improvement Program/State Transportation

Improvement Program; (5) the relationship between the requirements for consultation and public participation included in the development of the public transit-human services coordinated plan and the public participation requirements in metropolitan and statewide transportation planning; (6) the cycle and life of a public transit-human services coordinated transportation plan; (7) the ability to incorporate activities and projects that are supported by funding sources other than the Elderly Individuals and Individuals with Disabilities (§ 5310), Job Access and Reverse Commute (JARC) (§ 5316), and New Freedom (§ 5317) into the public transit-human services transportation plan, and (8) the role of the metropolitan planning organization (MPO) or State in certifying that projects are derived from a locally developed coordinated plan. FTA proposes and seeks comments on the following strategies to address the issues outlined above.

##### A. What is the relationship of the coordinated plan to the metropolitan and statewide planning process regulations specified in 23 CFR Part 450?

FTA's Office of Program Management and Office of Planning and Environment are working closely together to develop guidance on the coordinated plan that would ensure that it is consistent with the new metropolitan and statewide planning regulations now under development.

##### B. What is the relationship between the coordinated planning process and the metropolitan and statewide transportation planning processes?

FTA proposes flexibility in this area. The coordinated plan can either be developed separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans, or be developed as a part of the metropolitan and statewide transportation planning processes.

In either case, FTA proposes that the MPO or State be responsible for determining that the projects selected within a coordinated plan are incorporated in the metropolitan and statewide transportation plans, Transportation Improvement Programs (TIPs), and Statewide Transportation Improvement Programs (STIPs). All projects developed for funding by the coordinated planning process must be incorporated in the TIP and STIP by the MPO in urbanized areas with populations of 50,000 or more, or

incorporated into the STIP by the State for areas under 50,000 in population. Like all federally funded transportation programs, projects must be incorporated into the STIP before receiving a grant. FTA strongly urges the partners developing the coordinated plan to communicate with the relevant MPOs or State planning agencies at an early stage in plan development.

Depending upon the structure established by local decision-makers, the coordinated planning process may or may not become an integral part of the metropolitan or statewide transportation planning processes. FTA understands the fundamental differences in scope, time horizon, and level of detail between the coordinated planning process and the metropolitan and statewide transportation planning processes. FTA also recognizes that there are areas of overlap between the coordinated planning process and the metropolitan and statewide transportation planning processes. Areas of overlap may include: (1) Needs assessments based on the distribution of targeted populations and locations of employment centers, employment-related activities, community services and activities, medical centers, housing and other destinations; (2) inventories of transportation providers/resources, levels of utilization, duplication of service and unused capacity; (3) gap analysis; (4) any eligibility restrictions; and (5) opportunities for increased coordination of transportation services. As such, FTA encourages local communities to choose the method for developing plans that best fits their needs and circumstances.

*C. What is the relationship between the requirement for public participation in the coordinated plan and the requirement for public participation in metropolitan and statewide transportation planning?*

SAFETEA-LU strengthened the public participation requirements for metropolitan and statewide transportation planning. Title 49 U.S.C. 5303(i)(5) and 5304(f)(3), as amended by SAFETEA-LU requires MPOs and States provide "interested parties" with a reasonable opportunity to comment on the transportation improvement plan. "Interested parties" include, among others, affected public agencies, private providers of transportation, representatives of users of public transportation, and representatives of individuals with disabilities.

FTA proposes that MPOs and States coordinate schedules, agendas, and strategies of the coordinated planning process with metropolitan and

statewide planning in order to minimize additional costs and avoid duplication of efforts. MPOs and States must still provide opportunities for participation when planning for transportation related activities beyond human service specific activities.

*D. What is the cycle and duration of the coordinated plan?*

FTA proposes that the coordinated plan follow the update cycles for metropolitan transportation plans (i.e., four years in air quality nonattainment and maintenance areas and five years in air quality attainment areas). However, FTA recommends that there be opportunities to update the coordinated plan to harmonize with the competitive selection process.

*E. What is the role of the MPO or State in certifying that projects are derived from a locally developed coordinated plan?*

It is the designated recipient's responsibility to competitively select projects and certify that they are derived from a coordinated plan. The designated recipient may be the MPO in an urbanized area with a population over 200,000, and will be the State in rural areas and urban areas under 200,000 in population.

*F. What is the role of transportation providers that receive FTA funding under the Urbanized and Other Than Urbanized Formula programs in the coordinated planning process?*

FTA received questions about the role of transportation providers that receive FTA funding under the Urbanized Formula (§ 5307) and the Other Than Urbanized Formula (§ 5311) programs in the coordinated planning process. Recipients of § 5307 and § 5311 assistance are the "public transit" in the public transit-human service transportation plan and their participation is assumed and expected. Further, § 5307(c)(5) requires that, "Each recipient of a grant shall ensure that the proposed program of projects provides for the coordination of public transportation services \* \* \* with transportation services assisted from other United States Government sources." In addition, the § 5311(b)(2)(C)(ii) requires the Secretary of the U.S. Department of Transportation to determine that a State's § 5311 projects "provide the maximum feasible coordination of public transportation service \* \* \* with transportation service assisted by other Federal sources." Further, since States are required to expend 15 percent of the amount available under the Other Than

Urbanized area program (§ 5311) to support intercity bus service, FTA expects the coordinated planning process to take into account human service needs that require intercity transportation.

## VI. Competitive Selection Process

JARC and New Freedom require a recipient of funds to conduct a competitive selection process that is separate from the planning process. Sections 5316 and 5317 of 49 U.S.C., as amended by SAFETEA-LU, provide the following:

"(d) Competitive Process for Grants to Subrecipients.—

(1) Areawide solicitations.—A recipient of funds apportioned under subsection (c)(1)(A) [urbanized areas with a population over 200,000] shall conduct, in cooperation with the appropriate metropolitan planning organization, an area wide solicitation for applications for grants to the recipient and sub recipients under this section.

(2) Statewide solicitation.—A recipient of funds apportioned under subsection (c)(1)(B) [urbanized areas with a population of less than 200,000] or (c)(1)(C) [Other Than Urbanized areas] shall conduct a statewide solicitation for applications for grants to the recipient and sub recipients under this section.

(3) Application.—Recipients and sub recipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

(4) Grant awards.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis."

FTA received a significant number of comments regarding the competitive selection process required for New Freedom and JARC. Specifically, commenters had questions regarding: (1) The role of the designated recipient and the metropolitan planning organization (MPO) in the competitive selection process, particularly when the designated recipient also has an interest in applying for funds under a specific program; (2) the importance of establishing clear guidance on the competitive selection process; and (3) the importance of establishing a fair and equitable distribution as outlined in SAFETEA-LU.

*A. What is the role of the designated recipient and the metropolitan planning organization in the competitive selection process?*

In urbanized areas with populations less than 200,000 and in Other Than Urbanized areas, the State is the designated recipient. For these areas, the governor designates a State agency that will be responsible for administering the JARC and New

Freedom programs, and officially notifies the appropriate FTA regional office in writing of that designation. The governor may designate the State agency that receives Other Than Urbanized area (§ 5311) and/or the Elderly Individuals and Individuals with Disabilities (§ 5310) funds to be the JARC or New Freedom recipient, or the governor may designate a different agency.

In urbanized areas over 200,000 in population, the recipient is designated as prescribed in § 5307(a)(2). FTA interprets the provision regarding the designated recipient for JARC and New Freedom to mean that a recipient charged with administering the JARC and New Freedom programs must be officially designated through a process consistent with the provision in § 5307(a)(2)(A) which provides:

an entity designated in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 that are attributable to transportation management areas identified under section 5303.

Many commenters expressed concern that a "conflict of interest" could exist in large urbanized areas when the designated recipient both conducts the competitive selection process and is itself eligible for funds through that same process. Some commenters suggested that the MPO should hold the competitive selection process instead. However, JARC and New Freedom require that in urbanized areas, "a recipient of funds. \* \* \* shall conduct, in cooperation with the appropriate metropolitan planning organization, an area wide solicitation \* \* \*" 49 U.S.C. 5316(f)(1), 49 U.S.C. 5317(d)(1).

To address this concern, FTA proposes that the designated recipient for JARC and New Freedom does not have to be the same as the designated recipient for Urbanized Area Formula (§ 5307) funds. The potential "conflict of interest" is resolved when a designation of recipient is made for the JARC and New Freedom programs separate from the designation made for the Urbanized Area program (§ 5307). FTA recommends the designated recipient for these funds not be a provider of transportation services. When the MPO is the designated recipient of these funds, FTA proposes that the MPO would be responsible for conducting the competitive selection. FTA seeks comment on this proposed strategy. When the recipient of Urbanized Area Formula (§ 5307) funds is the same as the designated recipient for JARC and New Freedom funds, FTA

proposes a competitive selection process that is transparent, as described below. Further, FTA believes that the requirement for recipients to certify that the selection of projects is "fair and equitable" as required by 49 U.S.C. 5316(f)(2) and 49 U.S.C. 5317(e)(2) also provides an opportunity to ensure that the process is conducted fairly (see below).

*B. What is FTA's guidance on the competitive selection process in urbanized areas?*

SAFETEA-LU requires that selected projects be derived from the locally developed coordinated plan and meet the intent of the program. In addition to this requirement, FTA encourages recipients for large urbanized areas in which the designated recipient for JARC and New Freedom is the same as the Urbanized Area Formula program (§ 5307) recipient or another transit provider, to follow a simple and straightforward selection process. Below is a list of potential strategies, drawn from public comment, that FTA believes are useful for recipients to consider when implementing a competitive selection process. FTA proposes that a recipient can:

- Assure greater inclusion at the onset of the coordinated planning process to allow private sector participation or participation by others who have not been involved in the MPO planning process to alleviate concerns about a level playing field;
- Provide for transparency and documentation in both the coordinated planning process and the competitive selection process to minimize conflict of interest concerns;
- Publish an announcement that lays out program requirements and the process for receiving funds, which may help communities initiate planning activities as well as lay out the recipient's timeline for the competitive selection process;
- Conduct the competitive selection process in cooperation with the MPO to capitalize on the MPO's experience in project evaluation and selection processes for Transportation Improvement Programs (TIPs);
- Rank projects using any of the following approaches: peer review; third party review; best practices advice; or a panel of planning partners; and then publish a list of selected projects for each State/locale; and
- Evaluate who should provide services and ensure fair and equitable competition, by allowing communities to build on transit agencies' experience with third party contracting for specialized services.

FTA may also suggest additional criteria for recipients to use when establishing priorities for selecting projects. Such additional criteria may include selecting projects that: (1) Address gaps in current service provisions for targeted communities; (2) make use of available resources and leverage resources to the extent possible; (3) are considered for geographic distribution to encourage some level of diverse geographic disbursement; (4) coordinate with other Federal programs (e.g., coordinated services, financial partnership); (5) can be achieved with the given technical capacity of project sponsor; and (6) show evidence of broad solicitation for input (coordinated planning process).

*C. What is fair and equitable distribution of funds?*

Several comments also addressed the importance of oversight and accountability to ensure a fair and equitable competitive selection process. Sections 5316(f)(2) and 5317(e)(2) provide that "a recipient of a grant under this section shall certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis." A transparent and inclusive competitive selection and planning process should serve as the basis for the certifications.

Regardless of the process utilized, FTA embraces the importance of demonstrating evidence of a fair and equitable process, especially in the context of potential conflict of interest. FTA proposes that fair and equitable distribution would be addressed in the State Management Review for State administered programs and in the Planning Certification Review and Triennial Review Processes in urbanized areas over 200,000 in population. FTA further proposes that States document the competitive selection process as part of a State Management Plan and that designated recipients in urban areas document the competitive selection process in the annual solicitation notice or some other format available to the public. FTA believes that building on existing reviews would not slow down project implementation and would allow implementation and lessons learned to be examined. FTA seeks public comment on this proposal.

**VII. Technical Assistance and Training**

FTA solicited comments on the technical assistance needs and activities that should be undertaken to assist States and transit agencies with implementation of the requirements for the Elderly Individuals and Individuals

with Disabilities (§ 5310), JARC (§ 5316), and New Freedom (§ 5317). Commenters identified the need for technical assistance and training in: (1) The development of coordinated plans; (2) technical assistance for transportation providers in rural and urban settings; (3) training for non-profit and private transportation providers; (4) technical assistance for human service agencies regarding their role in transportation planning; and (5) training for consumers on skills required for using various transportation resources.

In addition to the two national technical assistance centers related to senior transportation and coordinated human service transportation established by SAFETEA-LU, FTA will continue to engage an existing network of technical assistance resources charged with addressing needs related to human service transportation. These resources include: Easter Seals Project ACTION (a national technical assistance center specializing in accessible transportation); JobLINKS (a national technical assistance program specializing in employment transportation); and Intelligent Transportation Systems (ITS) and Planning Peer to Peer projects (both of which offer on-site, phone, and e-mail consultation on targeted issues). Additionally, FTA will engage the Federal Interagency Coordinating Council, which launched the United We Ride Ambassador program, to provide technical assistance directly to State agencies on implementing the coordinated planning process. FTA will also use the United We Ride Web site (<http://www.unitedweride.gov>) to communicate useful practices from around the country. The National Rural Transportation Assistance Program (RTAP) is also available to assist States in implementing their RTAPs, in building capacity in coordinated human service transportation, and implementing the Elderly Individuals and Individuals with Disabilities (§ 5310), JARC (§ 5316) and New Freedom (§ 5317) programs in rural areas.

In addition, recipients may use up to 10% of their Elderly Individuals and Individuals with Disabilities (§ 5310), JARC (§ 5316) and New Freedom (§ 5317) funds to provide technical assistance, as well as administrative and planning functions, to localities and consumer groups on human service coordination. Designated recipients and States may use the funds directly for these purposes or to provide funding to subrecipients for technical assistance purposes. Regardless of structure, FTA encourages recipients to develop a

strategy for offering technical assistance to local communities.

### VIII. Strategies for Evaluation and Oversight

FTA received comments on issues concerning evaluation and oversight. These comments addressed the following issues: (1) The relationship of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom to the State Management Plan, (2) performance measures, (3) reporting requirements, and (4) oversight of these programs.

#### A. What is the relationship of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom to the State Management Plan (SMP)?

FTA recognizes that portions of the JARC and New Freedom programs will be managed by States. Therefore, FTA proposes that States be required to create an SMP for JARC and New Freedom. Like the current requirement for other FTA programs (e.g., Elderly Individuals and Individuals with Disabilities, Other Than Urbanized Formula, etc), the SMP may be a stand-alone plan for each program, or it may be a consolidated plan that addresses all State-managed programs (Elderly Individuals and Individuals with Disabilities, JARC, New Freedom).

#### B. What program evaluation and performance measures will FTA use to implement and manage the programs?

Commenters were interested in evaluation measures that focus on specified performance outcomes and impacts, having the same data collection and reporting requirements for the Elderly Individuals and Individuals with Disabilities, JARC, New Freedom programs and that data collection that is simple and straightforward.

FTA recognizes the importance of evaluation in the implementation and management of programs. FTA is working with the Federal Interagency Coordinating Council on Access and Mobility to develop performance measures for coordination of human services transportation. Once finalized, FTA proposes to adopt these measures for application to the Elderly Individuals and Individuals with Disabilities, JARC, New Freedom programs. FTA seeks comments on the following proposed measures:

**Performance Measure One: Efficiency of Operations.** Increase the number of rides for persons who are older, persons with disabilities and persons with limited incomes for the same or lower cost.

**Definition (Performance Measure One):** To increase by x% from baseline the number of communities and States reporting the use of shared resources (e.g., staff, equipment, funding, etc) between different agencies and organizations so they can provide more rides for more people with disabilities, older adults, and individuals with lower incomes at a lower cost.

**Performance Measure Two: Program Effectiveness.** Increase the number of communities with easier access to transportation services for persons who are older, persons with disabilities and persons with limited incomes.

**Definition (Performance Measure Two):** To increase by x% from baseline the number of communities (e.g., urban, rural, other) which have a simple point of entry-coordinated human service transportation system for people with disabilities, older adults, and individuals with lower incomes so they have easier access to transportation services.

**Performance Measure Three: Customer Satisfaction.** Increase the quality of transportation services for persons who are older, persons with disabilities and persons with limited incomes.

**Definition (Performance Measure Three):** To increase by x% from baseline the level of customer satisfaction reported in areas related to the availability, the affordability, the acceptability and the accessibility of transportation services for people with disabilities, older adults, and individuals with lower incomes.

The percentage of increase is stated in terms of an annual target, which will be established after a baseline has been determined and validated during the first year. In addition to the cross-cutting performance measures proposed above, FTA will be proposing new evaluation measures for each of the human services related programs (e.g., Elderly Individuals and Individuals with Disabilities, JARC and New Freedom). At the time of this **Federal Register** Notice, specific performance measures for the New Freedom and Elderly Individuals and Individuals with Disabilities programs are not developed. FTA seeks comments on outcome measures for consideration in these areas.

The JARC program has been collecting data for a number of years, and this year JARC will test a new measurement to evaluate outcome and impact. The following measure will be tested and baseline measurements will be obtained during FY06: cumulative number of jobs reached through the provision of JARC-related services for low-income

individuals and welfare recipients. FTA plans to set an annual goal of two million jobs reached and/or job-related services accessed. As a result of this new measure, only data necessary for understanding this impact of JARC will be included in future data collection efforts.

FTA recognizes that past data collection efforts associated with the JARC program have been difficult and cumbersome at times and the information collected has not been useful to the measure program effectiveness. Therefore, FTA is researching options to streamline data collection efforts using existing data collection mechanisms including the National Transit Database (NTD). NTD is a reporting mechanism required for the Urbanized Area Formula (§ 5307) designated recipients and will be implemented as a new requirement under SAFETEA-LU for Other Than Urbanized Formula program (§ 5311) recipients at the State level.

#### *C. What will FTA's reporting requirements be?*

Comments received addressed the need to ensure that reporting elements are identified and defined early in the implementation of programs. Commenters suggested using existing processes and products in the reporting process. Commenters also expressed concern about difficult and burdensome requirements, such as the past reporting requirements in the previous JARC program.

FTA proposes that reporting requirements focus on the minimum data needed to meet the requirements of the Government Performance and Results Act, the Office of Management and Budget's (OMB) Program Assessment Rating Tool, and other performance initiatives set forth by Congress and OMB. FTA proposes to build on existing infrastructure and data collection mechanisms including the use of the National Transit Database beginning in FY 2007. FTA seeks further comments on this approach.

#### *D. How will FTA monitor the implementation of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs?*

FTA will monitor implementation of these programs through our preaward review of grant applications and post-award grant management. FTA will also conduct oversight of these programs through its State Management Review for State managed areas and the Planning Certification Review and

Triennial Review Process in urbanized areas over 200,000 in population.

#### **IX. Mobility Management**

Some commenters requested clarification regarding the use of capital funds for "mobility management." Mobility management activities are eligible capital expenses, defined as "consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation services providers carried out by a recipient or sub-recipient through an agreement entered into with a person, including a government entity, under this chapter (other than sections 5309 and 5320); but excluding operating public transportation services." 49 U.S.C. 5302(a)(1)(L). Mobility management activities can be funded under all FTA programs that provide capital assistance, excluding § 5309 (Bus and Capital Investment) and § 5320 (Public Land) activities. This includes the § 5307 Urbanized Area and the § 5311 Other Than Urbanized Area programs. It also includes the § 5310 Elderly and Persons with Disabilities, the § 5316 Job Access and Reverse Commute and the § 5317 New Freedom programs. While mobility management funds may not be used for the direct provision and operation of coordinated transportation services, including the scheduling, dispatching and monitoring of vehicles, FTA proposes the following as eligible mobility management activities:

- The development of coordinated plans;
- The support of State and local coordination policy bodies and councils;
- The maintenance and operation of transportation brokerages to coordinate providers, funding agencies and customers;
- The development and maintenance of other transportation coordination bodies and their activities, including employer-oriented Transportation Management Organizations, human service organization customer-oriented travel navigator systems and neighborhood travel coordination activities;
- The development and support of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- The acquisition and operation of intelligent transportation technologies to help plan and operate coordinated systems inclusive of Global Information

Systems (GIS) mapping, coordinated vehicle scheduling, dispatching and monitoring technologies as well as technologies to track costs and billing in a coordinated system and single smart customer payment systems.

#### **X. Management of the Administrative Aspects of the Elderly Individuals and Individuals With Disabilities, Job Access Reverse Commute, and New Freedom Programs**

Comments received on various management and administrative cases addressed transfers of funds and the use of 10% of funds for administration, planning, and technical assistance.

#### *A. Can designated recipients transfer New Freedom funds to projects serving areas other than the area specified in the New Freedom program?*

FTA received several comments related to transfer of funds. Specifically, commenters suggested that in order to maximize flexibility, particularly where area allocations are very small, the New Freedom Program should follow JARC language which provides that, "[a] State may use funds \* \* \* for projects serving areas other than the area specified \* \* \* if the Governor of the State certifies that all of the objectives of this section are being met in the specified area; or for projects anywhere in the State if the State has established a statewide program for meeting the objectives of this section." 49 U.S.C. 5316(c)(3).

In response, FTA notes that the exception identified above in the JARC program was not included in New Freedom. Therefore, FTA cannot extend this exception to the New Freedom program.

#### *B. Use of the Elderly Individuals and Individuals With Disabilities, JARC, and New Freedom Funds for Administration, Planning and Technical Assistance*

FTA received comments concerning the use of the ten percent of funds available for administration, planning, and technical assistance. Funds for these purposes (up to ten percent) do not require a local match.

Commenters suggested that funds for administration should be available up front to facilitate development of the coordinated plan in order to provide an incentive for an agency to step forward as lead. This will mitigate the risk that funds will lapse because no one was willing to take on the task of leading the coordinated planning process.

FTA will allow recipients to apply for the ten percent of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom

program funding that can be used for planning, technical assistance, or project administration to cover costs associated with the development and implementation of the coordinated plan and the competitive selection process prior to applying for the project implementation. Preaward authority may be used for these activities. Preaward authority, however, cannot be used for project implementation prior to meeting the Federal requirements associated with the program.

Other commenters wanted to know if the salary cost for an employee administering the New Freedom and other programs would be eligible expenses. The ten percent of funding available does include costs, such as staff time, associated with administering the program.

#### **XI. New Freedom Program**

FTA requested comments on the following topics: (1) The projects and activities stated in SAFETEA-LU that might be funded under the New Freedom program and how they relate to what is "beyond the ADA;" (2) activities related to ADA complementary paratransit services beyond the minimum requirements outlined in 49 CFR part 37; and (3) the types of projects and services that should be considered for eligibility under the New Freedom program. FTA also requested comments regarding technical assistance strategies and measures for evaluating the success of the program. Those comments were addressed in Sections VII and VIII above, respectively.

##### *A. Do projects have to be both "new" and "beyond the ADA?"*

The New Freedom Program specifies that "the Secretary may make grants under this section to a recipient for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 that assist individuals with disabilities with transportation \* \* \*" 49 U.S.C. 5317(b)(1). Many commenters requested clarification regarding what would be considered "new" transportation service and what constitutes "beyond the ADA." Commenters suggested FTA take an expansive view of the types of projects that could be funded through the New Freedom program.

FTA proposes that "new public transportation services" and "public transportation alternatives beyond those required by the ADA" be considered separate categories of service. That is, to be eligible, a project must either be a "new public transportation service" OR

"a public transportation alternative beyond those required by the ADA." In either case, the project must "assist individuals with disabilities with transportation." Therefore, new service is not required to go beyond the ADA. Rather, it must simply be new service that (1) is targeted toward people with disabilities; and (2) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services. One example would be extension of a fixed bus route to serve a particular location identified as in need of service by the disability community.

FTA believes this interpretation allows the New Freedom program to fund projects identified by the conference report (H.R. Rpt. 109-203 at § 3019, July 28, 2005) accompanying SAFETEA-LU and disability advocates that would not have been eligible if services had to be both new and beyond the ADA. Examples include new routes targeted to serve people with disabilities, station accessibility improvements, and existing paratransit services beyond the required  $\frac{3}{4}$  mile on either side of a fixed route—all of which may not have been eligible if funded services or improvements had to be both new and beyond the ADA. FTA proposes that local communities may prioritize for funding those projects that are both new and beyond the ADA. FTA seeks public comment on these proposals.

FTA reminds transit providers and other interested parties that all eligible activities must be derived from the locally developed public transit-human services coordinated plan, and determined based on a competitive selection process.

##### *B. What types of enhancements to ADA complementary paratransit service will FTA consider eligible for New Freedom funding?*

The "ADA" means the Americans with Disabilities Act of 1990 (ADA), Pub.L. No. 101-336, as codified at 42 U.S.C. 12101 *et seq.*, and the Department of Transportation's implementing regulations, at 49 CFR parts 37 and 38. Commenters requested clarification on the types of projects and activities that would be considered beyond the ADA, particularly in the area of enhancements to paratransit service operated under 49 CFR part 37, subpart F.

One area of particular interest to a number of commenters involved the nature of complementary paratransit service under the ADA, and whether or

not door-to-door service should be considered beyond the ADA. Under 49 CFR 37.129, ADA complementary paratransit service is defined as "origin-to-destination" service, which may be defined by local communities as either curb-to-curb or door-to-door. A number of commenters requested that door-to-door service, in a community in which curb-to-curb service is provided, be considered beyond the ADA and therefore eligible for New Freedom funds.

When the regulation was first promulgated, the preamble language stated, "it is reasonable to think that service for some individuals or locations might be better if it is door-to-door, while curb-to-curb might be better in other instances. This is exactly the sort of detailed operational decision best left to the development of paratransit plans at the local level." (56 FR 45604; September 6, 1991). In guidance issued on September 1, 2005, the Department of Transportation provided further clarification of the nature of origin-to-destination service, stating, "where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, provision should still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point. To meet this origin-to-destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service." It would appear, then, that door-to-door service, whether provided across a community or only in circumstances in which a particular passenger needs additional assistance, is not beyond the ADA. FTA proposes that door-through-door service, however, may be eligible for New Freedom funding.

ADA complementary paratransit service may include feeder service to permit individuals who use wheelchairs or who have a specific impairment-related condition which prevents the person from traveling to a boarding location or from a disembarking location to access the fixed route. 49 CFR 37.129. Requirements for ADA complementary paratransit service do not apply to commuter bus, commuter rail, or intercity rail systems. 49 CFR 37.121(c). FTA proposes that feeder service to outlying transit stations for which complementary paratransit is not required, such as commuter rail stations, express or commuter bus service, or an intercity bus stop or rail station, may be eligible for New Freedom funding.

ADA complementary paratransit service is provided to origins and destinations within corridors with a width of  $\frac{3}{4}$  mile on each side of each fixed route, including, within the core service area, those small areas not inside any corridors but surrounded by corridors. 49 CFR 37.131. Outside of the core service area, a transit provider may designate corridors from  $\frac{3}{4}$  mile up to one and one half miles on each side of a fixed route. While ADA complementary paratransit services provided in such locations might be argued to be within the scope of the ADA, the conference report accompanying SAFETEA-LU clearly indicates an intent by Congress to consider paratransit service beyond  $\frac{3}{4}$  mile of the fixed route to be eligible for New Freedom funding by listing it as an example of the type of activity Congress would like the program to fund. H.R. Rpt. 109-203, at § 3019 (July 28, 2005).

The paratransit service area for rail is a circle with a radius of  $\frac{3}{4}$  mile around each station. Again, while the ADA permits local entities to consider paratransit service within a radius of up to one and one half miles around each station as part of their ADA complementary paratransit system, following the same logic as above, FTA proposes to regard any service beyond the minimum  $\frac{3}{4}$  mile as eligible for New Freedom funding.

Commenters stated that some paratransit operators already provide service outside of the  $\frac{3}{4}$  mile corridor, and they expressed a desire to use New Freedom funds to continue that service. FTA proposes to permit New Freedom funds be used for this purpose as long as it is part of the coordinated plan, and the project is competitively selected pursuant to statute.

Next day service is required pursuant to 49 CFR 37.131(b). While the Department's ADA regulations permit same-day service, they do not require it. For this reason, FTA proposes to regard same-day service as eligible for funding under the New Freedom program.

ADA complementary paratransit service shall be available during the same hours and days of service as fixed route service. 49 CFR 37.131(e). Paratransit service provided in addition to these hours is beyond the ADA. For example, if the fixed-route system does not operate between the hours of midnight and 5 a.m., but complementary paratransit service is available 24 hours a day, FTA proposes that New Freedom funding may be sought to support paratransit service between the hours of midnight and 5 a.m.

The regulation contemplates that an entity may provide ADA complementary paratransit service exceeding that provided for in 49 CFR § 37.131. Any service that exceeds the regulatory requirement is beyond the ADA and therefore may be eligible for New Freedom funding.

#### *C. How does FTA propose to define "new" service?*

Commenters requested clarification of what would be considered "new" service and requested that FTA take an expansive view of the types of projects eligible for New Freedom funds. As suggested previously, FTA proposes that enhancing fixed-route service by adding routes or providing additional hours of service in order to target groups of individuals with disabilities would be considered new service that assists individuals with disabilities with transportation, and therefore, eligible for New Freedom funds. Similarly, in rural areas where no service exists, if new service—whether demand response or fixed route—is added that meets the needs of persons with disabilities, that service would be new public transportation service and thus eligible for New Freedom funds. New service may in fact serve a greater population than just individuals with disabilities. FTA proposes that new service that meets the needs of older adults, individuals with low incomes, and/or the general public, if it primarily meets the needs of individuals with disabilities, may be eligible for New Freedom funds or may be supported with New Freedom funds in combination with other funding sources such as the Other Than Urbanized Formula Programs (§ 5311).

The Americans with Disabilities Act Accessibility Guidelines (ADAAG), as well as the Department of Transportation's ADA regulations, require new transportation facilities, including stations, bus stops, bus stop pads, terminals, buildings or other transportation facilities to be accessible. Further, when a transportation facility is altered, then each altered element, space, feature or area must be accessible, unless compliance is technically infeasible, in which case the alteration shall provide accessibility to the maximum extent feasible. Finally, when an area of primary function is altered, the ADA regulations require alterations to the path of travel and other elements serving the area of primary function, unless the cost of doing so would be disproportionate. Specific requirements for transportation facility alterations, including definitions of "maximum extent feasible," "primary

function," "path of travel" and "disproportionate," can be found in subpart C to 49 CFR part 37.

FTA proposes that New Freedom funds may be used to improve accessibility at existing transportation facilities, so long as the projects are clearly intended to remove barriers to existing stations that would otherwise have remained, and are not projects that are part of an already planned station renovation or alteration. In other words, FTA is drawing a distinction between funding a new accessibility enhancement to a station that is not otherwise being altered and the required accessibility portion of a planned alteration. Only the first would be eligible for New Freedom funds. The second would not be similarly eligible.

FTA believes that permitting New Freedom funds to be used for new accessibility enhancements meets the intent of the program as it removes barriers to people with disabilities so they may access greater portions of public transportation systems, such as fixed-route bus service, commuter rail, light rail and rapid rail. This may include building an accessible path to a bus stop that is currently inaccessible, including curbscuts, sidewalks, pedestrian signals or other accessible features. It may include adding an elevator or ramps, detectable warnings, improving signage, or other accessibility improvements to a non-key station. It may also include the implementation of technology improvements that enhance accessibility for persons with disabilities. FTA seeks comment on the types of technology improvements that may be funded, as well as additional types of accessibility improvements or barrier removals that may be funded with New Freedom funds.

Commenters suggested that a "new" project for purposes of eligibility in the New Freedom program would be any otherwise eligible project that did not already exist on the day SAFETEA-LU was signed into law, that is, August 10, 2005. FTA proposes that projects not included in a TIP and/or STIP as of August 10, 2005, would be eligible for New Freedom funds.

#### *D. What other activities may be eligible for New Freedom funds?*

In keeping with the language of the SAFETEA-LU conference report, (H.R.Rpt. 109-203 at § 3019, July 28, 2005), as well as comments received, FTA proposes that the following projects also be eligible for New Freedom funding:

- Purchasing vehicles and supporting accessible taxi, ride sharing, and vanpooling programs; including staff

training, administration, and maintenance. FTA proposes to define an accessible taxi as a vehicle having the capacity to accommodate a passenger who uses a "common wheelchair" as defined under 49 CFR 37.3, at a minimum, while remaining in his/her personal mobility device inside the vehicle, and meeting the same requirements for lifts, ramps and securement systems specified in 49 CFR part 38, subpart B;

- Administering voucher and transit pass programs for transportation services offered by transit and human services providers. This activity supports the management of these activities, and does not support the direct expense for the cost of vouchers or passes;

- Administering volunteer driver and aide programs to support the management of driver recruitment, safety, background checks, scheduling, coordination with consumers, and other related support functions;

- Supporting mobility management among public transportation providers and other human service agencies providing coordinated transportation services;

- Training for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities. This includes travel instruction and travel training services; and,

- Corridor services providing transportation access for populations beyond those served by one agency or organization within a community. For example, a non-profit agency receiving funding through New Freedom could not limit the services it provides to its own clientele; it would coordinate usage of vehicles with other non-profits. These services are intended to build coordination with other existing providers and service options.

#### E. Other Comments

The source of local match was a concern for several commenters. FTA received comments which suggested that "in-kind" services, or the increased cost of expanded paratransit service be considered a source of local match. The New Freedom statute provides that grants for capital projects may not exceed 80 percent of the net capital costs of the project, and grants for operating assistance may not exceed 50 percent of the net operating costs of the project. In-kind match may be allowed pursuant to 49 CFR 18.24 or 49 CFR 19.23 as appropriate. Other commenters suggested charging a premium fare for expanded paratransit service, and questioned whether the premium fare

could be used for local match. Fare box revenue generally must be subtracted from gross project costs to derive net project costs and is not eligible to be used as local match. Revenue from service contracts can be used as local match along with local funds and other non-DOT Federal funds.

Commenters expressed concern that the "stringent Federal requirements" for the New Freedom program might discourage agencies from applying for these funds, and suggested a threshold amount, such as \$10,000, could be established before the Federal requirements take effect. The statute does not contemplate such a threshold. Any recipient applying for New Freedom funds must meet the requirements as outlined in the statute.

One commenter quoted a statement from the November 30, 2005, Notice, which provided that "funding is available for transportation services provided by public, non-profit, or private-for-profit operators" and noted that this seems to preclude awards to individuals. This is correct. A recipient is defined as, "a designated recipient (as defined in Section 5307(a)(2)) and a State that receives a grant under this section directly." 49 U.S.C. 5317(a)(1). A subrecipient is defined as, "a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient." 49 U.S.C. 5317(a)(2).

Commenters asked whether New Freedom monies could be used for operating expenses in urbanized areas with populations over 200,000. Operating expenses are eligible under the New Freedom program subject to a 50% local matching share.

#### XII. Job Access and Reverse Commute Program

Comments relating to the JARC program focused on issues such as: continuation of prior year funding; eligible projects and expenses; the designated recipient's ability to transfer funds to Urbanized Area Formula program (§ 5307); and funding limitations.

##### A. Will previously funded JARC projects be continued?

As discussed previously, FTA proposes that previously funded JARC projects may continue to receive funding under the JARC program. Projects must be derived from the coordinated planning process, which means that local areas will decide if previously funded JARC projects should be continued. In addition, starting in FY

2006, the projects must be competitively selected by the State (for urbanized areas under 200,000 and rural areas) or the designated recipient (for large urbanized areas). FTA seeks comments addressing this proposal.

##### B. What other projects may be eligible for JARC funding?

In general, projects and expenses eligible for JARC funding must relate to "the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment." 49 U.S.C. 5316(a)(1).

During implementation of the TEA-21 JARC provisions, FTA's policy limited JARC funds to "new and expanded" services. The "maintenance of transportation services" language in SAFETEA-LU (above) suggests that not only continuing JARC projects could be funded, but also existing projects that meet the intent of the program but were previously funded by other programs such as the Urbanized Area Formula program (§ 5307). FTA is interested in comments that address the eligibility of existing services that meet the objectives of the JARC program, but may have been funded previously under a different program.

In the conference report (109-203) accompanying SAFETEA-LU, the conferees stated an expectation that FTA would "continue its practice of providing maximum flexibility to job access projects that are designed to meet the needs of individuals who are not effectively served by public transportation, consistent with the use of funds described in the **Federal Register**, Volume 67 (April 8, 2002)." H.R.Rpt. 109-203, at § 3018 (July 28, 2005). That **Federal Register** Notice, (67 FR 16790) provides that eligible projects may include, but are not limited to:

- Late-night and weekend service;
- Guaranteed ride home service;
- Shuttle service;
- Expanding fixed-route mass transit routes;
- Demand-responsive van service;
- Ridesharing and carpooling activities;
- Bicycling;
- Local car loan programs that assist individuals in purchasing and maintaining vehicles for shared rides; and
- Promotion, through marketing efforts, of the:
  - Use of transit by workers with non-traditional work schedules;
  - use of transit voucher programs by appropriate agencies for welfare

recipients and other low-income individuals;

- development of employer-provided transportation such as shuttles, ridesharing, carpooling; or

- use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986.

- Further, the **Federal Register** Notice encouraged communities to:

- Establish regional mobility managers or transportation brokerage activities;

- Apply Geographic Information System (GIS) tools;

- Implement Intelligent

Transportation Systems (ITS), including customer trip information technology;

- Integrate automated regional public transit and human service transportation information, scheduling and dispatch functions; and

- Deploy vehicle position-monitoring systems.

FTA seeks comments addressing this list of projects and requests input regarding additional projects that might be funded under JARC. In addition, FTA has required that JARC projects comply with the definition of public transportation by ensuring shared use of vehicles and availability to the public. Projects supporting bicycling and individual car use or ownership have at times had difficulty meeting this criterion. FTA is interested in comments on how nontraditional public transportation options (e.g., car loan or ownership programs, shared-use station cars, etc.) should be treated under the JARC program.

Previously, promotion of the use of transit vouchers was an eligible expense, but purchase of the vouchers themselves was not an eligible expense under JARC on existing services. For new services, such as guaranteed-ride home taxi programs, where contracts were based on individual rides, purchase of vouchers was an eligible expense. This policy was adopted by FTA because JARC focused on expanding transportation connections to jobs and support services, especially to suburban jobs, late night and weekend jobs and to support services like child care, and not on purchasing transit passes for existing services. FTA seeks comment on whether we should now allow JARC funds to support user-side subsidies for eligible individuals on all services of an existing system (e.g., transit passes to low-income workers

entering the workforce for a specified startup period). If so, how should the program goal of removing transportation service gaps be addressed?

*C. Can designated recipients transfer JARC funds to the urbanized area formula program?*

Some commenters recommended that the designated recipient in a large urbanized area be allowed to transfer JARC funds to the Urbanized Area Formula (§ 5307) program. The law specifically allows States to transfer JARC funds to the Other Than Urbanized (§ 5311) or the Urbanized (§ 5307) formula programs. (49 U.S.C. 5316(e)). However, there is no comparable provision regarding transfer by designated recipients. FTA does not have the discretion to allow such transfers. The designated recipient, however, can communicate in writing to FTA the allocation of JARC funds to other eligible Urbanized Area Formula (§ 5307) recipients in the urbanized area and FTA will make JARC grants directly to those recipients.

*D. Are there funding limitations for reverse commute projects?*

The law no longer limits the amounts that can be used for Reverse Commute projects. The decision to use funds for either Job Access or Reverse Commute projects is made at the local level through the coordinated planning process.

### **XIII. Section 5310 (Elderly Individuals and Individuals With Disabilities Programs)**

The following specific questions were raised about implementation of the § 5310 program: (1) Whether, if funds from these three programs are mixed in a local application, the § 5333(b) [aka § 13(c) labor] requirements convey to the New Freedom and Elderly Individuals and Individuals with Disabilities programs, and, (2) with regard to “sliding scale” matching requirements for the Elderly Individuals and Individuals with Disabilities programs, whether it is possible to obtain matches greater than 80 percent.

*A. Will FTA impose § 5333(b) labor protection requirements?*

FTA is working with the U.S. Department of Labor (DOL) as DOL develops revised procedures for labor certifications for all FTA programs

where labor certifications are required. Labor protective arrangements are not required for New Freedom projects or, except for a few case-by-case exceptions, for the Elderly Individuals and Individuals with Disabilities (§ 5310) projects, even when funds are transferred to Urbanized Area Formula (§ 5307) or Other Than Urbanized Formula (§ 5311) programs. Previously, States were able to transfer § 5310 funds to § 5307 or § 5311 to supplement those program objectives. However, as stated in the November 30, 2005 Notice, SAFETEA-LU provides that the Elderly Individuals and Individuals with Disabilities, funds that are transferred must be used for eligible projects under the Elderly Individuals and Individuals with Disabilities program. This is consistent with transfer provisions included in § 5316 and § 5317. The § 5333(b) requirements of the original program remain attached to the funds even when they are transferred.

*B. What are the sliding scale match requirements?*

SAFETEA-LU allows a higher Federal share for the Elderly Individuals and Individuals with Disabilities program for States described in § 120(b) of title 23 in accordance with the formula under that section for States with a large amount of Federal lands. Section 120(b)(1) provides a limited list of 14 states with specific “enhanced” match ratios for projects that would otherwise have an 80% Federal share under FTA funded projects. In addition, § 120(b)(2) provides a higher Federal share to all States. For those States on the (b)(1) list, the (b)(2) shares are higher than the (b)(1) shares, but in order to obtain the (b)(2) rates the State has to have a specific agreement with the Federal Highway Administration (FHWA) agreeing to spend the difference in local share on highway projects. FTA will honor the match ratio for § 120(b)(1) based on the list included in FHWA Notice N 4540.12, but in order to obtain the higher match for § 120(b)(2) the State will have to provide evidence that it has a current agreement with FHWA.

Issued in Washington, DC, this 8th day of March, 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

[FR Doc. 06-2444 Filed 3-14-06; 8:45 am]

**BILLING CODE 4910-57-P**

# Corrections

Federal Register

Vol. 71, No. 50

Wednesday, March 15, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**42 CFR Parts 405, 410, 411, 413, 414, 424 and 426**

[CMS-1502-F2 and CMS-1325-F]

RIN 0938-AN84 and 098-AN58

### Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006 and Certain Provisions Related to the Competitive Acquisition Program of Outpatient Drugs and Biologicals Under Part B; Correcting Amendment

#### *Corrections*

In rule document 06-1711 beginning on page 9458 in the issue of Friday,

February 24, 2006, make the following corrections:

1. On page 9461, in the table Addendum B, in the fifth column, in the 19th line, "0.2" should read "0.21".
2. On the same page, in the same table, in the sixth column, in the 19th line, "11.76" should read "1.76".
3. On the same page, in the same table, in the fifth column, in the 32nd line, "0.2" should read "0.21".
4. On the same page, in the same table, in the sixth column, in the 32nd line, "11.17" should read "1.17".
5. On the same page, in the same table, in the fifth column, in the 41st line, "0.2" should read "0.21".
6. On the same page, in the same table, in the sixth column, in the 41st line, "11.95" should read "1.95".
7. On the same page, in the same table, in the ninth column, in the 44th line, "10.693.77" should read "10.69".
8. On the same page, in the same table, in the 10th column, in the 44th line, "000" should read "3.77".

[FR Doc. C6-1711 Filed 3-14-06; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

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**Wednesday,  
March 15, 2006**

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## **Part II**

### **Consumer Product Safety Commission**

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**16 CFR Part 1633**

**Standard for the Flammability (Open  
Flame) of Mattress Sets; Final Rule**

**CONSUMER PRODUCT SAFETY  
COMMISSION****16 CFR Part 1632****Final Rule: Standard for the  
Flammability (Open Flame) of Mattress  
Sets****AGENCY:** Consumer Product Safety  
Commission.**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission ("Commission") is issuing a flammability standard under the authority of the Flammable Fabrics Act. This new standard establishes performance requirements based on research conducted by the National Institute of Standards and Technology ("NIST"). Mattresses and mattress and foundation sets ("mattress sets") that comply with the requirements will generate a smaller size fire with a slower growth rate, thus reducing the possibility of flashover occurring. These improved mattresses should result in significant reductions in deaths and injuries associated with the risk of mattress fires. The Commission estimates that the standard could limit the size of mattress fires to the extent that 240 to 270 deaths and 1,150 to 1,330 injuries could potentially be eliminated annually. As discussed in the preamble, this means that the standard could yield lifetime net benefits of \$23 to \$50 per mattress or aggregate lifetime net benefits for all mattresses produced in the first year of the standard of \$514 million to \$1,132 million.

**DATES:** The rule will become effective on July 1, 2007 and applies to mattress sets manufactured, imported, or renovated on or after that date.

**FOR FURTHER INFORMATION CONTACT:** Jason Hartman, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504-7591; e-mail [jhartman@cpsc.gov](mailto:jhartman@cpsc.gov).

**SUPPLEMENTARY INFORMATION:****A. Background**

The Commission is issuing this flammability standard to reduce deaths and injuries related to mattress fires, particularly those initially ignited by open flame sources such as lighters, candles and matches.<sup>1</sup> Although the

<sup>1</sup> Chairman Hal Stratton and Commissioner Nancy Nord issued a joint statement, and Commissioner Thomas H. Moore issued a separate statement. These are available from the Commission's Office of the Secretary (Office of the Secretary, Consumer Product Safety Commission,

Commission has a flammability standard directed toward cigarette ignition of mattresses, 16 CFR Part 1632, a significant number of mattress fires are ignited by open flame sources and are not directly addressed by that standard.

On October 11, 2001, the Commission issued an advance notice of proposed rulemaking ("ANPR") concerning the open flame ignition of mattresses/bedding, 66 FR 51886. CPSC, industry, and the California Bureau of Home Furnishings and Thermal Insulation ("CBHF") worked with National Institute of Standards and Technology ("NIST"), which conducted research to develop a test method that could be included in a standard to address open flame ignition of mattresses. On January 13, 2005, the Commission issued a notice of proposed rulemaking ("NPR") proposing a flammability standard based on the NIST research. 70 FR 2470. Comments received in response to the NPR are discussed in section H of this notice.

The characteristics of mattress/bedding fires and research conducted to develop the standard are discussed in detail in the NPR, 70 FR 2470, and in the staff's technical memoranda supporting this rulemaking. Because a mattress contains a substantial amount of flammable materials, if it (one that does not meet the standard) ignites in a bedroom fire the mattress will burn rapidly, and will quickly reach dangerous flashover conditions within a few minutes. Flashover is the point at which the entire contents of a room are ignited simultaneously by radiant heat, making conditions in the room untenable and safe exit from the room impossible. At flashover, room temperatures typically exceed 600–800° C (approximately 1100–1470° F). About two-thirds of all mattress fatalities are attributed to mattress fires that lead to flashover. This accounts for nearly all of the fatalities that occur outside the room where the fire originated and about half of the fatalities that occur within the room of origin.

The size of a fire can be measured by its rate of heat release. A heat release rate of approximately 1,000 kilowatts ("kW") leads to flashover in a typical room. Tests of twin size mattresses of traditional constructions (complying with the existing mattress cigarette ignition standard in 16 CFR 1632) without bedclothes have measured peak heat release rates that exceeded 2,000 kW in less than 5 minutes. In tests of

Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone 301-504-7293; or e-mail: [cpssc-os@cpsc.gov](mailto:cpssc-os@cpsc.gov) or from the Commission's Web site, [www.cpsc.gov](http://www.cpsc.gov).

traditional king size mattresses, peak rates of heat release were nearly double that. [2]<sup>2</sup>

The goal of the standard is to minimize or delay flashover when a mattress is ignited in a typical bedroom fire. With certain exceptions explained below, the standard requires manufacturers to test specimens of each of their mattress prototypes (designs) before mattresses based on that prototype may be introduced into commerce. The standard prescribes a full-scale test using a pair of T-shaped gas burners designed to represent burning bedclothes. The mattress set must not exceed a peak heat release rate of 200 kW at any time during a 30 minute test, and the total heat release for the first 10 minutes of the test must not exceed 15 megajoules ("MJ"). Mattresses that meet the standard's criteria will make only a limited contribution to a fire, especially in the early stages of the fire. This will allow occupants more time to discover the fire and escape. [1&2]

The State of California's Bureau of Home Furnishings and Thermal Insulation issued an open flame fire standard for mattresses and mattress/box spring sets and futons, TB 603, which went into effect January 1, 2005. Both the Commission's standard and TB 603 are based on the research conducted at NIST, and they use the same basic test method. Both TB 603 and the Commission's standard require that mattresses not exceed a 200 kW peak heat release rate during the 30 minute test. However, the standards differ in the limit they set on total energy release in the first ten minutes of the test (the Commission's standard sets a stricter limit of 15 MJ, while TB 603 sets the limit at 25 MJ).

NIST has conducted extensive research on mattress/bedding fires for the Sleep Products Safety Council ("SPSC") and the Commission. The NPR summarized the research that was conducted to develop the test method and other research conducted prior to publication of the NPR. 70 FR 2470. Subsequently, CPSC contracted with NIST to conduct additional test work to explore technical issues raised in the comments that the Commission received on the NPR and to provide additional technical support for finalizing the

<sup>2</sup> Numbers in brackets refer to documents listed at the end of this notice. They are available from the Commission's Office of the Secretary, (Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone 301-504-7293; or e-mail: [cpssc-os@cpsc.gov](mailto:cpssc-os@cpsc.gov)) or from the Commission's Web site (<http://www.cpsc.gov/library/foia/foia.html>).

standard. This work included a series of tests to evaluate the heat flux of different burner hole sizes, effects of temperature and relative humidity conditions, flammability behavior of one-sided mattresses, and flammability performance (durability) of selected flame retardant barriers. This research is discussed in the CPSC Engineering Sciences Directorate's memorandum, "Technical Rationale for the Standard for the Flammability (Open-Flame) of Mattress Sets and Engineering Responses to Applicable Public Comments," and the staff's briefing memorandum. [2&1]

## B. Statutory Authority

This proceeding is conducted pursuant to Section 4 of the Flammable Fabrics Act ("FFA"), which authorizes the Commission to initiate proceedings for a flammability standard when it finds that such a standard is "needed to protect the public against unreasonable risk of occurrence of fire leading to death or personal injury, or significant property damage." 15 U.S.C. 1193(a).

Section 4 also sets forth the process by which the Commission may issue a flammability standard. As required in section 4(g), the Commission issued an ANPR. 66 FR 51886. 15 U.S.C. 1193(g). The Commission reviewed the comments submitted in response to the ANPR and issued a notice of proposed rulemaking ("NPR") containing the text of the proposed rule along with alternatives the Commission has considered and a preliminary regulatory analysis. 70 FR 2470. 15 U.S.C. 1193(i). The Commission considered comments provided in response to the NPR and is issuing this final rule along with a final regulatory analysis. 15 U.S.C. 1193(j). The Commission cannot issue a final rule unless it makes certain findings and includes these in the regulation. The Commission must find: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. 15 U.S.C. 1193(j)(2). In addition, the Commission must find that the standard (1) is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury or significant property damage, (2) is reasonable, technologically practicable, and appropriate, (3) is limited to fabrics,

related materials or products which present unreasonable risks, and (4) is stated in objective terms. 15 U.S.C. 1193(b). The Commission makes these findings in section 1633.8 of the rule.

## C. The Product

The standard applies to mattresses and mattress and foundation sets ("mattress sets"). "Mattress" is defined as a resilient material, used alone or in combination with other materials, enclosed in a ticking and intended or promoted for sleeping upon. For further details on how the term is defined in the standard see section E.3. of this preamble.

Throughout the standard the Commission uses the term "mattress set" to mean a mattress alone if the mattress is manufactured for sale without a foundation, or a mattress and a foundation together, if the mattress is manufactured for sale with a foundation. Under the standard, a mattress manufactured for sale with a foundation must be tested with its foundation and a mattress manufactured for sale alone must be tested alone.

According to the International Sleep Products Association ("ISPA"), the top four producers of mattresses and foundations account for almost 60 percent of total U.S. production. In 2003, there were 571 establishments producing mattresses in the U.S. [7]

Mattresses and foundations are typically sold as sets. However, more mattresses are sold annually than foundations; some mattresses are sold as replacements for existing mattresses (without a new foundation) or are for use in platform beds or other beds that do not require a foundation. ISPA estimated that the total number of U.S. conventional mattress shipments was 22.5 million in 2004, and would be 23.0 million in 2005. These estimates do not include futons, crib mattresses, juvenile mattresses, sleep sofa inserts, or hybrid water mattresses. These "non-conventional" sleep surfaces are estimated to comprise about 10 percent of total annual shipments of all sleep products. The value of conventional mattress and foundation shipments in 2004, according to ISPA, was \$4.10 and \$1.69 billion respectively, compared to \$3.28 and \$1.51 billion respectively in 2002. [7]

The expected useful life of mattresses can vary substantially, with more expensive models generally experiencing the longest useful lives. Industry sources recommend replacement of mattresses after 10 to 12 years of use, but do not specifically estimate the average life expectancy. In the 2001 mattress ANPR, the

Commission estimated the expected useful life of a mattress at about 14 years. To estimate the number of mattresses in use for analysis of the proposed rule, the Commission used both a 10 year and 14 year average product life. Using CPSC's Product Population Model, the Commission estimates the number of mattresses (conventional and non-conventional) in use in 2005 to be 237 million using a ten-year average product life, and 303.9 million using a fourteen-year average product life. [7]

According to industry sources, queen size mattresses are the most commonly used. In 2004, queen size mattresses were used by 34.9 percent of U.S. consumers. Twin and twin XL were used by 29.3 percent of U.S. consumers, followed by full and full XL (19.9 percent), king and California king (11.5 percent), and all other sizes (4.4 percent). The average manufacturing price in 2004 was \$182 for a mattress and \$90 for a foundation. Thus, the average manufacturing price of a mattress and foundation set was about \$272 in 2004. Although there are no readily available data on average retail prices for mattress/foundation sets by size, ISPA reports that sets selling under \$500 represented 34.6 percent of the market in 2004 compared to 40.7 percent in 2002. Sets selling for between \$500 and \$1000 represented 41.1 percent of the market in 2004, compared to 39.2 percent in 2002. [7]

The top four manufacturers of mattresses and foundations operate about one-half of the 571 U.S. establishments producing these products. The remainder of the establishments are operated by smaller firms. According to the Statistics of U.S. Businesses Census Bureau data, all but twelve mattress firms had fewer than 500 employees in 2002. If one considers a firm with fewer than 500 employees to be a small business, then 97.7 percent ((522-12)/522) of all mattress firms are small businesses. [7] The potential impact of the standard on these small businesses is discussed in section K of this document.

## D. Risk of Injury

Annual estimates of national fires and fire losses involving ignition of a mattress or bedding are based on data from the U.S. Fire Administration's National Fire Incident Reporting System ("NFIRS") and the National Fire Protection Administration's ("NFPA") annual survey of fire departments. The most recent national fire loss estimates indicated that mattresses and bedding were the first items to ignite in 15,300 residential fires attended by the fire

service annually during 1999–2002. These fires resulted in 350 deaths, 1,750 injuries and \$295.0 million in property loss annually. Of these, the staff considers an estimated 14,300 fires, 330 deaths, 1,680 injuries, and \$281.5 million property loss annually to be addressable by the standard.

Addressable means the incidents were of a type that would be affected by the standard solely based on the characteristics of the fire cause (i.e., a fire that ignited a mattress or that ignited bedclothes which in turn ignited the mattress). For example, an incident that involved burning bedclothes but occurred in a laundry room would not be considered addressable. [3]

Among the addressable casualties, open flame fires accounted for about 110 deaths (33 percent) and 890 injuries (53 percent) annually. Smoking fires accounted for 180 deaths (55 percent) and about 520 injuries (31 percent) annually. Children younger than age 15 accounted for an estimated 90 addressable deaths (27 percent) and 340 addressable injuries (20 percent) annually. Adults age 65 and older accounted for an estimated 80 addressable deaths (24 percent) and 180 addressable injuries (11 percent) annually. [3]

## E. Description of the Final Standard

### 1. General

The standard sets forth performance requirements that all mattress sets must meet before being introduced into commerce. The test method is a full scale test based on the NIST research discussed above and in the NPR. The mattress specimen (a mattress alone or mattress and foundation set, usually in a twin size) is exposed to a pair of T-shaped propane burners and allowed to burn freely for a period of 30 minutes. The burners were designed to represent burning bedclothes. Measurements are taken of the heat release rate from the specimen and energy generated from the fire. The standard establishes two test criteria, both of which the mattress set must meet in order to comply with the standard: (1) The peak rate of heat release for the mattress set must not exceed 200 kW at any time during the 30 minute test; and (2) The total heat release must not exceed 15 MJ for the first 10 minutes of the test.

### 2. Imported Mattresses

Imported mattresses must meet the same requirements as domestically produced mattresses. This means that mattress sets produced outside the United States must be tested in accordance with the procedures

described in § 1633.7 and must meet the criteria specified in § 1633.3(b), as well as the quality assurance and recordkeeping requirements in §§ 1633.6 and 1633.11 before they may be introduced into commerce in the United States.

As discussed below, the term “manufacturer” refers to the establishment where a mattress is produced or assembled, and it is the plant or factory producing or assembling the mattress set that is responsible for prototype testing. The importer must have records demonstrating compliance with the standard on an establishment specific basis. To ensure that foreign-made mattress sets comply with the standard, the final rule requires that the records specified in § 1633.11 must be in English and must be kept at a location in the United States.

### 3. Scope and Definitions (§§ 1633.1 and 1633.2)

The standard applies to “mattress sets,” defined as either (1) a mattress and foundation labeled by the manufacturer for sale as a set, or (2) a mattress that is labeled for sale alone. This definition was not in the proposed rule, but was added to simplify the sometimes cumbersome references to mattress and foundation sets. As discussed below, the Commission has added a requirement for manufacturers to label mattresses and foundations to indicate if they are to be sold with a corresponding mattress or foundation or if they are to be sold alone.

“Mattress” is defined substantially as it was in the proposed rule and as it is in the existing mattress standard at 16 CFR 1632, as “a resilient material or combination of materials enclosed by a ticking (used alone or in combination with other products) intended or promoted for sleeping upon.” The standard lists several types of mattresses that are included in this definition (e.g., futons, crib mattresses, youth mattresses). It also refers to a glossary of terms where these items are further defined.

Specifically excluded from the definition of mattress are mattress pads, pillows and other items used on top of a mattress, upholstered furniture which does not contain a mattress, and juvenile or other product pads. Mattress pads and other top of the bed items may be addressed in the Commission’s pending rulemaking on bedclothes, in which an ANPR was issued on January 13, 2005. 70 FR 2514.

Like the Commission’s existing mattress cigarette ignition standard, the open flame standard issued today allows an exemption for one-of-a-kind

mattress sets if they are manufactured to fulfill a physician’s written prescription or manufactured in accordance with comparable medical therapeutic specifications.

The Commission has added a clarification that the term “mattress” includes mattresses that have undergone renovation, and it has added a definition of “renovation.” The NPR had included a policy clarification stating that mattresses renovated for resale would be covered by the standard. The definition of “renovation” comes from that policy clarification. Including mattresses renovated for resale in the mattress definition makes the Commission’s intent to include them in the standard clearer.

For clarification the Commission has added or modified some other definitions. The term “subordinate prototype” was added to refer to a prototype that is not required to be tested. A definition of “confirmed prototype” was added to describe a prototype that is based on a qualified prototype in a pooling arrangement. The term “edge seam” was redefined as “edge” to accommodate mattress or foundation constructions that do not have a seam, as in a continental border. A definition for “prototype developer” was added to describe a third party that designs mattress prototypes for use by a manufacturer, but does not produce mattress sets for sale. The prototype developer does not necessarily conduct tests to qualify the mattress prototype. A barrier supplier, for example, could be a prototype developer. The term “prototype pooling” was clarified to explain the responsibilities of the involved parties.

### 4. General Requirements of the Standard (§ 1633.3)

The test method in the standard is essentially unchanged from the method described in the NPR. It uses the full scale test method developed by NIST. As explained in the NPR, the complexities of mattress construction make a full scale test necessary to evaluate the fire performance of a mattress.

The specimen (a mattress and foundation or mattress alone) is exposed to a pair of T-shaped gas burners. The specimen is to be no smaller than twin size, unless the largest size mattress or set produced of that type is smaller than twin size, in which case the largest size must be tested.

The burners impose a specified local heat flux simultaneously to the top and side of the mattress set for a specified period of time (70 seconds for the top burner and 50 seconds for the side

burner). The burners were designed to represent the local heat flux imposed on a mattress by burning bedclothes based on research conducted by NIST. Details of the test method are discussed in section E.9. below.

#### 5. Test Criteria (§ 1633.3)

The standard establishes two test criteria that the specimen must meet to pass the test. These criteria are the same as those proposed in the NPR. The peak rate of heat release must not exceed 200 kW at any time during the 30 minute test, and the total heat release must not exceed 15 MJ during the first 10 minutes of the test.

Limiting the peak rate of heat release to 200 kW (during the 30 minute test) ensures a less flammable design. It represents a significant improvement in performance compared to traditional mattress designs. The peak rate of heat release limit accounts for the contribution of bedclothes and other room contents to the fire hazard, ensures that the mattress does not cause flashover on its own, is technically feasible, and considers many factors related to the fire scenario (such as room effects). [2]

The test duration of 30 minutes is related to, but not equivalent to, the estimated time required to permit discovery of the fire and allow escape under typical fire scenarios. A 30 minute test is based on an analysis of the hazard and the technological feasibility of producing complying mattresses. It is intended to provide a substantial increase in time for an occupant to discover and escape the fire. The number of failures, test variability, performance unreliability, and associated costs increase significantly with longer test periods. Usually, staying at or below the 200kW limit for a 30 minute test is estimated to provide an adequate time for fire discovery and escape by occupants in the bed or otherwise in the room of fire origin. [2]

The effectiveness of the standard depends on the need for early discovery and escape from the fire without delay. Limiting the early contribution of the mattress will have the greatest impact on reducing the risk as the mattress will have little involvement in the fire for the specified period of time. The early limit of 15 MJ for the first 10 minutes of the test partially compensates for burning bedclothes and ticking by preventing early involvement of the mattress as the bedclothes burn and compensates for other items that might be involved early in a fire. [2]

California's TB 603 prescribes a 25 MJ limit in the first 10 minutes of the test.

However, NIST research and fire modeling indicate that a fire that reaches a size of 25 MJ within 10 minutes could limit a person's ability to escape the room. According to several producers, mattress sets that use available barrier technology release total heat that is far below the 25 MJ limit of TB 603. [7]

#### 6. Prototype Testing (§ 1633.4)

The standard requires, with certain exceptions, that mattress manufacturers have three specimens of each prototype tested before introducing a mattress set into commerce. A prototype is a specific design of a mattress set that serves as a model for the production units that will be introduced into commerce. Mattress sets then produced based on the prototype mattress set must be the same as the prototype with respect to materials, components, design, and methods of assembly. The definition of "manufacturer" refers to the establishment where the mattress is produced or assembled, not the company. Thus, the plant or factory producing or assembling the mattress set is responsible for prototype testing.

However, there are three exceptions to the requirement for prototype testing. A manufacturer is allowed to sell a mattress set based on a prototype that has not been tested if the prototype differs from a qualified prototype (one that has been tested and meets the criteria) only with respect to: (1) The mattress/foundation length and width, not depth (e.g., twin, queen, king, etc.); (2) the ticking, unless the ticking of the qualified prototype has characteristics that are designed to improve the mattress set's test performance; and/or (3) any component, material or method of assembly, provided that the manufacturer can show, on an objectively reasonable basis, that such difference(s) will not cause the mattress set to exceed the specified test criteria. The third exception allows the manufacturer to change the depth of the mattress if he can make the required showing concerning the test criteria. If a manufacturer chooses to make use of the third exception, he/she can minimize testing, but must maintain records documenting that the change(s) will not cause the prototype to exceed the test criteria (see § 1633.11(b)(4) of the rule).

When conducting prototype qualification testing, the manufacturer must test a minimum of three specimens of the prototype in accordance with the test method described, and all of the mattress sets must meet both of the test criteria discussed above. If any one prototype specimen that the

manufacturer tests fails the specified criteria, the prototype is not qualified (even if the manufacturer chooses to test more than three specimens).

As explained in the NPR preamble, the Commission believes that three specimens is the appropriate minimum number for testing at this time (as this is the number typically used and the inter-laboratory study indicates that three replicates are appropriate to adequately characterize mattress performance).

As was proposed, the standard allows a manufacturer to produce a mattress set in reliance on testing that was conducted before the effective date of the standard. The final rule explains the parameters for relying on such tests. The manufacturer must have documentation demonstrating that the tests were conducted according to the required test method and the specified criteria were met. Tests conducted 30 days or more after this standard is published in the **Federal Register** must comply with the recordkeeping requirements of § 1633.11. The manufacturer must also comply with applicable recordkeeping requirements in order to use the prototype pooling and subordinate prototype provisions.

#### 7. Pooling (§ 1633.5)

This section is substantively the same as proposed, but some of the language has been revised for clarification. The standard allows one or more manufacturers to rely on a given prototype that has been developed by a manufacturer or a prototype developer (e.g., a component manufacturer). Under this approach, one manufacturer or prototype developer would conduct (or cause to be conducted) the full prototype testing required (testing three prototype specimens), obtaining passing results, and the other manufacturer(s) may then produce mattress sets represented by that qualified prototype so long as they conduct one successful confirmation test on a specimen they produce. If the mattress set fails the confirmation test, the manufacturer must take corrective measures, and then perform a new confirmation test that must meet the test criteria. If a confirmation test specimen fails to meet the test criteria, the manufacturer of that specimen must also notify the manufacturer that developed the prototype about the test failure.

Pooling may be used by two or more plants within the same firm or by two or more independent firms. The final rule also recognizes that pooling can occur between a manufacturer and a prototype developer. This could be a company that manufactures mattress

components and conducts testing for the manufacturer. As discussed in the regulatory flexibility analysis, pooling should reduce testing costs for smaller companies. Once they have conducted a successful confirmation test, pooling firms can produce mattresses based on a pooled prototype and may continue to do so as long as any changes to the mattress set based on the pooled prototype are limited to the three discussed above: (1) Width or length of the mattress set; (2) the ticking, unless the qualified ticking has characteristics that are designed to improve the mattress's test performance; and/or (3) any component, material or method of assembly that the manufacturer can show (on an objectively reasonable basis) will not cause the prototype to exceed the specified test criteria.

#### *8. Quality Assurance Requirements (§ 1633.6)*

The standard contains the same strict requirements for quality assurance as the proposal did. This is necessary because research and testing indicate that small variations in construction (e.g., missed stitching around the side of the mattress) can affect the fire performance of a mattress. Testing conducted at NIST after the NPR was published reinforced the importance of quality assurance. The language in this section has been changed somewhat to better indicate the Commission's intent that production mattresses should be the same as the prototypes on which they are based.

Each manufacturer must implement a quality assurance program to ensure that the mattress sets it produces are the same as the qualified, subordinate or confirmed prototype on which they are based with respect to materials, components, design and methods of assembly. This means that at a minimum, manufacturers must: (1) Have controls in place on components, materials and methods of assembly to ensure that they are the same as those used in the prototype; (2) designate a production lot that is represented by the prototype; and (3) inspect mattress sets produced for sale.

The standard does not require manufacturers to conduct testing of production mattresses. However, the Commission recognizes the value of such testing as part of a quality assurance program. Therefore, the Commission encourages manufacturers to conduct random testing of mattress sets that are produced for sale.

If a manufacturer obtains any test results or any other evidence indicating that a mattress set does not meet the specified criteria (or that a component,

material or assembly process could negatively affect the test performance of the mattress set), the manufacturer must cease production and distribution in commerce of the affected mattress sets until corrective action is taken.

#### *9. Test Procedure (§ 1633.7)*

The test procedure in the standard is based on the test protocol developed by NIST. The procedure in the final standard is essentially the same as what was proposed with some minor changes and a few substantive modifications described below.

Requirements for sample conditioning have been tightened to require a conditioning temperature greater than 18°C (65°F) and less than 25°C (77°F) and a relative humidity less than 55 percent. Requirements for the test area conditions have been added, stating that the area must be maintained at a temperature greater than 15°C (59°F) and less than 27°C (80.6°F) and at a relative humidity less than 75 percent. Initiation of flammability testing is required to begin within 20 minutes after removal of the mattress sample from environmentally controlled storage conditions.

Specifications for the bed frame supporting the test specimen have been clarified to address dimensions for specimens other than twin-size, frame height to accommodate the side burner in tests of thin mattresses without foundations, and support for more flexible mattress products.

The specification for the gas burner hole size has been changed. In 2000, NIST developed a pair of propane gas burners to consistently simulate the typical heat impact imposed on a mattress by burning bedding items. These burners were incorporated as the ignition source in the full-scale fire test for mattresses. Subsequently, a commercial supplier manufactured a commercial version of the NIST burner apparatus that was used by various test laboratories to conduct full-scale mattress testing in accordance with TB 603 and CPSC's proposed standard. Inadvertently, the commercial version incorporated larger diameter holes in both of the burner heads (1.50 mm vs. 1.17 mm). The proposed standard specified the original NIST burner holes. After this difference was discovered, NIST conducted studies to determine the effects of the larger diameter burner holes on peak burner heat flux. The results of the comparison show that the burners with the larger holes do a better job of meeting the target peak flux levels of bedclothes than do the original burners with the smaller holes, supporting continued use

of the commercial version of the burner apparatus rather than the NIST original. The final standard has been revised to provide for the burner holes used in the commercial versions. [1&2]

A provision has been added to the standard at § 1633.7(k) that allows the use of alternate test apparatus with the approval of the Office of Compliance.

Other minor changes in the test procedure, equipment and set up include clarifications of gas specifications, draft control, and burner orientation. These are discussed in the Engineering Sciences and Laboratory memoranda. [1,4&5]

#### *10. Recordkeeping (§ 1633.11)*

The Commission made several changes to the recordkeeping requirements. The standard now requires that records must be kept in English at a location in the United States and requires the complete physical addresses of suppliers, manufacturing facilities (foreign and domestic), and test laboratories in records. The standard no longer requires the manufacturer to maintain a physical sample of the materials and components of a prototype. The required records should be sufficient to determine compliance without the burden of maintaining physical samples.

The standard requires manufacturers to maintain certain records to document compliance with the standard. This includes records concerning prototype testing, pooling and confirmation testing, and quality assurance procedures and any associated testing. The required records must be maintained for as long as mattress sets based on the prototype are in production and must be retained for three years thereafter.

#### *11. Labeling (§ 1633.12)*

The labeling required by the standard has been modified from the proposed rule. These changes were made to provide more complete information about the manufacturer/importer and to enable consumers to choose the correct foundation (if any) to use with the mattress they purchase.

Each mattress set must bear a permanent label stating (1) the name of the manufacturer, or for imported mattress sets, the name of the foreign manufacturer and the importer; (2) the complete physical address of the manufacturer, and if the mattress is imported, the complete physical address of the importer or U.S. location where records are maintained; (3) the month and year of manufacture; (4) the model identification; (5) prototype identification number; and (6) a

certification that the mattress complies with the standard.

The final rule specifies the wording and format to be used in the compliance certification label, and requires that this information appear on a single label dedicated to this purpose. This will ensure that the information is not detracted from or minimized, and it will prevent potential confusion with state labeling requirements. The label information may be printed on the reverse side of the label in another language.

Included on the label must be a statement indicating whether the mattress meets the standard when used without a foundation, with a corresponding foundation or both alone and with a foundation. A mattress that is tested with a foundation may perform differently when used with a different foundation or without any foundation. Thus, it is important for consumers to know what foundation (if any) the mattress they are purchasing is intended to be sold with.

#### 12. One of a Kind Exemption (§ 1633.13)

The standard allows an exemption for a one-of-a-kind mattress set if it is manufactured in response to a physician's written prescription or manufactured in accordance with comparable medical therapeutic specifications. This provision is unchanged from the proposal and is also present in the 16 CFR 1632 mattress standard.

#### F. Effectiveness Evaluation

As discussed in the NPR, CPSC staff conducted an effectiveness evaluation to assess the potential effectiveness of the proposed standard in addressing deaths and injuries resulting from mattress/bedding fires. The evaluation was based primarily on review of CPSC investigation reports that provided details of the occupants' situations and actions during the fire. Staff reviewers identified criteria that affected the occupants' ability to escape the fires they had experienced. The staff used these criteria to estimate percentage reductions in deaths and injuries expected to occur under the much less severe fire conditions anticipated with improved designs of mattresses that would comply with the standard. The staff then applied these estimated reductions to national estimates of mattress/bedding fire deaths and injuries to estimate numbers of deaths and injuries that could be prevented with the standard. [3]

The staff's effectiveness estimates in the NPR were based on full-scale tests of early experimental mattress designs

incorporating strong, but not necessarily cost-effective barrier systems. These mattress tests were conducted with burning bedclothes so that the fires produced could be used to estimate changes in deaths and injuries expected to result from the standard. In the past few years, mattress designs and materials have evolved with manufacturers now producing mattresses to meet California TB 603. New fire barrier products have been introduced, mattress designs have been more closely engineered to achieve the required performance, and single-sided mattresses have become an increasingly larger and more significant portion of the residential market. [1]

In evaluations that the staff conducted after publication of the NPR, the staff found that when mattresses are closely designed to the performance requirements in the final standard, as is expected as the industry develops their new products, flashover conditions could occur earlier than previously measured with experimental and initially over-engineered designs. Staff accounted for this observed behavior by reducing the effectiveness estimates for the final standard adjusting for the effect on some occupants. The standard's limit on the early contribution of the mattress to the fire (15 MJ in the first 10 minutes) will help to maintain tenable conditions early in the fire and allow for timely discovery and escape from growing fire conditions. [1&2]

The most recent national fire loss estimates indicated that mattresses and bedding were the first items to ignite in 15,300 residential fires attended by the fire service annually during 1999–2002. These fires resulted in 350 deaths, 1,750 injuries and \$295.0 million in property loss each year. Of these, the staff considers an estimated 14,300 fires, 330 deaths, 1,680 injuries, and \$281.5 million property loss annually to be addressable by the standard (i.e., of the type that the standard could affect based on the characteristics of the fire). [3]

For the final rule, the staff has reviewed the fire loss data and updated its effectiveness evaluation to account for the observations discussed above. The staff's analysis is explained in detail in the memorandum "Updated Estimates of Residential Fire Losses Involving Mattresses and Bedding." [3]

CPSC staff estimates that, overall, the standard may be expected to prevent 69 to 78 percent of the deaths and 73 to 84 percent of the injuries presently occurring in addressable mattress/bedding fires attended by the fire service. Applying these percentage reductions to estimates of addressable mattress/bedding fire losses noted

above, staff estimates potential reductions of 240 to 270 deaths and 1,150 to 1,330 injuries annually in fires attended by the fire service when all existing mattress sets have been replaced with mattress sets meeting the new standard. There may also be reductions in property damage resulting from the standard, but data are not sufficient for the staff to quantify this impact. [3]

#### G. Inter-Laboratory Study

Before publication of the NPR, an inter-laboratory study was conducted with the support of the SPSC, NIST, and participating laboratories to explore the sensitivity, repeatability, and reproducibility of the NIST test method. However, only a preliminary analysis of the results of the study was available prior to the NPR. A more detailed analysis is now available. See Damant, G./Inter-City Testing and Consulting Corporation & Sleep Products Safety Council (2005). *Developing an Open-Flame Ignition Standard for Mattresses and Bed Sets (Report on a Precision and Bias Evaluation of the Technical Bulletin 603 Test Method)*. Alexandria, VA: Sleep Products Safety Council. The analysis is summarized below.

All of the participating labs conducted multiple tests of eight different mattress designs. The mattress designs varied critical elements (e.g., the barrier—sheet or high-loft, the type of mattress—single or double-sided) and the style of mattress (e.g., tight or pillow top). [2]

A detailed statistical analysis of the test data suggests neither unreasonable sensitivities nor practical limitations of the NIST test protocol. The results were not affected by substantially varying the parameters (primarily associated with possible test facility and operator errors) selected for the sensitivity study. The data indicate that the specified ignition source is severe enough and the test duration long enough to allow a valid/realistic evaluation of mattress set performance. [2]

The data showed some significant differences in the test results reported by the participating laboratories, and a variety of factors possibly influenced these differences. However, the study suggests that, when the test procedures are correctly followed, it is the combined characteristics and resulting behavior of the mattress components chosen, mattress design, and consistency of the manufacturing processes that determines the test outcome. Observations from the study emphasize the importance of controlling components, materials, and methods of assembly. Quality assurance procedures,

standardized testing, written records, and visual inspections are all means for assuring, verifying, and controlling consistency of production.

Environmental conditions required for tests have also been tightened in the standard. [2]

#### H. Response to Comments on the NPR

As discussed above, the Commission published an NPR in the **Federal Register** on January 13, 2005, proposing a flammability standard addressing open flame ignition of mattresses. 70 FR 2470. During the comment period, the Commission received over 540 comments from consumers, businesses, associations and interested parties representing various segments of the mattress industry and consumers. In addition, comments were presented by interested parties at a public hearing concerning the mattress NPR that the Commission held on March 3, 2005. Additional comments have also been submitted since the close of the comment period.

Commenters who generally supported the proposed rule provided comments regarding definitions, testing procedures, recordkeeping requirements, importer/renovator responsibilities, and other related issues. Those opposed to the standard expressed concerns about the health effects of flame retardant chemicals needed to help mattress sets comply with the performance requirements. [18 & 19] Significant issues and the Commission's responses are summarized below. More detailed responses and responses to minor comments are discussed in the staff's briefing memoranda.

##### 1. Scope and Definitions of the Standard

a. *Comment.* One commenter noted inconsistency in use of the terms "mattress" and "mattress set," which could lead to confusion. The commenter suggested using and defining "mattress set" to refer to mattresses to be tested both with and without a foundation.

*Response.* CPSC has now defined "mattress set" to include mattresses labeled for sale alone and mattresses labeled for sale with a foundation, depending upon the manufacturer's intentions, to resolve the problem of inconsistency, as well as reduce wordiness. The revised definition also makes clear that foundations need not meet the test requirements by themselves. The term is used throughout the final standard.

b. *Comment.* Two commenters stated that the distinction between prototypes that need to be tested and those that do

not is unclear. They suggest using a different term, such as "Model," for prototypes that do not need to be tested.

*Response.* CPSC agrees that using a different term to refer to prototypes that are not required to be tested would prevent confusion. "Subordinate prototype," defined at § 1633.2(p), is used for an untested prototype based on either a qualified or confirmed prototype.

c. *Comment.* One commenter recommended that the term "prototype developer" be defined to permit third parties, such as component suppliers, to design and test prototypes that can be used by mattress manufacturers.

*Response.* The standard does not prohibit entities other than mattress manufacturers from designing and testing mattresses for pooling purposes. For purposes of clarity a definition for "prototype developer" has been added to the standard to describe a third party providing this service to the industry. If such an entity designs a prototype for a mattress manufacturer, the manufacturer would still be responsible for causing qualification testing of and maintaining all records required for that prototype, including those documenting the prototype qualification. If the prototype developer designs and qualifies the prototype, the manufacturer would have to do the required confirmation test.

d. *Comment.* Commenters questioned the applicability of the proposed standard to mattresses used in recreational vehicles and the lodging industry.

*Response.* The Commission intends for this standard to apply to essentially the same mattresses as are currently regulated under Part 1632. Mattresses are "products" under the Flammable Fabrics Act. However, motorized RVs that are subject to the National Highway Traffic Safety Administration's FMVSS No. 302 would not be subject to the Commission's mattress standard.

Interpreting the 1632 mattress standard, the Commission's staff and Office of General Counsel have expressed the view that the flammability standards issued under the FFA (including 1632) are applicable to mattresses, carpets and rugs when installed in travel trailers, 5th wheelers and slide-in campers, but travel trailer cushions that have dual purposes as mattresses and seat cushions would not be considered mattresses.

Mattresses used in the lodging industry are subject to the 1632 mattress standard. Commenters have not presented any reasons why these mattresses should be treated differently under the new Part 1633 regulation

addressing open flame ignition. In the absence of such information, the Commission believes it is appropriate to continue to include mattresses used in the lodging industry as subject to Commission mattress flammability rules.

##### 2. Technical Requirements/ Specifications

a. *Comment.* Several commenters recommended changing the specified burner hole size to the #53 drill size (1.50 mm) used on production burners and limit the time between removal of the sample from conditioning and the start of the test.

*Response.* As discussed earlier in this preamble, NIST recently evaluated peak heat fluxes from two versions of gas burner designs, the original and the commercial burners with larger holes. The study showed that the burners with the larger holes do a better job of meeting the target peak flux levels of bedclothes than do the original burners with the smaller holes. Accordingly, the Commission has revised the standard to specify a nominal burner hole size of 1.50 mm, which corresponds to Grade 10 machining practice with a well formed #53 drill bit.

b. *Comment.* Several commenters recommended tightening sample conditioning and test area conditioning requirements.

*Response.* CPSC agrees that exposure of a mattress sample to the fire test room environmental conditions could likely have an impact on test results. Some laboratories have observed seasonal variations in test performance. It is reasonable, therefore, to require that testing of a specific conditioned sample should begin within a certain amount of time after removal from the storage conditions.

Based on NIST's evaluation of the effects of laboratory humidity in fire test performance, the Commission has revised the standard to require that testing must begin within 20 minutes after removal from the conditioning room. The sample conditioning requirements in § 1633.7(b) of the standard have been revised to specify an upper limit on the temperature. The temperature range must be greater than 18° C (65° F) and less than 25° C (77° F). The test area conditions must now be maintained at a temperature greater than 15° C (59° F) and less than 27° C (80.6° F) and a relative humidity less than 75 percent. These specifications will minimize environmental influences on test results.

c. *Comment.* Several comments requested the use of slightly modified test equipment. For example, one

commenter requested to use a modified technique to obtain the required burner offset from the specimen instead of the foot. Another comment pertained to using an alternate method of measuring the gas flow, rather than using a rotameter type of flowmeter.

*Response.* To address such issues that would not be expected to influence the test, the proposed standard has been revised to include a provision for the use of alternate apparatus in § 1633.7(k): Mattress sets may be tested using test apparatus that differs from that described in this section if the manufacturer obtains and provides to the Commission data demonstrating that tests using the alternate apparatus for the procedures specified in this section yield failing results as often as, or more often than, tests using the apparatus specified in the standard. The manufacturer shall provide the supporting data to the Office of Compliance, and staff will review the data and determine whether the alternate apparatus may be used.

### 3. Exposure to Flame Retardant Chemicals—Health Concerns

a. *Comment.* Numerous commenters stated that they were concerned about the possible toxicity of flame retardant (FR) chemicals in general. Other commenters, including manufacturers of mattresses or mattress components, stated that there are FR chemicals that can be used without presenting a hazard to consumers, workers, or the environment.

*Response.* In the view of the CPSC staff, there are inherently flame resistant materials and FR chemicals available that can be used to meet the standard and that are not likely to present a hazard to consumers, workers, or the environment. The CPSC and Environmental Protection Agency (EPA) staffs will continue to evaluate the potential effects of FR treatments to ensure that they do not present a hazard to consumers, workers, or the environment.

Mattress manufacturers would be free to choose the means of complying with the standard. Options available to manufacturers include the use of inherently flame resistant materials, FR barriers, and FR chemicals. To meet the standard, FR chemicals would most likely be applied to components inside the mattress, such as batting or barriers. However, FR chemicals might be applied to mattress ticking (cover fabric) in some cases. The potential risk presented by any chemical, including FR chemicals, depends on both toxicity and exposure. To the extent that FR chemical treatments remain bound to or

within the mattress, exposure and its attendant risk would be minimized.

The CPSC staff has considered the potential chronic health risks associated with FR chemicals that may be used in mattresses to comply with the standard and continues to study the potential exposures to FR chemicals that may occur over the lifetime of a mattress. The Commission concludes that there are inherently flame resistant materials, FR barriers, and FR chemical treatments that can be used without presenting any appreciable risks of health effects to consumers.

The CPSC staff is also working with the EPA to ensure that the use of FR chemicals does not endanger consumers, workers, or the environment. EPA has broad statutory authority over chemical substances that address potential risks to consumers, workers, and the environment. EPA has several programs such as the Design for the Environment (DfE), High Production Volume (HPV) Chemical Challenge, and Voluntary Children's Chemical Exposure Program (VCCEP) to evaluate the potential hazards of chemicals, including flame retardants, to consumers, workers, and the environment. In addition, the CPSC staff is cooperating with EPA in developing a significant new use rule (SNUR) for FR chemicals that could be used to comply with CPSC or state flammability requirements for upholstered furniture and possibly mattresses. EPA's programs and statutory authority can be used to obtain additional toxicity or exposure data where needed, and complement the activities of the CPSC and the statutory authority of the Commission.

b. *Comment.* A number of commenters were specifically concerned about the toxicity of boric acid, which is used to treat cotton batting.

Other commenters, including manufacturers of mattresses, mattress components, and chemicals, noted that boric acid has been used in mattresses for many years and that their employees have not suffered any ill effects. They noted that the EPA also recently increased its reference dose (RfD) for boric acid. (This means that a greater daily exposure to boric acid is considered acceptable by EPA.)

*Response.* After publication of the NPR, the CPSC staff performed studies to estimate the potential for exposure as well as the potential health risk associated with the use of boric acid as a flame retardant. [4&11] The staff's studies and analysis applied conservative assumptions in areas of scientific uncertainty, that is,

assumptions that may overestimate, rather than underestimate, exposure and risk. The staff concluded that the estimated exposure to boric acid was below both the EPA's revised RfD and the updated CPSC staff's Acceptable Daily Intake (ADI). Thus, boric acid is not expected to pose any appreciable risks of health effects to consumers who sleep on treated mattresses.

c. *Comment.* One commenter specifically mentioned fiberglass as a potentially hazardous FR treatment due to inhalation of glass fibers.

*Response.* The type of fiberglass used in textiles and FR barriers, "continuous filament," is not considered hazardous.

d. *Comment.* Some commenters argued that the risk of dying in a fire is lower than the risk of adverse health effects from exposure to FR chemicals in mattresses.

*Response.* The commenter provided no data on mattress exposures to support this assertion. There are approximately 15,000 fires per year in the U.S. in which mattresses or bedding are the first item ignited, resulting in about 1,750 injuries and 350 deaths per year. The Commission has concluded that the risk of injury or death in a fire involving mattresses or bedding is substantial.

The CPSC has studied the potential exposures and chronic health risks associated with FR chemicals that may be used in mattresses to comply with the standard. The results of these studies indicate that there are a number of commercially available FR-treated barriers that can be used to meet the standard without presenting any appreciable risks of health effects to consumers.

e. *Comment.* Numerous commenters stated that they have multiple chemical sensitivity (MCS), allergies, or other health conditions that could be exacerbated by exposure to FR chemicals.

*Response.* The CPSC concludes that there is no evidence to suggest that FR chemical exposures from mattresses would contribute to the causation or exacerbation of allergies, asthma, or multiple chemical sensitivity (MCS). For the most part, the materials and FR chemicals that will be used to comply with the standard do not share the characteristics of the types of exposures associated with the conditions noted by the commenters.

MCS is a "condition in which a person reports sensitivity or intolerance (as distinct from an allergy) to a number of chemicals and other irritants at very low concentrations." The chemicals include both recognized pollutants—for example, formaldehyde, volatile organic

compounds, and environmental tobacco smoke—as well as agents generally considered to be innocuous, such as fragrances. Health professionals and biomedical scientists differ in their views regarding the underlying causes and physiological processes of this condition. Non-allergic asthma and rhinitis are generally associated with exposure to respiratory irritants such as combustion products, environmental tobacco smoke, dusts, and solvents, while allergic asthma and rhinitis symptoms are most often associated with exposures to airborne biological substances, such as animal dander, insect wastes, molds, and pollen. The FR materials or chemicals under consideration are generally non-volatile, are not associated with fragrances or odors, and are not derived from biological materials.

Furthermore, the potential risks presented by FR chemicals depend on both toxicity and exposure. In most cases, FR chemicals would be applied to components inside the mattress, such as batting or barriers. To the extent that FR chemical treatments remain bound to or within the mattress, exposure and its attendant risk would be minimized.

f. *Comment.* Some commenters claimed that FR chemicals may cause sudden infant death syndrome (SIDS).

*Response.* The CPSC disagrees with the claim that antimony compounds or other FR chemicals may cause sudden infant death syndrome (SIDS). Following a four-year study in the United Kingdom and reviews by a number of expert panels in the UK and the U.S., the expert panels concluded that there is no credible evidence that antimony compounds or any other FR chemicals contribute to SIDS.

g. *Comment.* Some commenters were specifically concerned about the toxicity of polybrominated diphenyl ethers (PBDE's), including decabromodiphenyl oxide (DBDPO).

*Response.* PBDE's are a family of FR chemicals that have been used in some components of consumer products. Octabromodiphenyl ether (octa-BDE) was a relatively minor product that was never used in mattresses or upholstered furniture. Pentabromodiphenyl ether (penta-BDE) is no longer in use. It was one of the primary FR treatments for flexible polyurethane foam (PUF), which is used in mattresses, upholstered furniture, and other applications. However, most non-California residential mattresses and upholstered furniture do not require FR-treated PUF to pass current flammability requirements. The European Chemicals Bureau concluded that there is no reason to ban DBDPO. The U.S. EPA

and the European Chemicals Bureau continue to review the potential environmental effects of DBDPO. The CPSC staff evaluated risks associated with mattress barriers containing DBDPO and concluded that DBDPO used in barriers for mattresses is not expected to pose any appreciable risk of health effects in consumers. [1&13]

h. *Comment.* Some individuals commented that there is no guidance for manufacturers to consider toxicity and exposure when selecting FR chemicals.

*Response.* Under the FHSA, manufacturers are responsible for ensuring that their products either do not present a hazard to consumers or, if they are hazardous, that they are properly labeled according to the requirements of the FHSA. In 1992, the Commission issued chronic hazard guidelines to assist manufacturers in complying with the FHSA (16 CFR 1500.3(c)(2)). The guidelines address carcinogenicity, neurotoxicity, reproductive and developmental toxicity, exposure, bioavailability, and risk assessment.

i. *Comment.* One manufacturer commented that the CPSC staff should use realistic exposure scenarios, rather than overly conservative ones.

*Response.* In assessing chronic health hazards, the goal of the CPSC staff is to determine whether “reasonably foreseeable handling and use” may be hazardous to consumers. Therefore, the staff generally attempts to make best estimates of exposure under realistic conditions. However, in the absence of adequate data, the staff applies “conservative” assumptions, that is, assumptions that might overestimate, rather than underestimate risk.

The CPSC chronic hazard guidelines describe various approaches to exposure assessment. Direct measures of exposure such as field studies are generally preferred over laboratory studies and mathematical modeling. However, field studies are not always practical for technical or economic reasons. Thus, the staff frequently relies on a combination of laboratory data and mathematical models.

The CPSC staff developed laboratory methods and exposure scenarios to assess the potential exposure to FR chemicals in mattresses. These methods are conservative in that they may overestimate, rather than underestimate, the potential risk.

#### 4. Durability of Flame Retardant Chemicals—Fire Performance

*Comment.* Several commenters recommended requiring performance tests to assure the durability of flame retardant chemicals and barrier

performance after exposure to moisture. Some provided test data to support their concerns. Other commenters provided data from tests of used mattresses taken out of service, indicating they still met applicable standards.

*Response.* The data provided by commenters were either not relevant (tests using smoldering cigarettes) or based upon severe exposure of barrier materials, apart from the mattress, before testing. The staff sought and obtained new test data, supplied by manufacturers of barrier products and by NIST, to provide a limited evaluation of effects of moisture on flammability behavior. This evaluation does not support requiring specific durability tests for barrier components. NIST examined the fire performance of two mattress designs that used different barrier materials/systems made with water soluble flame retardants. NIST fire tests were conducted after the mattress sets were exposed to 10 localized, wetting and drying cycles. The effects of this severe wetting exposure scenario did not change the overall flammability performance of the mattress sets. In addition, even if exposed areas have decreased fire resistance, the tests suggest that the remainder of the mattress should retain its improved flammability performance, especially the performance expected early in the fire. Since localized wetting, as in bedwetting, is anticipated to be the most likely exposure of a mattress to water in real-world applications, it appears unnecessary to add durability test requirements to the standard to account for mattress designs that incorporate barrier systems that use water-soluble flame retardants.

#### 5. Effective Date

*Comment.* Commenters suggested a variety of effective dates for the final rule ranging from immediate implementation to coinciding with regular model changes (January and July) and 18 months from final publication.

*Response.* The standard provides an effective date of July 1, 2007, which is the earlier of January or July that follows twelve months after publication of the **Federal Register** notice. This date would coincide with regular model/style changes and thus make it easier for all producers, especially small producers outside of California who are not producing complying mattress sets, to update their styles and produce complying mattress sets.

All national producers that sell mattresses in California already have developed the production technology and conducted the testing required to

meet California TB 603, which is very similar to the Commission's standard. One of them is already selling mattresses complying with performance requirements of the Commission's standard nationwide. Three of the top four producers are selling complying mattress sets representing between 15 to 20 percent of their total output. Smaller companies not based in California may be behind in their design, production, and testing efforts. However, the Commission believes that an effective date of one year plus time to the next model introductions provides enough time for all manufacturers to transition to producing and selling compliant mattresses.

#### 6. Labeling

a. *Comment.* One commenter urged the Commission to require the labels of imported mattresses to bear the foreign manufacturer's name and full address, including country, as well as the importer's name and full address.

*Response.* CPSC agrees that such information should be present on the mattress set label and has revised § 1633.12 (a) of the standard accordingly.

b. *Comment.* One commenter referred to the Textile Fiber Products Identification Act, which is administered by the Federal Trade Commission (FTC) and requires, among other things, that mattresses made with "reused stuffing" be labeled so, and suggested that CPSC coordinate with FTC to allow the disclosure to appear on the label with the other information required by the standard.

*Response.* Labeling of mattresses is governed by several organizations, including CPSC, FTC, and individual states. Because of the informative nature and quantity of information needed, the standard has been revised to require the information specified in § 1633.12 to be displayed on a permanent, dedicated label in a prescribed format. Therefore, no other information apart from that required by the standard may appear on this label. This helps to insure prominence of consumer safety information and to prevent potential confusion with other labeling requirements.

c. *Comment.* One commenter suggested requiring renovated mattresses to bear a yellow label that would distinguish them from new mattresses, which traditionally bear white labels. In addition, the commenter recommended that renovated mattress labels be required to contain a statement indicating that compliance with the standard does not imply that the

renovated mattress is sanitary or hygienic.

*Response.* The standard seeks to reduce injuries and deaths due to fires. It is not intended to address the sanitary condition of mattresses.

d. *Comment.* One commenter expressed concern that requiring a dedicated label might detract from the Sleep Product Safety Council's safety hangtag program, conflict with the state law labeling program, and negatively affect the aesthetics of the finished product. The commenter suggested allowing manufacturers to display the required information on the Sleep Products Safety Council's safety hangtag.

*Response.* CPSC has revised the labeling provision in the standard to (1) include intended usage information for the safety of the consumer, (2) require all information specified in § 1633.12 to appear on a dedicated label, and (3) permit the display of the consumer usage information in any other language on the reverse (blank) side of the label. Consumers must be able to identify the correct foundation, if any, to use with the mattress they purchase. With this intended usage information, consumers will understand that the mattress they purchase meets the requirements of the standard when used alone, with one or more specific foundation(s), or both.

Requiring the specified information to appear on a dedicated label has the benefit of (1) ensuring that such information is not detracted from or minimized, (2) avoiding potential conflict or confusion with state labeling requirements, (3) guaranteeing that the intended usage information is highlighted and presented in a consistent manner, and (4) allowing manufacturers the option of providing the intended usage information in another language on the back of the label. CPSC staff designed the required label to be as small as possible without compromising the clarity and effectiveness of the specified information.

e. *Comment.* Ten commenters recommended including in the standard a requirement that mattresses provide a label listing FR chemicals used or a statement warning of health risks.

*Response.* The staff has found that numerous FR materials are available that will enable mattresses to meet the standard without posing any appreciable health risks. Moreover, the FHSA itself would require a hazard warning label if a mattress did contain a hazardous substance as that term is defined in the FHSA. The potential health hazard associated with any chemical depends on both toxicity and

exposure. A label stating the names of any FR chemicals used in the mattress would thus not in fact provide any useful information to the consumer because the mere presence of an FR chemical is not an indication that the mattress containing that chemical poses any health risk.

#### 7. Preemption

*Comment.* The Commission received several comments concerning preemption. One commenter asked that the Commission explicitly state in the standard that the mattress standard would preempt both codified state rules and State common law claims that address the same risk of injury as the federal mattress standard. Other commenters asked that the Commission indicate that the standard would not preempt stricter state standards.

*Response.* The Commission's position on the preemptive effect of this final rule is stated in Section N. of this preamble.

#### 8. Domestic Manufacturer/Renovator vs. Importer Responsibilities

a. *Comment.* Two commenters suggested making importer testing/recordkeeping responsibilities explicit. They suggested including language specifying that testing needs to be conducted (either qualification or confirmation) and records maintained for each foreign manufacturer if the importer is importing from more than one manufacturer.

*Response.* CPSC intends for the requirements of the standard to be the same for domestic manufacturers/renovators and importers: each is responsible for maintaining the appropriate qualification and confirmation test records for mattress sets they produce and/or import. These requirements have been clarified in the standard.

b. *Comment.* One commenter expressed concern that foreign manufacturers may circumvent testing requirements by drop-shipping directly to consumers. The commenter recommended adding a definition of "importer" that identifies domestic agents involved with selling or marketing the product to be drop-shipped as the responsible party.

*Response.* The CPSC does not believe that adding a definition of importer will suitably address the issue. Section 3(a) of the Flammable Fabrics Act already prohibits "[t]he manufacture for sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the

purpose of sale or delivery after sale in commerce \* \* \* of any product violating a standard issued under its authority. This means that any party—including importers and other agents initially introducing goods regulated under the FFA into commerce—engaged in the foregoing actions with respect to non-complying products would be liable under the FFA.

In response to the commenter's concern, CPSC revised the standard to require each manufacturer to maintain a copy of the records demonstrating compliance at a U.S. location. Additionally, this location would be required to appear on the mattress label. Section 1633.11(e) of the standard has been revised to reflect these requirements.

#### 9. Quality Assurance Requirements

*Comment.* One commenter suggested limiting the scope of the components and materials required to be controlled for quality assurance to only those that are critical to the flammability performance of the finished product.

*Response.* The Commission believes that it is premature to limit the scope of the quality control on incoming components and materials. The Commission could revisit this issue once significant experience with the standard is gained and the industry and CPSC have more confidence in the contributions of various components to the full-scale fire performance of mattress sets.

#### 10. Recordkeeping and Sample Retention

a. *Comment.* One commenter recommended that the test and manufacturing records require the "name and full address" of the testing laboratory, as opposed to just the "location." The same commenter likewise suggested substituting "full address" for "location" for both the manufacturer of the qualified prototype in the pooling confirmation test records and the suppliers in the prototype records.

*Response.* CPSC agrees that the name and complete address of the testing laboratory, as well as the complete addresses of the qualified prototype manufacturer and each material and component supplier, should appear in the respective records. This will provide more complete and accurate information for compliance purposes. Changes in § 1633.11 of the standard have been made accordingly.

b. *Comment.* One commenter urged the Commission to limit the records required under § 1633.11(d)(5) of the standard to only those relating to the

testing and evaluations of components, materials, and assembly methods critical to flammability performance of the qualified prototype.

*Response.* Since it is too early to know exactly what components, materials, and assembly methods will influence the flammability performance of a mattress, CPSC does not believe it is appropriate to limit the types of records required under § 1633.11(d)(5) at this time. Moreover, these records will likely be used by manufacturers to demonstrate that a change in component, material, and/or assembly method will not degrade the flammability performance of a prototype, thus allowing the manufacturer to forgo testing and qualifying a new prototype. To that end, it is in the interest of the manufacturer to maintain a broader scope of such records.

c. *Comment.* Two commenters remarked that the requirement to keep physical samples of all materials used in each prototype is overly burdensome and impractical. The large numbers of samples would require significant storage space while the objective could be accomplished through test and quality certificates and other documentation already required in the quality assurance records.

*Response.* The requirement to maintain physical samples of prototype materials and components was included in the proposed standard as an added measure for manufacturers to verify that production mattresses match their representative prototype. Given that the prototype recordkeeping requirements already call for manufacturers to provide a detailed description of and specifications for each material and component used in every prototype, and given that this information may be used to reliably verify material and component consistency, the requirement to keep physical samples has been eliminated in the standard.

#### 11. Consider Revoking Existing Cigarette Standard for Mattresses, 16 CFR Part 1632

*Comment.* Some commenters supported revoking the existing standard for cigarette ignition of mattresses and mattress pads. Others recommended careful review of risks, incident data, and benefits of the current standard before revocation is considered.

*Response.* On June 23, 2005, the Commission published an advance notice of proposed rulemaking for the possible revocation or amendment of the Standard for the Flammability of Mattresses and Mattress Pads (Cigarette

Ignition). 70 FR 36357. That rulemaking will allow for a full evaluation of options to reduce unnecessary burdens while maintaining the safety afforded by the cigarette ignition standard. The Commission staff is also considering measures to reduce the short term testing burden created by the addition of a new mattress standard to an existing one.

#### 12. Costs Associated With the Standard

*Comment.* Commenters expressed concerns about the increased costs of barrier materials needed to produce complying mattresses and increased costs to consumers (as much as \$100 per mattress).

*Response.* Estimates of barrier and other resource costs for mattress producers are lower in the final regulatory analysis than those in the initial regulatory analysis and are expected to drop further as a result of technological developments and increased competition among barrier producers. Total costs are not expected to exceed \$23.00 per mattress set.

The expected price increase for consumers was initially estimated to range from \$23.00 to slightly less than \$80.00. However, the final regulatory analysis updated the costs, which have declined because of technological advances and market competition. This means that the consumer price will increase by a mid-point estimate of \$24.21 per mattress.

One national producer currently makes mattresses that would comply with the standard without increasing the price of its mattress sets. Competition for market share among producers will likely drive the price closer to the one charged by this national producer, which would make the likely increase even lower than that suggested by the \$24.21 above.

#### 13. Bedclothes Rulemaking

*Comment.* Some commenters expressed support for an additional rulemaking for bedclothes because of the significant role those products play in mattress/bedding fire losses. Other commenters shared concerns about the potential use of FR chemicals in such a rulemaking as well.

*Response.* On January 13, 2005, the Commission published an advance notice of proposed rulemaking for a standard to address open flame ignition of bedclothes. 70 FR 2514. Recent research has shown that bedclothes are a significant ignition source for mattress fires and can also generate a fire large enough to pose a hazard on their own. Laboratory tests also showed that fire performance of these products could be

improved. The environmental and health implications of compliance strategies, including FR chemicals, will be evaluated in the course of that rulemaking.

### I. Final Regulatory Analysis

The Commission is issuing a rule establishing a flammability standard addressing the open flame ignition of mattresses. Section 4(j) of the FFA requires that the Commission prepare a final regulatory analysis for this action and that it be published with the final rule. 15 U.S.C. 1193(j). The Commission previously prepared, and published with the proposed rule, a preliminary regulatory analysis. The staff reviewed the preliminary regulatory analysis and updated it to prepare a final regulatory analysis. The following discussion was extracted from the staff's memorandum titled "Final Regulatory Analysis of Staff's Draft Standard Final to Address Open-Flame Ignitions of Mattress Sets." [7]

#### 1. Introduction

For 1999 to 2002, there were an estimated annual average of 15,300 fires where the first item ignited was mattress/bedding. These fires resulted in an annual average of 350 deaths, 1,750 injuries, and \$295 million of property loss. As discussed elsewhere in this document, NIST conducted extensive research and developed a test methodology to test open flame ignition of mattresses. The Commission issued an NPR proposing a standard that incorporates the NIST test method.

California Technical Bulletin (TB) 603, which is based on the use of NIST test burners designed to mimic the local thermal insult (heat flux levels and duration) imposed by burning bedclothes, became effective in California on January 1, 2005. The California share of the market is estimated, by industry representatives, to be around 11 percent of the U.S. market. TB 603 requires all mattress/foundation sets, mattresses intended to be used without a foundation, and futons to meet the following pass/fail criteria: (1) The peak heat release rate ("PHRR") does not exceed 200 kW during the 30 minute test, and (2) the total heat release does not exceed 25 mega joules (MJ) in the first 10 minutes of the test.

As of October 2005, one of the top four producers is selling mattress sets that comply with both TB 603 and the CPSC standard. The other three (of the top four) are producing complying mattress sets representing between 15 and 20 percent of their total output. This includes all mattress sets sold in

California, plus other special orders, institutional mattresses and mattress sets sold in other states. Smaller manufacturers, however, may not produce mattress sets intended for sale outside California to meet TB 603 performance requirements. They are more likely to wait until a federal standard is adopted. The mattress industry and the International Sleep Products Association (ISPA) support the development of a mandatory federal standard (*Furniture Today*, May 10, 2004). A Federal standard would eliminate the uncertainty that may result from having different flammability standards for different states.

#### 2. The Standard: Scope and Testing Provisions

The standard will apply to all mattress sets, where the term mattress set means either a mattress and foundation labeled by the manufacturer for sale as a set, or a mattress labeled by the manufacturer without any foundation. The term mattress means a ticking (*i.e.*, an outer layer of fabric) filled with a resilient material used alone or in combination with other products intended or promoted for sleeping upon. This definition is discussed further in section E.3. above.

A typical innerspring mattress construction might include ticking; binding tape fabric; quilt cushioning with one or more separate layers; quilt backing fabric; thread; cushioning with one or more separate layers; flanging; spring insulator pad; spring unit; and side (border) panels. Options for meeting the standard include the use of one or a combination of the following: fire resistant ticking; chemically treated or otherwise fire resistant filling products; or a fire blocking barrier (either a sheet style barrier, sometimes called a fabric barrier, or a high-loft barrier, sometimes called a fiber barrier). The fire blocking barrier is placed either directly between the exterior cover fabric of the product and the first layer of cushioning materials, or beneath one or more "sacrificial" layers that can burn without reaching the heat release constraints of the standard.

While the technology exists for producing a sheet-style fire blocking barrier, few, if any, producers are choosing it for protecting the mattress. The cost of using sheet barriers is higher than using high-loft barriers, since sheet barriers are thin and therefore could not be substituted for an existing foam or cushioning layer. There is also concern that some sheet barriers, unlike high-loft barriers, may reduce the comfort of the sleeping surface. There are already over

twenty different vendors of fire resistant materials associated with the production of mattress sets, including barriers, ticking, foam, tape, and thread. These materials include chemically treated cotton, rayon, and/or polyester, melamine, modacrylic, fiberglass, aramid (Kevlar®), or some combination of them.

For each qualified prototype, three mattress sets must be tested and must pass the test requirements. To obtain a passing result, each mattress/set must pass a 30 minute test, where the PHRR does not exceed 200 kW and the total heat release does not exceed 15 MJ in the first 10 minutes of the test. If any of the sets fail, the problem must be corrected, the prototype must be retested and pass the test (in triplicate). Manufacturers may sell any mattress set based on a qualified prototype. Manufacturers may also sell a mattress set based on a subordinate prototype that has not been tested if that prototype differs from a qualified prototype only with respect to (1) mattress/foundation size (length and width); (2) ticking, unless the ticking of the qualified prototype has characteristics designed to improve performance on the burn test; and/or (3) the manufacturer can demonstrate, on an objectively reasonable basis, that a change in any component, material, or method of assembly will not cause the prototype to exceed the test criteria specified above.

Once a prototype has been qualified, other establishments (plants within the same firm) or independent firms may rely on it through a pooling arrangement. The pooling plant or firm is required to test one mattress set for confirmation testing. If that set fails, then the plant or firm will need to test another mattress set after correcting its production to make sure that it is identical to the original prototype. A pooling firm may sell other mattress sets that have not been tested by the pooling firm if they are based on a confirmed prototype and differ from the confirmed prototype only with respect to the three situations stated above.

#### 3. Products and Industries Potentially Affected

According to ISPA, the mattress producers' trade organization, the top four producers of mattresses account for almost sixty percent of total U.S. production. In total, there are 571 establishments (as of 2003) that produce mattresses in the U.S., using the U.S. Department of Commerce NAICS (North American Industry Classification System) Code 33791 for mattresses. The top four producers account for about half of the number of all these

establishments. The number of establishments has been declining over time due to mergers and buy-outs. Total employment in the industry, using the NAICS Code 33791, was 24,545 workers in 2003.

The mattress manufacturing industry has three key supplying industries: spring and wire product manufacturing, broad-woven fabric mills, and foam products manufacturing. Depending on the type of fire resistant barrier chosen by different manufacturers, the demand for foam padding or non-skid fabric for mattresses might decline if it were replaced by the high-loft or sheet barrier in the construction of the mattress and foundation. This would be offset by an increase in the demand for the barrier. Fiberglass, melamine, and aramid producers may also be affected to the extent that they are used to produce fire resistant materials used in mattress production.

Manufacturers of bedclothes may also be affected by the standard. Sales of bedclothes may increase or decrease based on whether consumers view bedclothes as complements or substitutes for a new mattress set (complements are goods generally consumed together, substitutes generally substitute for each other). For example, if people tend to buy all parts of a new bed (mattress, foundation, and bedclothes consisting of a comforter, pillows, and sheets) at the same time, then an increase in the quantity of mattresses sold would cause an increase in sales of bedclothes. If, alternatively, people tend to have a fixed budget from which to buy all mattresses and bedding items, then an increase in the quantity of mattresses sold would lead to a decrease in sales of bedclothes. Also, if the decision to buy a new mattress (or mattress set) involves buying a mattress that is much thicker than the one currently in use, then consumers will most likely buy new sheets (and possibly matching pillowcases and other bedclothes items) to fit the new thicker mattress.

If the cost increase is relatively small or there is no resulting increase in the price of a mattress set, then the demand for bedclothes will only be affected if consumers place a higher value on the safer mattress and replace their current mattress sooner than they would have with no standard in place. An increased demand for the safer (and thicker, if the current mattress is relatively old) mattress will likely result in an increased demand for sheets that fit the newer mattresses. This effect, however, is not directly resulting from the adoption of the standard since the thickness of the mattress need not be

increased by the presence of either type of barrier. It is the result of the increased utility some consumers may derive from the safer mattress and the consequent increase in demand for bedclothes. The increased demand for safer mattresses would most probably lead to an increase in sales and employment in the spring and wire products, broad-woven fabric, and foam products industries, as well as in the mattress and bedclothes industries.

Other producers that could potentially be affected, if the price change associated with producing compliant mattresses is significant, are those of other substitute products, like airbeds, waterbeds, \* \* \* etc. that contain no upholstered material and would, therefore, not be covered by the standard. Their sales may increase as a proportion of total bedding products.

#### 4. Characteristics of Mattresses Used in U.S. Households

The total number of U.S. conventional mattress shipments was 22.5 million in 2004 and is estimated to be 23.0 in 2005. Mattress shipments have grown at an average rate of three percent over the period 1981 to 2005. Unconventional mattresses (including futons; crib mattresses; juvenile mattresses; sleep sofa inserts; and hybrid water mattresses) are estimated to be about ten percent of the total market. This yields an estimated total number of mattresses produced domestically of 25.6 million in 2005. The value of mattress and foundation shipments in 2004, according to ISPA, was \$4.10 and \$1.68 billion, compared to \$3.26 and \$1.51 billion respectively in 2002.

The CPSC Product Population Model (PPM) estimate of the number of mattresses in use in different years is based on available annual sales data and an estimate of the average product life of a mattress. Industry representatives assert that the average consumer replaces a mattress set after ten years. A 1996 CPSC market study estimated the average expected life of a mattress to be 14 years. The PPM estimates the number of (conventional and non-conventional) mattresses in use in 2005 to be 237.0 million, using a 10-year average product life and 303.9 million, using a 14-year average product life. These two numbers are later used to estimate the pre-standard baseline risk and the expected benefits of the standard.

This analysis focuses principally on queen-size mattresses because they are the most commonly used. In 2004 queen-size mattresses were used by 34.9 percent of U.S. consumers. Following the queen-size are the sizes: Twin and Twin XL (29.3 percent), Full and Full

XL (19.9 percent), King and California King (11.5 percent), and all other (4.4 percent). ISPA data reflect that the average size of a mattress is increasing. The average manufacturing price in 2004 was \$182 for a mattress of average size and \$90 for a foundation of average size. Hence the average manufacturing price of a mattress set was about \$272 in 2004.

There are no readily available data on average retail prices for mattress sets by size. ISPA, however, reports that mattress sets selling for under \$500 represented 34.6 percent of the marketing 2004. Mattress sets selling for between \$500 and \$1000 represented 41.1 percent of the market in 2004, compared to 39.2 percent in 2002.

#### 5. Mattress/Bedding Residential Fires, Deaths, Injuries, and Property Losses: 1999–2002

The staff estimates that there were 15,300 average annual mattress/bedding fires for 1999–2002. Of these, 14,300 (or 93 percent) are potentially addressable by the standard. Average annual mattress/bedding deaths for 1999 to 2002 are 350. Of these, 330 (or 94 percent) are potentially addressable by the standard. Average annual mattress/bedding injuries for 1999 to 2002 are 1,750. Of these, 1,680 (or 96 percent) are potentially addressable by the standard. Average annual mattress/bedding property losses for 1999 to 2002 are 295 million dollars. Of these, 281.5 million dollars (or 95 percent) are potentially addressable by the standard.

#### 6. Expected Benefits of the Standard

The expected benefits of the standard are estimated as reductions in the baseline risk of death and injury from all mattress fires, based on a CPSC staff study of fire investigations from 1999–2004. Risk reductions are then calculated on a per-mattress-in-use basis based on estimates of the number of mattresses in use. The monetary value of expected benefits per mattress is derived using estimates for the value of a statistical life and the current (i.e., 2005) average cost of a mattress fire injury. To derive the monetary value of expected benefits over the life of a mattress, the expected annual benefits are discounted (using a three percent discount rate), and then summed over the expected life of the mattress. The analysis considers mattress lives of 10 and 14 years.

The potential benefits of the standard consist of the reduction in deaths, injuries, and property damage that would result. Since the prime objective of the standard is to reduce the likelihood of flashover or increase the

time before flashover occurs, and not to reduce fires, changes in property losses associated with the standard are hard to quantify. Property losses are expected to decline but the extent of the decline cannot be quantified. Consequently, for purposes of this analysis, no reduction in property losses is assumed. That is, all expected benefits from the standard are in the form of prevented deaths and injuries. This underestimates net benefits, since there will likely be some benefits from reduced property losses.

The standard is expected to reduce the likelihood of flashover resulting from fires started by smoking materials or other ignition sources, as well as those started by open-flame ignition. Reductions in fires, injuries, and deaths will translate into societal benefits, as will be discussed in the benefit-cost analysis (Section 8 of this analysis).

Estimates of the effectiveness of the standard are based on a CPSC staff evaluation of in-depth investigation reports of fires (including details of the occupants' situations and actions during the fire) occurring in 1999–2004 in which a mattress or bedding was the first item to ignite, the fire was of the type considered addressable by the standard, and a civilian death or injury resulted. Most of the investigations also included documentation from the fire department that attended the fire. Some incident reports were initiated from death certificates with follow-up documentation from the fire department. This resulted in a total of 195 deaths and 205 injuries in the investigations to be evaluated. The distribution of mattress ignition sources was not representative of all fires involving mattresses and thus the data were weighted to match the NFIRS-based national fire data distributions.

Evaluations of the fire incidents by CPSC staff reviewers used the results of NIST testing (Ohlemiller, 2004; Ohlemiller and Gann, 2003; Ohlemiller and Gann, 2002) conducted to assess the hazard produced from burning mattresses and bedclothes. Specifically, the evaluations were based on the expectation that occupants in bed when the fire ignited but able to escape the burning bedclothes in the first three to five minutes faced a minimal hazard. Occupants in direct contact with burning bedclothes for a longer period (5 to 10 minutes) would be subject to potentially hazardous levels of heat release. If the burning bedclothes did not ignite other non-bedding items or produce flashover at this time, heat release would subside temporarily and then begin to increase as the involvement of the mattress increased.

These conditions would allow occupants 10 to 15 minutes to escape the room of origin before the situation in the room would become untenable. Since the standard is expected to slow the rate of fire spread and hence increase escape time, assuming that bedclothes do not contribute enough heat to pose a hazardous condition, it was assumed that people who were outside the room of origin at the time of ignition were unlikely to die in the fire, unless they entered the room later or were incapable of exiting on their own. The analysis focused on reduction of deaths and injuries because the standard is designed to limit fire intensity and spread rather than prevent ignition.

Each investigation was evaluated by CPSC staff reviewers to identify the features related to the occurrence of a death or injury once the fire was ignited. These included casualty age, casualty location when the fire started (at the point of ignition, in the room of origin but not at the point of ignition, or outside the room of origin), whether the casualty was asleep, or suffered from additional conditions likely to increase the time needed to escape, whether the casualty engaged in fighting the fire, and whether a rescuer was present. All of these conditions were used to determine a range for the likelihood that each individual death or injury would have been prevented had the standard been in effect. Percentage reductions of deaths (injuries) within subcategories of heat source and age group were applied to equivalent subcategories of the national estimates based on the NFIRS and NFPA data for 1999–2002. The estimated reductions per category were summed and the overall percentage reductions were calculated as the percent of addressable deaths (or injuries) that would have been prevented if the likelihood of flashover were reduced in the first 30 minutes and victims had 10 to 15 minutes of escape time.

The staff indicates that the standard is expected to reduce all addressable deaths from mattress/bedding fires by 69 to 78 percent and reduce all addressable injuries from mattress/bedding fires by 73 to 84 percent. Assuming that addressable mattress/bedding fire deaths and injuries account for the same percentage of residential casualties in 2003 and 2004 as in 1999 to 2002, the staff estimates that 240 to 270 deaths and 1150 to 1330 injuries in mattress/bedding fires attended by the fire service could have been prevented annually during the period 2000 to 2004.

The staff's analysis presents the estimated benefits of the standard, based

on the expected annual deaths and injuries that are expected to be prevented by the standard. The analysis is conducted as if the standard had gone into effect in 2005. All dollar estimates are based on constant 2005 dollars. A discount rate of 3 percent and average expected lives of a mattress of 10 and 14 years are also assumed.

Based on the estimated number of mattresses in use for an average mattress life of 10 years (described in Section 4), the reduction in the risk of death during the first year the standard becomes effective equals 1.01 deaths per million mattresses (240 deaths divided by the estimated 237 million mattresses in use in 2005) to 1.14 per million mattresses (270 deaths/237 million mattresses). The mid-point estimate of the reduction in the risk of death the first year the standard becomes effective is, therefore, 1.08. The mid-point estimate of the reduction in the risk of injury, similarly calculated, equals 5.23, with a range from 4.85 to 5.61, injuries per million mattresses for an estimated 10-year life of a mattress. The mid-point estimates of the risk reductions for an estimated 14-year average life of a mattress are 0.84 deaths, with a range from 0.79 to 0.89, and 4.08 injuries, with a range of 3.78 to 4.38, per million mattresses.

Annual risk reductions resulting from the standard are used to derive the monetary benefits from reduced deaths and injuries. The estimated reduction in the risk of death is multiplied by the value of a statistical life (and divided by a million) to derive a first-year monetary estimate for the range of benefits from lives saved per mattress. Based on the existing literature, a value of a statistical life of five million dollars is assumed (Viscusi, 1993). The estimated reduction in the risk of injury is similarly used to derive the range of first-year monetary benefits from injuries prevented. The benefits from preventing an injury (the cost of an injury) in 2005 are estimated to average about \$150,000, based on Zamula (2005) and Miller et al. (1993). The mid-point estimate of the first-year benefits associated with preventing deaths and injuries equals \$6.17, with a range from \$5.79 to \$6.54 for an estimated mattress life of 10 years and \$4.81, with a range from \$4.52 to \$5.10 for an estimated mattress life of 14 years.

Lifetime benefits are derived by projecting annual benefits for the life of the mattress and summing the discounted (at a rate of 3 percent) stream of annual benefits (measured in constant dollars). The number of mattresses in use is projected to grow at a rate of zero to three percent, based on the average growth rate for the 1981–

2004 period. Since the number of deaths and injuries are implicitly assumed to remain constant over time, a positive growth rate of mattresses in use implies a declining risk over time. The lower end of the ranges for estimated (10 and 14 years) lifetime benefits correspond to a 3 percent projected growth rate and the lower end of the effectiveness ranges. The upper end of the ranges for estimated (10 and 14 years) lifetime benefits correspond to a zero percent projected growth rate and the upper end of the effectiveness ranges.

For an expected mattress life of 10 years, the resulting mid-point estimate of expected lifetime benefits of saved lives associated with the standard equals \$44.71, with a range of \$39.37 to \$50.05 per mattress. The corresponding mid-point estimate of benefits of prevented injuries equals \$6.54, with a range of \$5.67 to \$7.41 per mattress. Hence, for an expected mattress life of 10 years, the mid-point estimate of the expected total lifetime benefits of a compliant mattress equals \$51.25, with a range of \$45.04 to \$57.46 per mattress. For an expected mattress life of 14 years, the mid-point estimate of the total benefits equals \$51.82, with a range of \$44.30 to \$59.34 per mattress. The sensitivity analysis section below examines how the results might change when a discount rate of seven percent is used.

### 7. Expected Costs of the Standard

This section presents the expected resource costs associated with the standard. Resource costs are costs that reflect the use of a resource that would have been available for other uses had it not been used in conjunction with the production of mattresses compliant with the standard. These costs include material and labor costs; testing costs; costs to wholesalers, distributors, and retailers; costs of producers' information collection and record keeping; costs of quality control/quality assurance programs; and compliance and enforcement costs. The effect on retail prices will be discussed in Section 8 of this Regulatory Analysis.

**Material and Labor Costs.** To comply with the standard, the construction of most mattress sets will include a barrier technology with improved fire performance. This barrier may be thick (high-loft) or thin (sheet). High-loft barriers are generally used to replace some of the existing non-woven fiber, foam, and/or batting material, leading to a smaller increase in costs than sheet barriers, which constitute an addition to production materials (and costs). Producers, therefore, are generally using the high-loft barrier for the panel (top of

the mattress) and mattress and foundation borders. If they are using sheet barriers, they limit their use to the bottom of the mattress, replacing the no-skid non-FR (fire resistant) sheet used previously.

According to several barrier producers and mattress manufacturers, the price of a high-loft barrier that would make a mattress comply with the standard, is around \$2.65 per linear yard, defined to have a width of 88 to 92 inches. Barrier costs range from \$2.00 to \$3.30, per linear yard. The high-loft barrier replaces the currently-used polyester batting, which costs an average of \$1.15, with a range from \$0.55 to \$1.75, per linear yard. Hence, the net increase in the average cost attributed to the use of the high-loft barrier, referred to by the industry as the application cost, is \$1.50, with a range from \$0.25 to \$2.75 per linear yard, which translates to a net increase in barrier-related manufacturing costs of \$7.95, with a range from \$1.33 to \$14.58, for a queen-size mattress set.<sup>3</sup> The queen-size is used for all the cost estimates, because it is the mode size, used by 34.9 percent of consumers in 2004.

In addition to the increase in material costs due to the use of a barrier, costs will increase due to the use of fire-resistant (FR) thread for tape stitching. According to several thread producers, the cost of FR thread is \$0.51 per queen-size mattress set, with a range from \$0.41 to \$0.60. Given that the cost of nylon (non-FR) thread is about \$0.10 per queen-size mattress set, the average application cost of FR thread (net increase in costs due to the use of FR thread) per queen-size mattress set is \$0.41, with a range from \$0.31 to \$0.50.

Costs may also increase due to slightly reduced labor productivity. Based on industry estimates of an average of two labor hours for the production of a queen-size mattress set, and a 10 percent reduction in labor productivity and an industry average hourly total compensation of \$22.00, the cost increase due to reduced labor productivity is about \$4.40. The reduced labor productivity results from the inexperience of the workers with the new production methods and should disappear when they become familiar with the products and techniques being used.

The standard requires producers to add a new label to both mattresses and

foundations that identifies the prototype and the possible choice of foundations to be used with a specific mattress. This requirement is to ensure that consumers are buying a mattress set that was tested as a set, and would thus meet the requirements of the standard. This label is required to be separate from any other labels already being used and is estimated by industry representatives to result in an additional cost of \$0.01 for both the mattress and foundation. This estimate includes both the material and labor needed to add the label.

The increase in the average materials and labor costs of a mattress set is thus equal to the sum of the barrier application cost per mattress set, thread application cost, labeling cost, and costs due to reduced labor productivity. This sum equals \$12.77 (\$7.95 barrier cost + \$0.41 thread cost + \$4.40 labor cost + \$0.01 label cost). The estimated range for the materials and labor costs is \$6.05 to \$19.49.

**Costs of Prototype and Confirmation Testing.** The standard requires each mattress set qualified prototype to be tested in triplicate for prototype qualification. According to industry representatives, the cost of testing per twin-size mattress set may be about \$500: the sum of the average cost of the materials and shipping (\$100) and the cost of the use of the lab (\$400). Hence, the cost of testing three mattress sets for prototype qualification equals \$1500. Additionally, if some mattress set prototypes do not pass the first time, then the cost will be higher, because additional tests will be done after action is taken to improve the resistance of the prototype. If 10 percent of mattresses are retested, then the average cost of testing a prototype would be 10 percent higher, or \$1650. This cost is assumed to be incurred no more than once per establishment for each prototype. It is expected that a qualified prototype will be used to represent a mattress construction (e.g., single-sided pillow top) with all subordinate prototypes using the same construction (with different sizes (lengths and widths) and different ticking materials) being based on the qualified prototype.

If companies pool their prototypes across different establishments or different companies, testing costs would be smaller as all but one of the firms/establishments producing to the specification of a pooled prototype may just burn one mattress (for the confirmation test) instead of three (for the qualified prototype test). Therefore, it is expected that the average cost of testing per mattress will be lower for firms and/or establishments that pool their results than for those that do not.

<sup>3</sup>This calculation is based on the assumption that a queen-size mattress set requires 5.3 linear yards of the barrier material to be used in the two (top and bottom) panels of the mattress and the borders of both the mattress and foundation. Some producers are able to use less than 5.3 linear yards, which reduces their cost per queen mattress set.

If manufacturers test every mattress construction (e.g., single-sided pillow top, double-sided pillow-top, tight-top, euro-top, \* \* \* etc.), which is estimated, based on conversations with manufacturers, to average about twenty per manufacturer, for every establishment in a given year, then their average testing cost per mattress would approximately equal 82 cents ( $\$1650 \times 20 \text{ styles} \times 571 \text{ establishments} / 23.0 \text{ million conventional mattresses}$ ) per mattress set for the first year of production. The standard would allow selling mattress sets whose (subordinate) prototypes differ from a qualified (or confirmed) prototype only with respect to size (length and width), and/or ticking material or other components that do not impact the fire performance of the prototype without testing the prototypes, to minimize testing costs to all manufacturers, especially those whose volume of output is small. Pooling testing results across establishments and/or firms will further reduce the average cost of testing per mattress set. On an annual basis, testing costs will be further reduced because qualified, confirmed, and subordinate prototypes need not be tested every year.

*Cost of Information Collection and Record Keeping.* In addition to prototype testing, the standard requires detailed documentation of all tests performed and their results including video or pictures; prototype or production identification number; date and time of test; and name and location of testing facility; test room conditions; and test data for as long as the prototype is in production and for three years after its production ceases. Manufacturers are also required to keep records of a unique identification number for the qualified prototype and a list of the unique identification numbers of each prototype based on the qualified prototype and a description of the materials substituted. Moreover, they are required to document the name and supplier of each material used in construction of a prototype. Additionally, they are required to identify the details of the application of any fire retardant treatments and/or inherently fire resistant fibers employed relative to mattress components.

This documentation is in addition to documentation already conducted by mattress manufacturers in their efforts to meet the cigarette standard. Detailed testing documentation will be done by the test lab and is included in the estimated cost of testing. Based on CPSC Office of Compliance staff estimates, all requirements of the standard are expected to cost an establishment about

one hour per qualified prototype. Assuming that every establishment will produce 20 different qualified prototypes, the increase in record keeping costs is about  $\$412.20$  (1 hour  $\times$  20 qualified prototypes  $\times$   $\$20.61$  average total compensation per hour for office and administrative support workers) per establishment per year. (Note that pooling among establishments or using a qualified prototype for longer than one year will reduce this estimate.) This translates to an average cost of 1 cent per mattress set for an average establishment, with average output of 40,280 conventional mattresses.

*Cost of Quality Control/Quality Assurance Programs.* To ensure that all mattresses are produced to the prototype specification across all factories and over the years for which a production line exists, mattress manufacturers will need a thorough well-documented quality control/assurance program. The top 15 mattress producers (with a market share of 83 percent) have existing quality control programs which could be modified to fit the new standard with minimal additional costs. Smaller producers, whose quality control programs are less detailed or non-existent, will incur some incremental costs as a result of the standard. These incremental costs will be small for each manufacturer and less when measured per mattress set. (See the section on impact of the standard on small businesses for a description of their cost of quality control and quality assurance programs to them.)

Additionally, the standard encourages random production testing to assure manufacturers that their mattresses continue to meet the requirements of the rule, as a possible component of the quality control/quality assurance program. Assuming that an average of 3 mattress set constructions will be tested per establishment per year yields an estimated cost of production testing of about  $\$1500$ . Based on this assumption, the estimated cost of testing mattress sets for quality assurance purposes, therefore, equals 3.7 cents per mattress ( $\$1500/40,280$ ) for an average establishment.

The labor needed to meet the quality assurance measures required by the standard is estimated by CPSC Office of Compliance staff to be 224 minutes per establishment per prototype per year. Assuming that every establishment will produce 20 qualified prototypes, the increase in labor costs associated with quality assurance requirements of the standard is about  $\$1539$  (224 minutes  $\times$  20 qualified prototypes  $\times$   $\$20.61$  average total compensation per hour for office

and administrative support workers) per establishment per year. (Note that pooling among establishments or using a qualified, confirmed, or subordinate prototype for longer than one year will reduce this estimate.) This yields an average cost of 3.8 cents per mattress set for an average establishment, with average output of 40,280 mattresses per year. Hence expected total costs of quality assurance/quality control programs may average about 7.5 cents ( $3.7 + 3.8$ ) per conventional mattress set per year.

*Costs to Wholesalers, Distributors, and Retailers.* An added cost of the standard is the increase in costs to wholesalers, distributors, and retailers in the form of additional storage, transportation, and inventory financing costs. Since a mattress complying with the standard will not be bigger than a similar mattress produced before the standard becomes effective, storage and transportation costs are not expected to increase. Inventory financing costs will increase by the average cost of borrowing money, applied to the wholesale price of a mattress over the average inventory holding time period. Since most mattress producers use just-in-time production and have small inventories, this additional cost will probably not exceed ten percent of the increase in production cost (which is the sum of material, labor, testing, record keeping, and quality assurance costs). A ten percent mark-up is, therefore, being used to measure the cost to wholesalers, distributors, and retailers. This yields a resource cost to wholesalers, distributors, and retailers equal to  $\$1.37$ , with a range from  $\$0.69$  to  $\$2.04$ , per mattress set. Retail prices may increase by more than the 10 percent mark-up. Section 8 discusses the impact of the standard on retail prices of mattress sets.

*Costs of Compliance and Enforcement.* Compliance and enforcement costs refer to the costs incurred by CPSC to ensure that manufacturers are complying with the standard. Based on past experience with the existing mattress standard, the estimated CPSC inspection time spent per location (establishment) equals 33 hours for inspection and 6 hours for sample collection. This yields a cost per inspection of about  $\$1,722.63$  (39 hours  $\times$   $\$44.17$ , the average wage rate for CPSC inspectors). Additionally, compliance officers spend an average of 20 hours per case, making their cost equal to  $\$1,071.20$  (20 hours  $\times$   $\$53.56$ , the average hourly wage rate for compliance officers). This yields an average compliance and enforcement total labor

cost of \$2,793.83 per inspected establishment per year.

It should be noted that the expected cost per establishment, if less than one hundred percent of establishments are inspected every year, equals the cost per inspected establishment times the probability that a given establishment will be inspected. Though the probability that a given establishment will be inspected in a given year is not known, assuming that a third of all establishments will be inspected (i.e., about 190 establishments) yields a compliance and enforcement total expected labor cost of \$931.28 ( $\$2,793.83 * (1/3)$ ) per establishment per year.

In addition to labor costs, CPSC will incur testing costs. It should be noted that the decision to collect samples after an inspection visit is made at the discretion of the investigator and, therefore an accurate assumption about the number of samples collected and sent for a burn test cannot be made. If, based on inspection, samples from 10 percent of all inspected establishments were to be collected and sent to a lab for a burn test, and if samples representing 5 (qualified, confirmed, or subordinate) prototypes are taken from each of these establishments, then the total cost of CPSC testing will be \$142,750 (5 prototypes \* \$1,500 (the cost of testing 3 mattress sets for each qualified prototype) \* 19 (10 percent of inspected establishments, equal to a third of 571)). These assumptions about frequency of testing yield an expected cost of testing per establishment of \$250 ( $\$142,750 / 571$ ).

Therefore the expected total CPSC wage and testing costs associated with the standard per establishment per year equal \$1,181.28 ( $\$931.28 + \$250.00$ ). With an average production of 40,280 mattresses per establishment (23 million mattresses divided by 571 establishments), the average CPSC wage and testing costs equal 2.9 cents per mattress set ( $\$1,181.28 / 40,280$ ). These costs are expected to decrease over time as manufacturers learn the requirements of the standard.

**Total Resource Costs.** Therefore total resource costs (including material costs, labor costs, costs of prototype and confirmation testing, paperwork collection and record keeping costs, costs of quality control/quality assurance programs, production testing costs, costs to wholesalers, distributors, and retailers, and costs of compliance and enforcement) are estimated to be \$15.07, with a range from \$7.67 to \$22.46, per mattress set. The section on the impact of the standard on small businesses and other small entities

discusses how costs of testing and quality control/quality assurance programs may differ for small businesses and strategies that small manufacturers might adopt to reduce these costs.

**Projected Future Costs.** It is possible that costs associated with the standard will decline over time. A supplier of fire resistant barriers predicts that the price of the barriers will decline by 40 percent in the next two years, due to decreased uncertainty and increased competition. (They have already dropped significantly since TB603 was proposed.) The increase in labor costs due to decreased productivity is expected to be temporary and be reduced when workers get more training and/or the older machines get replaced with newer machines that are more capable of handling the FR thread and material used in fire resistant barriers. Moreover, as noted above, prototype testing costs are expected to decline after the first year of the standard.

The standard includes an effective date of July 1, 2007. The costs reported here are based on the assumption that supplier companies will be able to maintain existing capacity. If federal standards for bedclothes and upholstered furniture were mandated at the same time and input producers were not given enough time to increase their capacity, input prices would rise in the short-run because of increased demand for the FR material used by all three industries.

**Unquantifiable Costs.** A mattress manufacturer indicated that in response to an open-flame mattress standard, the number of models/styles produced may be cut by half. If this response is typical, then there may be a reduction in consumers' utility, because of the reduction in mattress types that they would have to choose from. Others indicate that there will be an aversion to producing double-sided mattresses, because it would be harder for them to pass the burn test. Double-sided mattresses possibly have a longer expected life than single-sided ones. To the extent that consumers prefer double-sided mattresses to single-sided mattresses, the shift away from producing double-sided mattresses imposes a non-monetary cost. Though unquantifiable, this reduction in choices of construction type and design is an added cost to consumers of the standard.

#### 8. Benefits and Costs of the Standard

This section compares benefits and costs of the standard, presents a sensitivity analysis, and highlights the impact of the standard on retail prices,

small businesses, children, and the environment. The sensitivity analysis examines the effect of changing some of the assumptions used earlier. The analysis shows that net benefits continue to be positive under a reasonable range of assumptions about the death and injury effectiveness of the standard, the reduction in injuries resulting from the standard, the value of a statistical life estimate, the discount rate, or the expected mattress life.

Using an expected mattress life of 10 years and a discount rate of 3 percent, the mid-point estimates for total benefits, costs, and net benefits per mattress set associated with the standard equal \$51.25, \$15.07, and \$36.18 respectively per mattress set. The ranges for these estimates are \$45.04 to \$57.46, \$7.67 to \$22.46, and \$22.58 to \$49.78 respectively per mattress set. The lower end of the range for net benefits is derived by subtracting the upper end of the range for costs from the lower end of the range for total benefits. The upper end of the range for net benefits is derived by subtracting the lower end of the range for costs from the upper end of the range for total benefits. The whole range for net benefits is positive, which means that the expected benefits of the standard will exceed the expected costs. The sensitivity analysis, which allows the discount rate and the expected product life to vary, shows that net benefits remain positive when varying assumptions are made.

Assuming that all mattress sets in California would have complied with a standard that is very similar to CPSC's standard, expected aggregate lifetime costs, benefits, and net benefits associated with one year's production of mattresses are derived by applying the per unit cost and benefit of the standard to 89 percent of the estimated U.S. market for mattresses (equal to 25.6 million units). The sensitivity analysis section below shows aggregate costs, benefits, and net benefits of the standard assuming that current production shares would continue into the future without the anticipation of a federal standard.

Using a discount rate of three percent and an expected 10-year mattress life, aggregate benefits of the standard are expected to be \$1,024 to \$1,307 million ( $\$45.04$  to  $\$57.46$  per mattress times 89 percent times 25.6 million mattresses). The mid-point estimate for aggregate benefits is \$1,166 million. The corresponding expected aggregate resource costs of the standard are \$175 to \$511 million ( $\$7.67$  to  $\$22.46$  times 89 percent times 25.6 million). The mid-point estimate for aggregate costs is \$343 million. The resulting aggregate net benefits equal \$514 to \$1,132

million (\$22.58 to \$49.78 times 89 percent times 25.6 million). The mid-point estimate for aggregate net benefits is \$823 million. For a mattress life of 14 years (and a 3 percent discount rate), the mid-point estimates for aggregate lifetime benefits, costs, and net benefits of the standard associated with one year of production are \$1,179, \$343, and \$836 million respectively. The expected benefits of the standard will accrue for a long period of time and discounted net benefits will, therefore, be much greater than net benefits associated with only the mattress production in the first year the standard becomes effective.

**Sensitivity Analysis.** The previous analysis compares benefits and costs of the standard using expected mattress lives of 10 and 14 years, a discount rate of 3 percent, an expected effectiveness rate of the standard of 69 to 78 percent of deaths and 73 to 84 percent of injuries, an estimated value of a statistical life of 5 million dollars, and an estimated cost of injury of \$150,000. It also assumes that only mattresses sold in California would have to, and therefore will, comply with TB 603, if producers are not anticipating a federal standard to be issued in the near future. This section examines the effect of changing any of these assumptions on the expected net benefits of the standard.

Comparing expected benefits and costs of the standard, it is clear that net benefits are expected to be positive (i.e., expected total benefits exceed expected costs) for an average mattress life of 10 or 14 years. Though increasing the expected mattress life from 10 to 14 years, while using the 3 percent discount rate, expands the positive range of net benefits, it does not affect the conclusion regarding net benefits per mattress set. A further increase of the expected life of a mattress similarly would not affect the estimate of net benefits. For example, using the Product Population Model estimate of the number of mattresses in use based on an expected mattress life of 18 years (equal to 354.2 million mattresses) yields net benefits of \$21.76 to \$54.31, with a mid-point estimate of \$38.04, per mattress set using a discount rate of 3 percent.

Net benefits per mattress set are also positive using discount rates of 3 and 7 percent. Using a 3 percent discount rate, the mid-point estimate of net benefits per mattress set equals \$36.18 for an average life of 10 years and \$36.75 for an average life of 14 years. Using a 7 percent discount rate, the mid-point estimate of net benefits per mattress set equals \$28.95 for an average life of 10 years and \$26.93 for an average life of 14 years. Assuming a larger discount

rate reduces net benefits, because future benefits reaped over the life of the mattress set contribute less to total discounted benefits.

Net benefits are based on an estimated value of a statistical life equal to \$5 million. Changing the estimate used for the value of a statistical life does not have a major impact on the results. For example, if \$3 million, the lower bound estimate in Viscusi (1993), is used as an estimate of the value of a statistical life, the mid-point estimate of net benefits becomes \$18.30 per mattress set (using a 3 percent discount rate and an estimated mattress life of 10 years).<sup>4</sup> Alternatively, a \$7 million estimate, the higher bound estimate in Viscusi (1993), yields a mid-point estimate of net benefits equal to \$54.06 per mattress set (using a 3 percent discount rate and an estimated mattress life of 10 years).

Changing the estimate used for the cost of injury will have minimal impact on the results, because the share of benefits from reduced injuries is only 13 percent of total benefits. Hence, even if there were no reduction in injuries from the standard, the net benefits would be \$29.64, with a range of \$16.91 to \$42.37 per mattress set (using a mattress life of 10 years and a 3 percent discount rate).

The analysis assumes that the effectiveness of the standard ranges from 69 to 78 percent for deaths and 73 to 84 percent for injuries. Even with a lower effectiveness rate, net benefits will remain positive. For example, assuming an effectiveness rate of 50 percent for deaths and injuries yields net benefits of \$9.32 to \$28.24 per mattress set, with a mid-point estimate of \$18.78, and aggregate net benefits of \$212 to \$642 million, with a mid-point estimate of \$427 million, from all mattress sets produced the first year the standard is mandated and sold outside California (using a mattress life of 10 years, a 3 percent discount rate, and the same effectiveness for injuries as used in the baseline analysis). Also, assuming a smaller number of deaths and injuries before the standard is mandated (a smaller baseline risk) would still result in positive net benefits. A 50 percent reduction in baseline death and injury risks yields net benefits of \$0.09 to \$20.16 per mattress set, with a mid-point estimate of \$10.12, and aggregate net benefits of \$2 to \$515 million, with

<sup>4</sup> The range for net benefits was derived by subtracting the upper end of the cost range from the lower end of the benefits range to get the lower end of the range of benefits and subtracting the lower end of the cost range from the higher end of the benefits range to get the higher end of the range for net benefits. Because of this method, both ends of the range for net benefits are a very unlikely occurrence.

a mid-point estimate of \$259 million, from all mattress sets produced the first year the mattress standard is mandated (using a mattress life of 10 years, a 3 percent discount rate, and the estimated effectiveness measures used in the baseline analysis).

The estimates of aggregate benefits, costs, and net benefits are based on the assumption that compliance before the promulgation of the standard was limited to California, which represents a market share of 11 percent. If, instead, we assume that current (October 2005) production shares would continue in the absence of the CPSC standard, the expected aggregate benefits, costs, and net benefits associated with the CPSC standard will decline. Assuming that the top four producers continue to produce the same percent of TB 603-complying mattress sets that they are now (one producing complying mattress sets nationwide, the other three producing 15 percent to 20 percent complying mattress sets), while all others produce complying mattress sets only in California, then the ranges for the mid-point estimates for aggregate benefits, costs, and net benefits are \$952 million to \$981 million, \$280 million to \$288 million, and \$672 million to \$692 million respectively.<sup>5</sup> These aggregate benefits are associated with one year's worth of mattress output. Summing all benefits over all mattress output over the time period during which the CPSC standard remains effective would result in much more positive benefits than indicated here.

**Impact on Retail Prices.** One of the top four mattress manufacturers in the industry has re-merchandised its product lines to lower the costs of other materials so that total costs (and prices) are the same as they were before the production of mattresses that comply with TB603. Other manufacturers have indicated that they will have to increase their price which, according to some manufacturers and based on reported traditional industry mark-ups, might translate to an increase in the retail price to consumers that could reach approximately four-fold the increase in manufacturer's costs. Hence the average

<sup>5</sup> These ranges are based on the estimated market share of complying mattresses produced by the one producer selling complying mattresses nationwide (13.9 percent), the estimated market share of the remaining three of the top four producers who are selling some complying outside California (43.4 percent), and the estimated market share of all remaining producers (42.7 percent). With these three groups producing complying mattresses representing all output, 15 to 20 percent of output, and 11 percent of output (for California) respectively, the resulting U.S. market share of complying mattresses is 25.1 to 27.3 percent. (Estimated market shares are derived from Furniture/Today, May 30, 2005.)

increase in the price at which mattress manufacturers are willing to sell their products (supply price) will be anywhere between the price of a similar mattress without FR material and that price plus four times the increase in the costs of production. Given the presence of at least one company that will not increase the price, it is unlikely that the new average price will be close to the higher end of the range because of competition for market share among manufacturers.

The market (equilibrium) price is determined by the intersection of consumers' willingness to buy and producers' willingness to sell the product at different prices. The value the equilibrium price will take (relative to the price before the introduction of fire resistant mattress sets) will be affected by the change in the demand and supply curves for fire resistant mattress sets and their relative elasticities. Assuming that the demand curve is unaffected, the equilibrium price will reflect the price elasticity of demand (i.e. the sensitivity of the change in the quantity demanded to the change in price) as well as the shift in supply. In the short-run, consumers have a relatively elastic demand curve, because they can always postpone the purchase of a durable good, and therefore the increase in the equilibrium price is expected to be much lower than the increase in the supply price (what producers would want to sell the same number of mattress sets for). Because of the relatively high elasticity of demand, sales are likely to decrease in the short-run. In the long-run, the demand curve is less elastic, and therefore the equilibrium price and quantity (sales) will be higher than the short-run price and quantity.

Given the availability of mattresses whose retail prices will not increase and the competitive nature of the industry, it is possible that, on average, prices will rise by about twice the costs associated with the standard (i.e., retail price mark-up will average about twice the increase in manufacturing costs). Under this assumption, consumers would pay an additional mark-up of 10 percent (the cost to wholesalers, distributors, and retailers) to 100 percent of total production costs, applied to the total production cost per mattress set. Hence the range for the price increase is  $\$7.64 (\$6.95 * 1.1)$  to  $40.78 (20.39 * 2)$ , with a mid-point estimate of  $\$24.21$ , per mattress set (compared to the price they would have paid for a current mattress set that does not comply with the standard). Assuming that the demand curve for mattresses is unaffected by the standard,

some consumers will choose not to purchase (or at least delay the purchase of) a new mattress set. These consumers who delay or choose not to purchase a new set will not be getting the value (or benefits) that they would have gained from purchasing a new set. This loss, though difficult to quantify, is sometimes measured as a loss in consumer surplus (McCloskey, 1982).

It is unlikely, however, that the post-standard demand curve for mattresses will be the same as the current demand. Early 2004 market observations indicate consumer and retail enthusiasm about the fire resistant mattresses already available for sale (Furniture Today, April 26th, 2004). If this enthusiasm generally reflects consumers' preferences, then the demand for mattresses may increase. This would tend to offset any reduction in mattress sales and possible losses in consumer surplus.

*Impact on Small Businesses and Other Small Entities.* The increase in material and labor costs to meet the standard is not likely to be dependent on a firm's size and will therefore not disproportionately affect small businesses. The cost imposed disproportionately (per unit produced) on small businesses will be the cost of testing, information collection and record keeping and quality control/quality assurance programs. While these costs are estimated to be a little less than one dollar per mattress set per year for average-sized establishments, they could be substantially higher for small mattress manufacturers.

The rule allows two or more establishments (plants within the same firm) or independent firms to "pool" prototypes. This reduces the cost of testing because only one of the pooling firms is required to test three sets (for a qualified prototype) with all remaining firms testing one set (for a confirmation test). The standard would also allow selling mattress sets based on subordinate prototypes and differing from a qualified prototype only with respect to size (length and width), and/or ticking material or other components that do not impact the fire performance of the prototype without testing the prototypes, to minimize testing costs to all manufacturers, especially those whose volume of output is small. Moreover, costs could be reduced if a qualified, confirmed, or subordinate prototype is used to produce mattress set styles for longer than a year. Furthermore, firms with more than one establishment (or different firms) may be able to reduce costs by pooling their quality control programs over all establishments.

Use of prototype pooling across establishments and firms would ameliorate the impact of the standard on small businesses. By getting together across different states and regions, small manufacturers who do not share a common market (and therefore do not compete with each other) can resemble a large producer in their testing and quality control/quality assurance efforts and therefore reduce their costs per mattress set. It is also expected that some barrier suppliers would be willing to do the testing and quality control/assurance programs for small manufacturers in exchange for a small charge, which will be similar to the average cost per mattress for large businesses, because the volume of output will be large.

To reduce the impact of the standard on small businesses, CPSC eliminated the requirement of keeping physical samples. This reduced the average annual record keeping cost per establishment (assuming that they produce 20 different prototypes) from  $\$767$  to  $\$412$ .

*Impact on the Environment.* The extraction, processing, refinement, and conversion of raw materials to meet the standard involve energy consumption, labor, and the use of potentially toxic chemicals. Most manufacturing has some impact on the environment, and manufacturing fire resistant mattresses is no exception. Because the standard is a performance standard, it does not restrict manufacturers' choice of fire resistant materials and methods that could be used in the production of mattresses. There appear to be several economically viable options to meet the standard that, based on available information, do not impose health risks to consumers or significantly affect the environment. (See discussion at Section M of this preamble.)

*Impact on Children.* Deaths and injuries among children constitute a substantial proportion of mattress-related fire losses, and of the potential benefits of the standard. A CPSC staff report, based on a field investigation study in 1995 to learn more about cigarette-ignited fires and open-flame fires, found that 70 percent of open-flame fires involved child play and that child play was involved in 83 percent of the 150 deaths of children less than five years of age. A National Association of State Fire Marshals 1997 study also indicated that 66 percent of the small open-flame ignitions were reportedly started by children under the age of 15 (21 percent by children under 5).

For virtually all of the fires started by children less than 15 years of age, the ignition was not witnessed by an adult

(Boudreault and Smith, 1997). Reducing the likelihood of flashover in the first 30 minutes of the fire may therefore benefit children disproportionately, as it allows enough time for adults to detect the fire and save young children in close proximity to the fire. Also children between 5 and 9 who sometimes do not cooperate with adults and run away from adults to other parts of the occupancy will have enough time to be found and rescued by an adult.

The Epidemiology staff's memorandum shows that, based on national fire estimates for the years 1999–2002, the standard would reduce deaths and injuries to children ages 5 and younger by 77 to 87 percent and 59 to 73 percent respectively. Deaths and injuries to children ages 5 to 14 were estimated to be reduced by 83 to 92 percent and 80 to 89 percent respectively. This represents a total of 70 deaths of children less than 15 years of age per year for the 1999 to 2002 period. It also represents 240 to 280 injuries to children less than 15 years of age for the same period.

#### 9. Alternatives to the Standard

*Alternative Maximum Peak Heat Release Rate (PHRR) and Test Duration.* The initial California TB 603 proposal required the duration of the test to be 60 minutes with a maximum peak heat release rate (PHRR) of 150 kW. Following industry opposition to this proposal, the California Bureau of Home Furnishings and Thermal Insulation changed the criterion to a maximum of 200 kW PHRR in the first 30 minutes, the requirement for both the CPSC standard and the current TB 603.

Increasing the duration of the test and reducing the PHRR would, according to several input suppliers, increase the production costs to manufacturers of a queen mattress set by \$15.42 to \$46.88, with a mid-point estimate of \$31.15, compared to non-complying products (i.e., those not conforming to the standard.) Adding the costs to wholesalers, distributors, and retailers, and of CPSC compliance efforts, yields a total resource cost of the stricter standard (150 kW and 60 minutes) of \$17.00 to \$51.61, with a mid-point estimate of \$34.30. (The resource cost is the sum of the production cost, cost to wholesalers, distributors, and retailers, and CPSC compliance cost). This represents a marginal increase in average resource costs of \$19.24 over the mid-point estimate of the costs associated with the final standard.

Potential benefits of the stricter standard could be higher than the standard, but the extent is uncertain. Given an effectiveness rate of the

standard of 69 to 78 percent for deaths and 73 to 84 percent of injuries, the additional benefits of stricter test requirements are limited. Using the mid-point estimate of these effectiveness ranges (73.5 percent for deaths and 78.5 percent for injuries) and assuming that the stricter standard eliminates 50 percent of the remaining addressable deaths and injuries (i.e., it saves 46 additional lives and prevents 167 additional injuries), then an additional benefit of about \$8.34 per mattress set is expected. This additional benefit may be lower than the expected associated costs of \$19.24 and thus reduce net benefits.<sup>6</sup> Moreover, a small increase in net benefits may not justify the large increase in retail price that would result from a stricter standard.

Such increase in costs would likely result in consumers facing higher mattress set prices. Based on traditional industry mark-ups, the new price may reflect a two-to four-fold increase over the increase in production costs, depending on the relative elasticity of demand and supply for mattress sets. This yields a total increase in the average price of a queen mattress set of \$30.84 (2 times the lower end of the range for the increase in production costs, equal to \$15.42) to \$187.52 (4 times the upper end of the range for the increase in production costs, equal to \$46.88), with a mid-point estimate of \$109.18. A bedding official estimated that the price increase resulting from the stricter standard may reduce sales by 25 percent or more (Furniture/Today, July 21, 2004).

The larger increase in prices (compared to the less strict test) and the resulting reduction in sales could drive some of the smaller producers out of business. (The stricter standard is more likely to require replacing some existing machines to accommodate the denser barrier material, which would be disproportionately more costly for smaller firms whose machinery is older and less sophisticated.) Since mattress sets are durable goods, one would expect a larger drop in sales in the short-run than in the long-run, as consumers choose to keep their old

mattress sets longer than before. This would make the reduction in sales more pronounced in the short-run, increasing the likelihood that some firms may exit the market. Moreover, if a large number of consumers choose to extend the life of their mattress sets for a longer time period, it will take longer to achieve the benefits expected to be associated with the safer mattress sets.

*Alternative Total Heat Released in the First Part of the Test.* TB 603 requires the total heat released during the first 10 minutes of the test to not exceed 25 MJ. The stricter criterion of the standard (15 MJ in the first 10 minutes) reduces the expected size of the initial fire and hence allows consumers a greater chance to escape the fire and get out of the room, even if the room never reaches flashover. The effectiveness rates presented in the analysis are based on the stricter criterion. Using the TB 603 criterion (25 MJ in the first 10 minutes) would likely reduce estimated benefits (the estimated reductions in deaths and injuries), without having any significant effect on costs. According to several producers, mattress sets that use existing barrier technology release total heat that is far below the 25 MJ requirement of TB 603. Therefore, using the TB 603 criterion for the total heat released would not change costs but could potentially reduce the benefits and, hence, the net benefits of the standard.

Moreover, because of the small fuel load of ticking materials currently being used, the lower total heat release requirement allows the production of mattress sets based on a prototype that has not been tested as long as it differs from a qualified prototype only with respect to ticking and the ticking material is not part of the fire resistance solution. Requiring a test for every prototype with a different ticking was rejected by the CPSC because of the magnitude of the burden it would impose on small producers who do not produce large numbers of any one prototype and who would have been adversely affected by these requirements.

*Alternative Testing Requirements.* With certain exceptions discussed above, the standard requires prototype testing (of three mattress sets) before a manufacturer starts production of a given mattress design and a confirmatory test of one mattress for any other establishment or firm relying on that qualified prototype through a pooling arrangement. Though production testing is encouraged by the standard, it is not required as a possible component of the quality assurance

<sup>6</sup> These cost estimates (and the resulting marginal increase) should be viewed as approximate since no extensive tests of the barriers have been conducted for 60 minutes, as most manufacturers are focused on meeting the California requirements, which are less strict. Input suppliers generally do not assemble and test large numbers of mattresses, and may therefore underestimate reduced labor productivity and/or reduced output per machine (compared to a maximum PHRR of 200kW for a 30-minute test) due to handling the thicker, denser barrier. A number of mattress producers estimate that to meet the stricter standard, manufacturing costs would increase \$50 to \$70 for a queen-sized set (Furniture/Today, July 21, 2004).

program, and no specific frequency is set.

As an alternative, the Federal standard could, like TB 603, omit testing or prototype definition requirements. Without testing, however, it might be difficult for manufacturers to know whether their mattresses will comply with the standard.

Alternatively, the standard could require production testing with a specified frequency. This specification, however, could result in unnecessary costs if they are not justified given the quality control measures generally undertaken by manufacturers in the absence of the standard. Requiring more tests per establishment, prototype, or enterprise would increase the estimated costs per mattress and could reduce net benefits.

*Alternative Effective Date.* The effective date in the standard is July 1, 2007. Given the length of time needed to ensure the availability of inputs for the production of barrier materials, availability of barriers for mattress producers, and a sufficient volume of inventories at retailers' showrooms, an earlier effective date may result in higher input costs to manufacturers. More importantly, it is expected that smaller manufacturers will be disproportionately affected, as they are more likely to wait to invest in development efforts until the technology is developed by larger firms, or until the standard becomes effective. The Commission chose the July date to coincide with the cycle for introduction of new mattress models, as suggested by the public comments.

A later effective date (longer than 18 months) could reduce expected net benefits as more fires, deaths, and injuries associated with mattresses would occur between the date of publication in the **Federal Register** and the date the standard becomes effective. The Commission is unaware of evidence that small manufacturers would benefit from extending the effective date further into the future. The staff requested comments from small businesses on the expected economic impact of the effective date and received one comment from a small business owner indicating that his firm would need more than twelve months to meet the standard. By the time the final standard takes effect, it would be nearly 18 months after publication of the **Federal Register** notice of the final rule. This should provide enough time for the commenter to transition to producing compliant mattress sets.

*Taking No Action or Relying on a Voluntary Standard.* If the Commission chose to take no action, only 11 percent

of all mattress sets produced in the United States would have to comply with a standard that is very similar to the CPSC standard (California's TB 603). It is uncertain whether there will be any incentive for producers outside California to incur additional costs to produce mattress sets that would comply with California's TB 603. Consequently, how much, if any, of the remaining 89 percent of production would comply is uncertain. One of the largest four producers is currently producing mattress sets that comply with the CPSC standard. The other three top producers were selling complying mattress sets that represent between 15 to 20 percent of their total output in October, 2005. It is not clear, however, that any of these producers would continue to sell complying mattress sets outside California if they were not anticipating a future promulgation of a federal standard. Moreover, the absence of a federal standard may lead other states to develop their own standard, which would result in unnecessary burden (in terms of higher production costs) on manufacturers selling mattress sets in different states with different flammability requirements. Hence, expected aggregate net benefits associated with CPSC's standard are higher than the net benefits that result from taking no action and only relying on the California standard.

No effort has been undertaken to develop a voluntary standard. Furthermore, industry representatives support a mandatory standard to level the playing field among domestic producers (large and small) and importers. If a voluntary standard were developed, the economic burden would fall primarily on the larger firms (who would likely be the first to comply), their market shares could be reduced and benefits to consumers (in terms of reduced deaths and injuries) would likely decline accordingly.

*Labeling Requirements Instead of Performance Standard.* The Commission could require labeling on mattresses to warn consumers in lieu of a standard. Requiring warning labels is not considered an effective option for reducing the risk of fires. Since mattress labels are usually covered by bedclothes and may not be seen by the mattress users, mandating warning labels on mattress sets is unlikely to be an effective alternative to a performance standard. Moreover, fires started by children who cannot read or do not change the bed sheets will not be reduced by a labeling requirement. Hence, while labeling costs are probably negligible, labels alone are unlikely to reduce mattress fires significantly.

## J. Paperwork Reduction Act

The standard will require manufacturers (including importers) of mattress sets to perform testing and maintain records of their testing and quality assurance efforts. For this reason, the rule contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, the NPR discussed the paperwork burden of the proposed rule and specifically requested comments on the paperwork burden of the proposal. As discussed in section H above, the Commission received comments concerning testing costs (particularly for small producers) and generally on the costs of meeting the standard. As noted above, the Commission accepted several of the suggestions of commenters and has made some changes that should reduce the testing, quality assurance and recordkeeping burden for manufacturers (eliminated requirement for physical samples and timed the effective date to coincide with development of new models). The agency has applied to OMB for a control number for this information collection, and it will publish a notice in the **Federal Register** providing the number when the agency receives approval from OMB.

## K. Final Regulatory Flexibility Analysis

### 1. Introduction

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. 5 U.S.C. 603. Section 603 of the RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. Accordingly, the Commission published in the NPR a summary of an initial regulatory flexibility analysis that was prepared by the staff for the mattress proposed rule. The staff reviewed the initial regulatory flexibility analysis and prepared a final regulatory flexibility analysis as required by the RFA, which is summarized below. [8]

### 2. Need for and Objectives of the Rule

As discussed above, the standard is intended to reduce deaths and injuries resulting from residential fires involving mattresses ignited by open flame sources. The Commission estimates that the standard will substantially reduce the incidence and cost of these fires by minimizing the possibility of or

delaying the time for flashover conditions to occur.

### 3. Significant Issues Related to Small Business Raised by Comments on the NPR

Significant comments and the Commission's responses to them are discussed in section H of this preamble. Three issues in particular could be of concern to small business.

**Effective date.** One commenter suggested that the effective date should coincide with the time when manufacturers make regular model changes (January or July). The Commission is accepting this suggestion, and the standard provides for an effective date of July 1, 2007. This will make it easier for all producers, but especially small producers outside of California who are not producing complying mattresses, to update their styles and produce complying mattresses.

**Expected cost of meeting the standard.** The Commission received comments from companies concerned about the cost of complying with the standard, some from small businesses. As discussed in the regulatory analysis above, adding all other resource costs (including reduced productivity, cost of testing, record keeping, quality assurance costs and compliance costs) results in costs ranging from \$7.67 to \$22.46, with a mid-point estimate of \$15.07, per (queen) mattress set. These cost estimates are expected to drop as a result of technological developments and increased competition among barrier producers.

**Impact on small business.** Six commenters addressed the impact on small businesses. The small producers expressed concern over the burden of testing costs and the feasibility of producing complying mattress sets in twelve months. The standard's testing, recordkeeping, and quality control/assurance requirements may have a disproportionate impact on small manufacturers because they are generally required per firm or per prototype and therefore would constitute a larger percent of total revenues, sales, and value added for the smaller firms. The standard's provisions for prototype pooling and selling variations of mattress sets without additional testing in certain situations should minimize the adverse impact on small manufacturers. Moreover, if a particular qualified, confirmed, or subordinate prototype was used to produce mattress sets for more than one year, then the testing cost would be reduced. The increase in time needed to produce a mattress set is expected to

decline as workers get more experienced in producing the new models. Staff currently estimates the additional time (and wages) to average 10 percent, with the expectation that it will decline over time.

One small producer suggested that producers under a certain dollar volume be permitted to continue testing under 16 CFR 1632. However, this is not feasible because it would not protect consumers from the risk of fires, deaths, and injuries associated with open flame ignitions; it would also give small producers an unfair advantage over medium-sized producers.

The two barrier producers who commented on the NPR asserted that the costs of meeting the proposed standard are low, with one stating that there is "zero economic impact on small business due to the wide breadth and variety of FR barrier products being offered to the market." A barrier producer suggested only testing one mattress set if the peak heat release rate (PHRR) does not exceed 50 megajoules (MJ) in the first 30 minutes. This suggestion would reduce the cost of testing to all producers, but might not provide an adequate measure of compliance with the standard.

### 4. Firms Subject to the Standard

The standard covers producers and importers of mattresses. There were 522 mattress firms and 607 mattress establishments in 2002, according to the Statistics of U.S. Businesses, Census Bureau data. (According to the Economic Census data, the number of mattress establishments was 571 for 2003.) All but the largest twelve firms had fewer than 500 employees. The U.S. Small Business Administration's Office of Advocacy defines a small business as one that is independently owned and operated and not dominant in its fields. A definition for the mattress manufacturing industry that is used by the Small Business Administration and is less subject to interpretation is a firm with fewer than 500 employees. The latter definition classifies 97.7 percent ((522-12)/522) of all mattress firms as small businesses.

Average employment per firm for the whole industry is 46.2 employees. Average employment for the 1 to 4 employees per enterprise group, which represents 22.41 percent of all firms, is 2.1 employees. Average employment for the less than 20 employees per enterprise group, which represents 60.54 percent of all firms, is 6.9 employees. Hence more than half of mattress firms have less than 20 employees.

### 5. Reporting, Recordkeeping and Other Compliance Requirements of the Standard and Possible Impacts on Small Businesses

The standard is a performance standard, not a design standard, and hence allows producers to choose the technology to meet the mattress set test requirements. With the exceptions discussed in the preamble above, all mattress sets subject to the standard must be tested in prototype and meet the specified performance requirements before production. Manufacturers are required to keep records of all tests performed and their results. The recordkeeping requirements are described in detail in the Regulatory Analysis in section I above.

The increase in the average materials and labor costs of a mattress set that meets the standard (estimated in the regulatory analysis to be \$12.77, with a range of \$6.05 to \$19.49 per mattress set) is not likely to be dependent on a firm's size and will therefore not disproportionately affect small businesses. Larger firms are bearing all the capital investment costs of research and development, sharing some of these costs with input suppliers. Most smaller firms will simply buy from the suppliers a barrier solution, which has been tested extensively and is known to meet the standard. The price these smaller firms pay to cover the development and testing costs are borne by the supplier but will not have a disproportionate adverse impact on the small firms, because the price is not measured relative to their small output, but relative to the supplier's output. Other smaller firms may combine their development efforts to be able to benefit from dividing the costs over a larger number of firms. Finally, small mattress producers that do not assemble the mattress panels (the quilted assembly, including ticking, batting material, and barrier, used to cover the contents of the mattress construction), but buy them from a panel supplier are effectively combining all their output in a "pooling" arrangement. This is because the panel supplier will be responsible for including a barrier in the panel assembly and will pass that cost on to the mattress producers, again not disproportionately impacting the small producers who buy the already assembled panels.

The costs more likely to be imposed disproportionately (per unit produced) on small businesses will be the costs of testing, information collection and record keeping, and quality control/quality assurance programs. While the regulatory analysis estimates these costs

(including the cost of compensating office and administrative support workers for record-keeping and quality control/quality assurance requirements) to be less than one dollar per mattress set per year for average-sized establishments, they could be substantially higher for some small mattress producers. To reduce the impact on small businesses, the Commission eliminated the requirement of keeping physical samples, included in the proposed standard. This reduced the average record keeping cost per establishment (assuming that they produce 20 different prototypes) from \$767 to \$412.

#### 6. Steps Taken To Minimize the Economic Impact of the Standard on Small Entities

As discussed above, the standard allows pooling of prototypes, which reduces the cost of testing because only one of the pooling firms is required to test three sets (for a qualified prototype) with all remaining firms testing one set (for a confirmation test). The standard also allows certain changes to be made without additional testing, which will minimize testing costs. Costs could also be reduced if a qualified, confirmed, or subordinate prototype is used to produce mattress set styles for longer than a year. Furthermore, firms with more than one establishment (or different firms) may be able to reduce costs by pooling their quality control programs over all establishments. Thus, pooling across establishments and firms will ameliorate the standard's impact on small businesses.

In response to a comment from the mattress producers' association, ISPA, the standard now provides an effective date of July 1, 2007. Providing an effective date that coincides with regular model/style changes will also minimize the impact on small producers because it will make it easier for all producers (but especially small producers outside of California who are not producing complying mattress sets) to update their styles and produce complying mattress sets.

Finally, elimination of the requirement for keeping physical samples will also reduce the impact of the standard on small businesses (it reduced the average record keeping cost per establishment (assuming that they produce 20 different prototypes) from \$767 to \$412).

Compared to all other alternatives considered, the standard minimizes the impact on small businesses.

#### 7. Alternatives to the Standard

*Alternative Maximum Peak Heat Release Rate (PHRR) and Test Duration.* One alternative would be to issue a standard with criteria like those initially proposed in the California TB 603 proposal (a maximum PHRR of 150kW and test duration of 60 minutes). As discussed in the regulatory analysis, this would increase the resource costs to manufacturers (the total resource cost of a stricter standard (150 kW and 60 minutes) would result in a marginal increase in costs averaging \$19.24 over the mid-point estimate of costs associated with the standard).

Potential benefits of a stricter standard could be higher than the standard, but the extent is uncertain and a stricter standard would likely reduce net benefits. Moreover, a small increase in net benefits may not justify the large increase in retail price that would result from a stricter standard. Also, the larger increase in prices could reduce sales and drive some of the smaller manufacturers out of business.

*Alternative Total Heat Released in the First Part of the Test.* CPSC's standard sets a limit of 15 MJ in the first 10 minutes while TB 603 limits the total heat released during the first 10 minutes of the test to 25 MJ. The Commission could adopt the criterion of TB 603. However, this would likely reduce estimated benefits without having any significant effect on costs. According to several producers, mattresses that use existing barrier technology release total heat that is far below the 25 MJ requirement of TB 603. Therefore, using the TB 603 criterion for the total heat released would not change costs but could potentially reduce the benefits and, hence, the net benefits of the standard.

Moreover, it would limit manufacturers' ability to change tickings without additional testing, thus increasing testing costs which would be particularly burdensome for small manufacturers who do not produce large numbers of any one prototype.

*Alternative Testing Requirements.* With certain exceptions discussed above, the standard requires prototype testing (of three mattress sets) before a manufacturer starts production of a given mattress design and a confirmatory test of one mattress if more than one establishment or firm are pooling their results. Though production testing is encouraged by the standard, it is not required. As an alternative, the Federal standard could, like TB 603, omit testing or prototype definition requirements. Without testing, however, it might be difficult for

manufacturers to know whether their mattresses will comply with the standard. Alternatively, the standard could require production testing with a specified frequency. This specification, however, could result in unnecessary costs if they are not justified given the quality control measures generally undertaken by manufacturers in the absence of the standard. Requiring more tests per establishment, prototype, or enterprise would increase the estimated costs per mattress and could reduce net benefits.

*Alternative Effective Date.* The effective date in the standard is July 1, 2007. An earlier effective date could result in higher input costs to manufacturers. Moreover, it is expected that smaller manufacturers will be disproportionately affected, as they are more likely to wait to invest in development efforts until the technology is developed by larger firms, or until the standard becomes effective. The Commission chose the July date to coincide with the cycle for introduction of new mattress models, as suggested by the public comments.

A later effective date (longer than 18 months) could reduce expected net benefits. The Commission is unaware of evidence that small manufacturers would benefit from extending the effective date further into the future. The Commission received one comment from a small business owner indicating that his firm would need more than twelve months to meet the standard. By the time the final standard takes effect, it would be nearly 18 months after publication of the final rule in the **Federal Register**. This should be enough time for the all manufacturers to transition to producing compliant mattress sets.

*Taking No Action or Relying on a Voluntary Standard.* If the Commission chose to take no action, only 11 percent of all mattress sets produced in the United States would have to comply with a standard that is very similar to the CPSC standard (California's TB 603). How much, if any, of the remaining 89 percent of production would comply is uncertain, and without a federal standard other states may develop their own standards, which would result in unnecessary burden (in terms of higher production costs) on manufacturers selling mattress sets in different states with different flammability requirements. Hence, expected aggregate net benefits associated with CPSC's standard are higher than the net benefits that result from taking no action and only relying on the California standard.

No effort has been undertaken to develop a voluntary standard, and

industry representatives support a mandatory standard. If a voluntary standard were developed, the economic burden would fall primarily on the larger firms (who would likely be the first to comply), their market shares could be reduced and benefits to consumers (in terms of reduced deaths and injuries) would likely decline accordingly.

*Labeling Requirements.* The Commission could require labeling on mattresses to warn consumers in lieu of a standard. However, as discussed in the Regulatory Analysis above, requiring warning labels is not considered an effective option for reducing the risk of fires. Thus, while labeling costs are probably negligible, labels alone are unlikely to reduce mattress fires significantly.

### 8. Summary and Conclusions

The standard to address open-flame ignition of mattress sets will affect all mattress manufacturers. Almost all of these firms would be considered small businesses, using the Small Business Administration definition. Material and labor costs for all firms are expected to initially increase on average by \$6.05 to \$19.49, with a mid-point estimate of \$12.77, per mattress set produced. These cost increases are expected to be borne equally by all firms and hence do not have a disproportionate adverse impact on the smaller mattress producers. These costs are expected to decline in the future due to improved technology of producing fire resistant materials and increased competition among suppliers of inputs used by the mattress industry.

Testing, record keeping, and quality control/quality assurance requirements may have a disproportionate impact on small manufacturers because they are generally required per firm or per prototype and therefore would constitute a larger percent of total revenues, sales, and value added for the smaller firms. To minimize the adverse impact on small manufacturers, the standard provides for prototype pooling among different establishments within the same firm and among different firms. The standard would also allow selling mattress sets based on subordinate prototypes that differ from a qualified prototype only with respect to size (length and width), and/or ticking material or other components that do not impact the fire performance of the prototype without testing the subordinate prototypes, to minimize testing costs to all manufacturers, especially those whose volume of output is small.

Compared to other effective alternatives considered, the standard minimizes the impact on small businesses. The only alternatives that might have a lower adverse impact on small business are labeling or doing nothing. Either alternative would be ineffective in reducing the fires, deaths, and injuries associated with mattresses.

### L. Health Effects Issues Concerning the Use of Flame Retardants

As discussed above, some commenters raised concerns about possible health effects from flame retardants ("FR") that manufacturers may use to meet the standard. The staff considered this issue when developing the proposed rule and prepared a preliminary qualitative assessment of the potential risk of health effects from exposure to FR chemicals that may be incorporated in mattresses to meet the proposed standard. Five FR chemicals/chemical classes (*i.e.*, antimony trioxide, boric acid/zinc borate, decabromodiphenyl oxide, melamine, and vinylidene chloride) were reviewed (at the time, data on potential exposures to FR chemicals in mattresses was not available). The staff concluded that, based on available information, FR chemicals and flame resistant materials were available that could be used to meet the proposed mattress standard without posing any unacceptable risk to consumers.

After publication of the NPR the staff continued its analysis of possible environmental or health effects. That analysis is provided in the staff's "Quantitative Assessment of Potential Health Effects from the Use of Fire Retardant (FR) Chemicals in Mattresses," which is discussed below. [11] The staff provided this assessment for peer review. [16] The staff's report, the comments of the reviewers and the staff's responses are available on CPSC's Web site.

To quantify the amount of FR chemical(s) that may be released from the barriers, the staff conducted migration/exposure assessment studies on selected FR-treated mattress barriers. These barriers were treated with a variety of FR chemicals including: antimony trioxide (AT), boric acid, decabromodiphenyl oxide (DBDPO), melamine, ammonium polyphosphate, and vinylidene chloride. The exposure studies were conducted in three sequential phases to estimate exposures from dermal absorption, ingestion, and inhalation. The staff measured the total amount of FR chemical present in the barrier and the potential migration of the FR chemical(s) in the barrier to a surrogate material for skin, to estimate

dermal absorption. Tests were also done to determine the amount of FR chemical that may be ingested. Finally, the airborne particle-bound release of the FR chemical(s) from the barrier during tests simulating normal use over 10 years was used to estimate potential inhalation exposures. The staff also conducted limited aging studies to assess the effects of environmental factors, such as heat and humidity, on the release of airborne particle-bound FR chemicals.

The staff quantitatively assessed all applicable routes of exposure (*i.e.*, dermal, oral, and inhalation) for the FR chemicals for which migration/exposure data were available and determined the potential risk associated with exposure to these FR chemicals. The analysis included estimates of average exposure, as well as the reasonable upper bound exposures. Staff evaluated potential exposure through all three routes combined, as well as individually. The staff's studies and analyses applied conservative assumptions in areas of scientific uncertainty, that is, assumptions that tend to overestimate exposure and risk.

Based on this risk assessment, the staff concludes that AT, boric acid, and DBDPO would not present any appreciable risk of health effects to consumers who sleep on treated mattresses. The estimated hazard index values for these compounds are all substantially less than one under all exposure conditions. As for vinylidene chloride, no detectable concentrations were found, even in the staff's initial extreme extraction studies. Thus, it is considered unlikely that significant quantities of this compound will be released from mattress barriers. Since melamine and ammonium polyphosphate do not satisfy the FHSA definition of "toxic," these compounds are not expected to present any appreciable risk of health effects to consumers, and therefore, were not tested extensively.

The results of this exposure and risk assessment of the selected FR treatments suggest that there are a number of commercially available FR-treated barriers that can be used to meet the standard that are not expected to present any appreciable risk of health effects to consumers who sleep on mattresses that comply with the standard.

### M. Environmental Considerations

Usually, CPSC rules establishing performance requirements are considered to "have little or no potential for affecting the human environment," and environmental

assessments are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). However, because manufacturers may need to use more inherently flame resistant materials or incorporate flame retardant (FR) chemicals into their products in order to meet the standard, the Commission provided a more thorough discussion of the potential for environmental impacts in the NPR than it normally would.

As mentioned above, at the time of the NPR, the staff prepared a preliminary qualitative assessment of the potential risk of health effects from exposure to flame retardant chemicals that may be incorporated in mattresses to meet the proposed standard. Based on this assessment, the staff prepared (and posted on CPSC's Web site) both an Environmental Assessment ("EA") and a Finding of No Significant Impact ("FONSI"),<sup>7</sup> which were discussed in the NPR. The EA concluded that there are FR chemicals and flame resistant materials available for meeting the proposed standard that, based on currently available data, are not expected to pose unacceptable risks to the environment or human health and are widely used in other applications. [14] The FONSI concluded that there will be no significant impacts on the human environment as a result of the proposed standard. [15] The CPSC reaffirms these conclusions with regard to the final rule. [10] As discussed in section L. above, after publication of the NPR, the staff performed additional work and prepared a quantitative assessment of potential health effects of FR chemicals that could be used to meet the mattress standard. This subsequent work further supports the conclusions in the EA and FONSI.

#### **N. Executive Order 12988 (Preemption)**

Under Executive Order 12988 (Feb. 5, 1996) federal agencies must specify the preemptive effect, if any, of new regulations. Requirements imposed under state law, including laws developed in state courts, may be limited, foreclosed or barred by express language in a Congressional enactment, by implication from the breadth of a Congressional regulatory scheme that occupies the legislative field, or by implication because of a conflict with a Congressional enactment.

The Commission intends and expects that the new mattress flammability standard will preempt inconsistent state standards and requirements, whether in the form of positive enactments or court

created requirements. State requirements intended to reduce the risk of mattress fire, no matter how well intentioned, have the potential to undercut the Commission's uniform national flammability standard, create impediments for manufacturers whose mattress products enter the stream of interstate commerce, establish requirements that make dual state and federal compliance physically impossible, and cause confusion among consumers seeking to understand differing state and federal mattress fire requirements.

To fully accomplish the Congressional purpose of the FFA in this area, this mattress flammability rule must take precedence over any non-identical state requirements that seek to reduce the risk of mattress fire. Preemption of non-identical state requirements is expressly and impliedly supported by the words of the statute, its legislative history, and public policy. The FFA expressly provides that if the Commission issues a flammability standard for a fabric or product under the FFA, "no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material or product if the standard or other regulation is designed to protect against the same risk of the occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation." 15 U.S.C. 1203(a). The statute also provides an application process for an exemption from federal preemption for non-identical State or political subdivision flammability requirements. Thus, in the absence of such an exemption, the federal standard will preempt all non-identical state requirements.

The legislative history of the FFA affirms the broad preemptive scope of the federal rule. The Conference Committee Report explicitly explained the preemptive reach of the FFA:

The conferees wish to emphasize that in determining whether a Federal requirement preempts State or local requirements, the key factor is whether the State or local requirement respecting a product is designed to deal with the same risk of injury or illness associated with the product as the Federal requirement. Even though the State or local requirement is characterized in different terms than the Federal requirement or may have different testing methods for determining compliance, so long as the Federal and State or local requirements deal with the same risk of injury associated with a product, the Federal requirement preempts a different State or local requirement.

[A] State standard designed to protect against the risk of injury from a fabric catching on fire would be preempted by a Federal flammability standard covering the same fabric even though the Federal flammability standard called for tests using matches and the State standard called for tests using cigarettes. When an item is covered by a Federal flammability standard \* \* \* a different State or local flammability requirement applicable to the same item will be preempted since both are designed to protect against the same risk, that is the occurrence of death or injury from fire.

H.R. Rep. No. 1022, 94th Cong., 2d Sess. 29 (1976).

The broad preemptive reach of the new rule is further supported by Congress' omission from the FFA of a savings clause. A savings clause is commonly used to restrict the preemptive reach of a federal law. In the context of the Commission, the Congress included savings clauses to preserve state common law requirements in the Consumer Product Safety Act, 15 U.S.C. 2074(a) and 2072(c). Moreover, the existence or absence of a savings clause in a statutory scheme is a significant factor in court decisions reviewing the scope of preemption. The absence of a savings clause generally indicates Congressional intent for broader preemption of state flammability requirements that seek to reduce the risk of mattress fires.

In developing this mattress flammability standard, the Commission carefully balanced numerous factors to craft a rule that will improve consumer safety and meet the Commission's other statutory obligations. The Commission believes that a different standard or additional requirements imposed by state statutes or common law would upset this balance. The FFA requires the Commission to find that the benefits of the regulation bear a reasonable relationship to its costs and that the regulation imposes the "least burdensome" requirement to prevent or adequately reduce the risk of injury. See 15 U.S.C. 1193(j)(1)-(2). The Commission has performed such analysis and believes that requiring mattresses to meet a different flammability requirement—even one that is effectively more stringent—would impose greater costs, in both monetary and non-monetary terms, on manufacturers and consumers and thereby upset the carefully tailored balance of costs and benefits this standard achieves.

This standard prescribes a performance test. Requiring mattress manufacturers to use specific materials or methodologies to reach the flammability standard's goals could

<sup>7</sup> Both of these documents are available from the Commission's Office of the Secretary or from the Commission's Web site (see footnote 2 above).

impose greater costs and interfere with the particular balance the Commission struck between competing public policy considerations. Mattress manufacturers need to maintain the flexibility and business discretion to decide what combination of design and materials is appropriate to meet the federal flammability standard.

Finally, non-identical requirements imposed by state courts conflict with the federal standard no less than requirements imposed by state legislatures or state agencies. Congress' repeated characterization in the Conference Report of the FFA's "requirements" could not have intended to exclude state common law causes of action. If it did, then each state could use its tort law to enforce whatever flammability standard it deemed appropriate, potentially creating fifty different mattress fire standards across the nation. This is precisely the result Congress sought to avoid. Congress' explicit ban on non-identical state flammability requirements would be meaningless if states were free to incorporate such standards into their common law duties of care.

For all these reasons, this standard would preempt all non-identical state requirements which seek to reduce the risk of death or injury from mattress fires.

#### O. Effective Date

The FFA requires that the effective date of a flammability standard be one year after the final standard is promulgated unless the Commission finds for good cause shown that an earlier or later date is in the public interest. 15 U.S.C. 1193(b). The Commission proposed that the rule would become effective one year from publication of a final rule in the **Federal Register** and would apply to mattresses entering the chain of distribution on or after that date. However, as discussed above, in response to comments, the Commission is providing an effective date of July 1, 2007 to coincide with the mattress production cycle.

The Commission finds that this longer effective date is in the public interest. An effective date that coincides with the regular model/style change cycle will minimize the standard's impact on the industry, particularly small producers outside of California.

#### P. Findings

Sections 1193(a) and (j)(2) of the FFA require the Commission to make certain findings when it issues a flammability standard. The Commission must find that the standard: (1) Is needed to adequately protect the public against the

risk of the occurrence of fire leading to death, injury or significant property damage; (2) is reasonable, technologically practicable, and appropriate; (3) is limited to fabrics, related materials or products which present unreasonable risks; and (4) is stated in objective terms. Id. 1193(b). In addition, the Commission must find that: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome requirement that would prevent or adequately reduce the risk of injury. The last three findings must be included in the regulation. Id. 1193(j)(2). These findings are discussed below.

*The standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire.* National fire loss estimates indicate that mattresses and bedding were the first items to ignite in 15,300 residential fires attended by the fire service annually during 1999–2002. These fires resulted in 350 deaths, 1,750 injuries and \$295.0 million in property loss each year. Of these, the staff considers an estimated 14,300 fires, 330 deaths, 1,680 injuries, and \$281.5 million property loss annually to be addressable by the standard. The Commission estimates that the standard will prevent 69 to 78 percent of deaths and 73 to 84 percent of the injuries occurring with these addressable mattress/bedding fires. Thus, the Commission estimates that when all mattresses have been replaced by ones that comply with the standard, 240 to 270 deaths and 1,150 to 1,330 injuries will be avoided annually as a result of the standard.

The regulatory analysis explains that the Commission estimates lifetime net benefits of \$23 to \$50 per mattress or aggregate lifetime net benefits for all mattresses produced in the first year of the standard of \$514 to \$1,132 million from the standard. Thus, the Commission finds that the standard is needed to adequately protect the public from the unreasonable risk of the occurrence of fire.

*The standard is reasonable, technologically practicable, and appropriate.* Through extensive research and testing, NIST developed a test method to assess the flammability of mattresses ignited by an open flame. The test method represents the typical scenario of burning bedclothes igniting

a mattress. Based on NIST's testing, the standard establishes criteria that will reduce the fire intensity of a burning mattress, allowing more time for occupants to escape before flashover occurs. NIST testing has also demonstrated that mattresses can be constructed with available materials and construction that will meet the test criteria. Therefore, the Commission finds that the standard is reasonable, technologically practicable, and appropriate.

*The standard is limited to fabrics, related materials, and products that present an unreasonable risk.* The standard applies to mattresses and mattress and foundation sets. It is a performance standard. Thus, it neither requires nor restricts the use of particular fabrics, related materials or products. Manufacturers may choose the materials and methods of construction that they believe will best suit their business and result in mattresses that can meet the specified test criteria. As discussed above, the Commission concludes that current mattresses present an unreasonable risk. Therefore, the Commission finds that the standard is limited to fabrics, related materials, and products that present an unreasonable risk.

*Voluntary standards.* The Commission is not aware of any voluntary standard in existence that adequately and appropriately addresses the specific risk of injury addressed by this standard. Thus, no findings concerning compliance with, and adequacy of, voluntary standards are necessary.

*Relationship of Benefits to Costs.* The Commission estimates that the total lifetime benefits of a mattress complying with this standard will range from \$45 to \$57 per mattress (based on a 10 year mattress life and 3% discount rate). The Commission estimates that total resource costs of the standard will range from \$8 to \$22 per mattress. This yields net benefits of \$23 to \$50 per mattress. The Commission estimates that aggregate lifetime benefits associated with all mattresses produced the first year the standard becomes effective range from \$1,024 to \$1,307 million, and that aggregate resource costs associated with these mattresses range from \$175 to \$511 million, yielding net benefits of about \$514 to \$1,132 million. Therefore, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

*Least burdensome requirement that adequately reduces the risk of injury.* The Commission considered the following alternatives: alternative maximum peak heat release rate and test

duration, alternative total heat released in the first 10 minutes of the test, mandatory production testing, a longer effective date, taking no action, relying on a voluntary standard, and requiring labeling alone. As discussed in the preamble above and the regulatory analysis, these alternatives are expected to increase costs without increasing benefits, or significantly reduce the benefits expected from the rule. Therefore, the Commission finds that the standard imposes the least burdensome requirement that would adequately reduce the risk.

#### Q. Conclusion

For the reasons stated in this preamble, the Commission finds that this flammability standard for mattress sets is needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, and significant property damage. The Commission also finds that the standard issued today is reasonable, technologically practicable, and appropriate. The Commission further finds that the standard is limited to the fabrics, related materials and products which present such unreasonable risks. The Commission also finds that the benefits from the regulation bear a reasonable relationship to its costs and the standard imposes the least burdensome requirement that would adequately reduce the risk.

#### List of Subjects in 16 CFR Part 1633

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

■ For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations by adding a new part 1633 to read as follows:

### PART 1633—STANDARD FOR THE FLAMMABILITY (OPEN FLAME) OF MATTRESS SETS

#### Subpart A—The Standard

Sec.

- 1633.1 Purpose, scope and applicability.
- 1633.2 Definitions.
- 1633.3 General requirements.
- 1633.4 Prototype testing requirements.
- 1633.5 Prototype pooling and confirmation testing requirements.
- 1633.6 Quality assurance requirements.
- 1633.7 Mattress test procedure.
- 1633.8 Findings.
- 1633.9 Glossary of terms.

#### Subpart B—Rules and Regulations

- 1633.10 Definitions.
- 1633.11 Records.
- 1633.12 Labeling.

1633.13 Tests for guaranty purposes, compliance with this section, and “one of a kind” exemption.

- FIGURE 1 TO PART 1633—TEST ASSEMBLY, SHOWN IN FURNITURE CALORIMETER (CONFIGURATION A)
- FIGURE 2 TO PART 1633—TEST ARRANGEMENT IN 3.05m × 3.66m (10 ft × 12 ft) ROOM (CONFIGURATION B)
- FIGURE 3 TO PART 1633—DETAILS OF HORIZONTAL BURNER HEAD
- FIGURE 4 TO PART 1633—DETAILS OF VERTICAL BURNER HEAD
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- FIGURE 6 TO PART 1633—BURNER ASSEMBLY SHOWING ARMS AND PIVOTS (SHOULDER SCREWS), IN RELATION TO, PORTABLE FRAME ALLOWING BURNER HEIGHT ADJUSTMENT
- FIGURE 7 TO PART 1633—ELEMENTS OF PROPANE FLOW CONTROL FOR EACH BURNER
- FIGURE 8 TO PART 1633—JIG FOR SETTING MATTRESSES AND FOUNDATION SIDES IN SAME PLANE
- FIGURE 9 TO PART 1633—BURNER PLACEMENTS ON MATTRESS/ FOUNDATION
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- FIGURE 11 TO PART 1633—DIAGRAMS FOR GLOSSARY OF TERMS
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- FIGURE 13 TO PART 1633—B LABELS FOR IMPORTED MATTRESS WITH FOUNDATION
- FIGURE 14 TO PART 1633—B LABEL FOR DOMESTIC MATTRESS ALONE AND WITH FOUNDATION
- FIGURE 15 TO PART 1633—B LABEL FOR IMPORTED MATTRESS ALONE AND WITH FOUNDATION
- FIGURE 16 TO PART 1633—B LABEL FOR DOMESTIC MATTRESS ONLY
- FIGURE 17 TO PART 1633—B LABEL FOR IMPORTED MATTRESS ONLY

Authority: 15 U.S.C. 1193, 1194

#### Subpart A—The Standard

##### § 1633.1 Purpose, scope, and applicability.

(a) *Purpose.* This part 1633 establishes flammability requirements that all mattress sets must meet before sale or introduction into commerce. The purpose of the standard is to reduce deaths and injuries associated with mattress fires by limiting the size of the fire generated by a mattress set during a thirty minute test.

(b) *Scope.* (1) All mattress sets, as defined in § 1633.2(c), manufactured, imported, or renovated on or after the effective date of this standard are subject to the requirements of the standard.

(2) One-of-a-kind mattress sets may be exempted from testing under this

standard in accordance with § 1633.13(c).

(c) *Applicability.* The requirements of this part 1633 shall apply to each “manufacturer” (as that term is defined in § 1633.2(k)) of mattress sets which are manufactured for sale in commerce.

##### § 1633.2 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act as amended (15 U.S.C. 1191), the following definitions apply for purposes of this part 1633.

(a) *Mattress* means a resilient material or combination of materials enclosed by a ticking (used alone or in combination with other products) intended or promoted for sleeping upon. This includes mattresses that have undergone renovation as defined in paragraph (d) of this section.

(1) This term includes, but is not limited to, adult mattresses, youth mattresses, crib mattresses (including portable crib mattresses), bunk bed mattresses, futons, flip chairs without a permanent back or arms, sleeper chairs, and water beds or air mattresses if they contain upholstery material between the ticking and the mattress core. Mattresses used in or as part of upholstered furniture are also included; examples are convertible sofa bed mattresses, corner group mattresses, day bed mattresses, roll-away bed mattresses, high risers, and trundle bed mattresses. See § 1633.9 Glossary of terms, for definitions of these items.

(2) This term excludes mattress pads, mattress toppers (items with resilient filling, with or without ticking, intended to be used with or on top of a mattress), sleeping bags, pillows, liquid and gaseous filled tickings, such as water beds and air mattresses that contain no upholstery material between the ticking and the mattress core, upholstered furniture which does not contain a mattress, and juvenile product pads such as car bed pads, carriage pads, basket pads, infant carrier and lounge pads, dressing table pads, stroller pads, crib bumpers, and playpen pads. See § 1633.9 Glossary of terms, for definitions of these items.

(b) *Foundation* means a ticking covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.

(c) *Mattress set* means either a mattress and foundation labeled by the manufacturer for sale as a set, or a mattress labeled by the manufacturer for sale without any foundation.

(d) *Renovation* means altering an existing mattress set for the purpose of resale.

(1) This term includes any one, or any combination of the following: replacing the ticking or batting, stripping a mattress to its springs, rebuilding a mattress, or replacing components with new or recycled materials.

(2) This term excludes alterations if the person who renovates the mattress intends to retain the renovated mattress for his or her own use, or if a customer or a renovator merely hires the services of the renovator and intends to take back the renovated mattress for his or her own use.

(e) *Ticking* means the outermost layer of fabric or related material of a mattress or foundation. It does not include any other layers of fabric or related materials quilted together with, or otherwise attached to, the outermost layer of fabric or related material.

(f) *Upholstery material* means all material, either loose or attached, between the mattress ticking and the core of a mattress.

(g) *Edge* means the seamed, unseamed or taped border edge of a mattress or foundation that joins the top and/or bottom with the side panels.

(h) *Tape edge* means an edge made by using binding tape to encase and finish raw edges.

(i) *Binding tape* means a fabric strip used in the construction of some edges.

(j) *Seam thread* means the thread used to form stitches in construction features, seams, and tape edges.

(k) *Manufacturer* means an individual plant or factory at which mattress sets are manufactured or assembled. For purposes of this part 1633, importers and renovators are considered manufacturers.

(l) *Prototype* means a specific design of mattress set that serves as a model for production units intended to be introduced into commerce and is the same as the production units with respect to materials, components, design and methods of assembly. A mattress intended for sale with a foundation(s) shall be considered a separate and distinct prototype from a mattress intended for sale without a foundation.

(m) *Prototype developer* means a third party that develops a prototype for use by a manufacturer. Such prototypes may be qualified by either the prototype developer or by the manufacturer.

(n) *Qualified prototype* means a prototype that has been tested in accordance with § 1633.4(a) and meets the criteria stated in § 1633.3(b).

(o) *Confirmed prototype* means a prototype that is part of a pooling arrangement and is the same as a

qualified prototype with respect to materials, components, design and methods of assembly and has been tested in accordance with § 1633.5(a)(3) and meets the criteria stated in § 1633.3(b).

(p) *Subordinate prototype* means a mattress set that is based on a qualified or confirmed prototype and is the same as the qualified or confirmed prototype, except as permitted by § 1633.4(b). A subordinate prototype is considered to be represented by a qualified or confirmed prototype and need not be tested in accordance with § 1633.4(a) or § 1633.5(a)(3).

(q) *Prototype pooling* means a cooperative arrangement—whereby one or more manufacturers build mattress sets based on a qualified prototype produced by another manufacturer or prototype developer. A manufacturer who relies on another manufacturer's or prototype developer's qualified prototype must perform a confirmation test on the mattress set it manufactures.

(r) *Confirmation test* means a pre-market test conducted by a manufacturer who is relying on a qualified prototype produced by another manufacturer or prototype developer. A confirmation test must be conducted in accordance with the procedures set forth in § 1633.7 and meet the criteria in § 1633.3(b).

(s) *Production lot* means any quantity of finished mattress sets that are produced in production intervals defined by the manufacturer, and are intended to replicate a specific qualified, confirmed or subordinate prototype that complies with this part 1633.

(t) *Specimen* means a mattress set tested under this regulation.

(u) *Twin size* means any mattress with the dimensions 38 inches (in) (965 millimeters) × 74.5 in. (1892 mm); all dimensions may vary by  $\pm 1/2$  in. ( $\pm 13$  mm).

(v) *Core* means the main support system that may be present in a mattress, such as springs, foam, water bladder, air bladder, or resilient filling.

#### § 1633.3 General requirements.

(a) *Summary of test method.* The test method set forth in § 1633.7 measures the flammability (fire test response characteristics) of a mattress specimen by exposing the specimen to a specified flaming ignition source and allowing it to burn freely under well-ventilated, controlled environmental conditions. The flaming ignition source shall be a pair of propane burners. These burners impose differing fluxes for differing times on the top and sides of the specimen. During and after this

exposure, measurements shall be made of the time-dependent heat release rate from the specimen, quantifying the energy generated by the fire. The rate of heat release must be measured by means of oxygen consumption calorimetry.

(b) *Test criteria.* (1) When testing the mattress set in accordance with the test procedure set forth in § 1633.7, the specimen shall comply with both of the following criteria:

(i) The peak rate of heat release shall not exceed 200 kilowatts ("kW") at any time within the 30 minute test; and

(ii) The total heat release shall not exceed 15 megajoules ("MJ") for the first 10 minutes of the test.

(2) In the interest of safety, the test operator should discontinue the test and record a failure if a fire develops to such a size as to require suppression for the safety of the facility.

(c) *Testing of mattress sets.* Mattresses labeled for sale with a foundation shall be tested with such foundation.

Mattresses labeled for sale without a foundation shall be tested alone.

(d) *Compliance with this standard.* Each mattress set manufactured, imported, or renovated on or after the effective date of the standard shall meet the test criteria specified in paragraph (b) of this section and otherwise comply with all applicable requirements of this part 1633.

#### § 1633.4 Prototype testing requirements.

(a) Except as otherwise provided in paragraph (b) of this section, each manufacturer shall cause three specimens of each prototype to be tested according to § 1633.7 and obtain passing test results according to § 1633.3(b) before selling or introducing into commerce any mattress set based on that prototype, unless the manufacturer complies with the prototype pooling and confirmation testing requirements in § 1633.5.

(b) Notwithstanding the requirements of paragraph (a) of this section, a manufacturer may sell or introduce into commerce a mattress set that has not been tested according to § 1633.7 if that mattress set differs from a qualified or confirmed prototype only with respect to:

(1) Mattress/foundation length and width, not depth (e.g., twin, queen, king);

(2) Ticking, unless the ticking of the qualified prototype has characteristics (such as chemical treatment or special fiber composition) designed to improve performance on the test prescribed in this part; and/or

(3) Any component, material, design or method of assembly, so long as the manufacturer can demonstrate on an

objectively reasonable basis that such differences will not cause the mattress set to exceed the test criteria specified in § 1633.3(b).

(c) All tests must be conducted on specimens that are no smaller than a twin size, unless the largest size mattress set produced is smaller than a twin size, in which case the largest size must be tested.

(d) (1) If each of the three specimens meets both the criteria specified in § 1633.3(b), the prototype shall be qualified. If any one (1) specimen fails to meet the test criteria of § 1633.3(b), the prototype is not qualified.

(2) Any manufacturer may produce a mattress set for sale in reliance on prototype tests performed before the effective date of this Standard, provided:

(i) The manufacturer has documentation showing that such tests were conducted in accordance with all requirements of this section and § 1633.7 and yielded passing results according to the test criteria of § 1633.3(b);

(ii) Any tests conducted more than 30 days after publication of this standard in the **Federal Register** must comply with the recordkeeping requirements in § 1633.11;

(iii) Such mattress sets may be used for prototype pooling only if the manufacturer complies with applicable recordkeeping requirements in § 1633.11; and

(iv) Such mattress sets may serve as the basis for a subordinate prototype only if the manufacturer has all records required by § 1633.11.

#### **§ 1633.5 Prototype pooling and confirmation testing requirements.**

(a) *Prototype pooling.* One or more manufacturers may rely on a qualified prototype produced by another manufacturer or prototype developer provided that:

(1) The prototype meets the requirements of § 1633.4;

(2) The mattress sets being produced are the same as the qualified prototype with respect to materials, components, design and methods of assembly; and

(3) The manufacturer producing mattress sets in reliance on a qualified prototype has performed a confirmation test on at least one (1) Specimen of the mattress set it produces in accordance with § 1633.7. The tested specimen must meet the criteria under § 1633.3(b) before any mattress sets based on the qualified prototype may be sold or introduced into commerce.

(b) *Confirmation test failure.* (1) If the confirmation test specimen fails to meet the criteria of § 1633.3(b), the

manufacturer thereof shall not sell any mattress set based on the same qualified prototype until that manufacturer takes corrective measures, tests a new specimen, and the new specimen meets the criteria of § 1633.3(b).

(2) If a confirmation test specimen fails to meet the criteria of § 1633.3(b), the manufacturer thereof must notify the manufacturer of the prototype of the test failure.

#### **§ 1633.6 Quality assurance requirements.**

(a) *Quality assurance.* Each manufacturer shall implement a quality assurance program to ensure that mattress sets manufactured for sale are the same as the qualified and/or confirmed prototype on which they are based with respect to materials, components, design and methods of assembly, except as permitted by § 1633.4(b). At a minimum these procedures shall include:

(1) Controls, including incoming inspection procedures, of all mattress set materials, components and methods of assembly to ensure that they are the same as those used in the prototype on which they are based;

(2) Designation of a production lot that is represented by the prototype; and

(3) Inspection of mattress sets produced for sale sufficient to demonstrate that they are the same as the prototype on which they are based with respect to materials, components, design and methods of assembly.

(b) *Production testing.* Manufacturers are encouraged to conduct, as part of the quality assurance program, random testing of mattress sets being produced for sale according to the requirements of §§ 1633.3 and 1633.7.

(c) *Failure of mattress sets produced for sale to meet flammability standard.*

(1) *Sale of mattress sets.* If any test performed for quality assurance yields results which indicate that any mattress set of a production lot does not meet the criteria of § 1633.3(b), or if a manufacturer obtains test results or other evidence that a component or material or construction/assembly process used could negatively affect the test performance of the mattress set as set forth in § 1633.3(b), the manufacturer shall cease production and distribution in commerce of such mattress sets until corrective action is taken.

(2) *Corrective action.* A manufacturer must take corrective action when any mattress set manufactured or imported for sale fails to meet the flammability test criteria set forth in § 1633.3(b).

#### **§ 1633.7 Mattress test procedure.**

(a) *Apparatus and test materials.* (1) *Calorimetry.* The rate of heat release must be measured by means of oxygen consumption calorimetry. The calibration should follow generally accepted practices for calibration. The calorimetry system shall be calibrated at a minimum of two (2) calibration points—at 75 kW and 200 kW.

(2) *Test area.* The test area must have either Test Configuration A or B. The test area conditions shall be maintained at a temperature greater than 15 °C (59 °F) and less than 27 °C (80.6 °F) and a relative humidity less than 75 percent.

(i) *Test configuration A. (an open calorimeter (or furniture calorimeter)).* In this configuration, the specimen to be tested is placed under the center of an open furniture calorimeter. Figure 1 of this part shows the test assembly atop a bed frame and catch surface. The specimen shall be placed under an open hood which captures the entire smoke plume and is instrumented for heat release rate measurements. The area surrounding the test specimen in an open calorimeter layout shall be sufficiently large that there are no heat re-radiation effects from any nearby materials or objects. The air flow to the test specimen should be symmetrical from all sides. The air flow to the calorimeter hood shall be sufficient to ensure that the entire fire plume is captured, even at peak burning. Skirts may be placed on the hood periphery to help assure this plume capture, if necessary, though they must not be of such an excessive length as to cause the incoming flow to disturb the burning process. Skirts must also not heat up to the point that they contribute significant re-radiation to the test specimen. The air supply to the hood shall be sufficient that the fire is not in any way limited or affected by the available air supply. The fire plume should not enter the hood exhaust duct. Brief (seconds) flickers of flame that occupy only a minor fraction of the hood exhaust duct inlet cross-section are acceptable since they do not signify appreciable suppression of flames.

(ii) *Test configuration B.* The test room shall have dimensions 10 ft. by 12 ft. by 8 ft. (3048 mm x 3658 mm x 2438 mm) high. The specimen is placed within the burn room. All smoke exiting from the room is caught by a hood system instrumented for heat release rate measurements. The room shall have no openings permitting air infiltration other than a doorway opening 38 in ± 0.25 in by 80 in ± 0.25 in (965 mm ± 6.4 mm x 2032 mm ± 6.4 mm) located as indicated in Figure 2 of this part and other small openings as necessary to

make measurements. The test room shall be constructed of wood or metal studs and shall be lined with fire-rated wallboard or calcium silicate board. An exhaust hood shall be positioned outside of the doorway so as to collect all of the combustion gases. There shall be no obstructions in the air supply to the set-up.

(3) *Location of test specimen.* The location of the test specimen is shown in Figure 2 of this part. The angled placement is intended to minimize the interaction of flames on the side surfaces of the test specimen with the room walls. One corner of the test specimen shall be 13 centimeters (cm) to 17 cm from the wall and the other corner shall be 25 cm to 30 cm from the wall. The test room shall contain no other furnishings or combustible materials except for the test specimen.

(4) *Bed frame.* (i) *Frame dimensions.* The specimen shall be supported around its perimeter by the bed frame. For twin size mattresses, the specimen shall be placed on top of a welded bed frame 1.90 m by 0.99 m (75 in by 39 in) made from 40 mm (1.50 in) steel angle. If testing a size other than twin, the bed frame shall similarly match the dimensions of the specimen.

(ii) *Frame height.* The frame shall be 115 mm (4.5 in) high, except if adjustments are necessary to accommodate the required burner position in paragraph (h)(2)(ii) of this section. The height of the frame shall also be adjusted, as necessary, so that the burner is no less than 25 mm (1 in) above the supporting surface.

(iii) *Frame crosspieces.* The frame shall be completely open under the foundation except for two crosspieces, 25 mm wide (1 in) at the  $\frac{1}{3}$  length points, except when sagging of the specimen between the crosspieces exceeds 19 mm ( $\frac{3}{4}$  in) below the frame. Minimal additional crosspieces shall then be added to prevent sagging of the specimen.

(5) *Catch pan.* The bed frame feet shall rest on a surface of either calcium silicate board or fiber cement board, 13 mm (0.5 in) thick, 2.11 m by 1.19 m (83 in by 47 in). The board serves as a catch surface for any flaming melt/drip material falling from the bed assembly and may be the location of a pool fire that consumes such materials. This surface must be cleaned between tests to avoid build-up of combustible residues. Lining this surface with aluminum foil to facilitate cleaning is not recommended since this might increase fire intensity via reflected radiation.

(6) *Ignition source.* (i) *General.* The ignition source shall consist of two T-shaped burners as shown in Figures 3

and 4 of this part. One burner impinges flames on the top surface of the mattress. The second burner impinges flames on the side of the mattress and on the side of the foundation. Each of the burners shall be constructed from stainless steel tubing (12.7 mm diameter with  $0.89 \pm 0.5$  mm wall thickness; 0.50 in diameter with  $0.035 \pm 0.002$  in wall). Each burner shall incorporate a stand-off foot to set its distance from the test specimen surface (Figure 5 of this part). Both burners shall be mounted with a mechanical pivot point but the side burner is locked in place to prevent movement about this pivot in normal usage. The top burner, however, is free to rotate about its pivot during a burner exposure and is lightly weighted so as to exert a downward force on the mattress top through its stand-off foot so that the burner follows a receding top surface on the test specimen (Figure 6 of this part). The combination of burner stand-off distance and propane gas flow rate to the burners determines the heat flux they impose on the surface of the test specimen so that both of these parameters are tightly controlled.

(ii) *Top surface burner.* The T head of the top surface burner (horizontal burner, Figure 3 of this part) shall be  $305 \pm 2$  mm ( $12 \pm 0.08$  in) long with gas tight plugs in each end. Each side of the T shall contain 17 holes equally spaced over a 135 mm length ( $8.5 \text{ mm} \pm 0.1$  mm apart;  $0.333 \pm 0.005$  in). The holes on each side shall begin 8.5 mm (0.33 in) from the centerline of the burner head. The holes shall be 1.45 mm to 1.53 mm (0.058 in to 0.061 in) in diameter (which corresponds to Grade 10 machining practice with a well formed #53 drill bit). The holes shall point  $5^\circ$  out of the plane of the diagram in Figure 3. This broadens the width of the heat flux profile imposed on the surface of the test specimen.

(iii) *Side surface burner.* The T head of the side surface burner (vertical burner) shall be constructed similarly to the top surface burner, as shown in Figure 4 of this part, except that its overall length shall be  $254 \pm 2$  mm ( $10 \pm 0.08$  in). Each side of the burner head shall contain 14 holes spaced evenly over a 110 mm length ( $8.5 \text{ mm} \pm 0.1$  mm apart;  $0.333 \pm 0.005$  in). The holes shall be 1.45 mm to 1.53 mm (0.058 in to 0.061 in) in diameter (which corresponds to Grade 10 machining practice with a well formed #53 drill bit). The holes shall point  $5^\circ$  out of the plane of the diagram in Figure 4.

(iv) *Burner stand-off.* The burner stand-off on each burner shall consist of a collar fixed by a set screw onto the inlet tube of the burner head (Figure 5 of this part). The collar shall hold a 3

mm diameter stainless steel rod having a 12.7 mm by 51 mm by (2–2.5 mm) thick (0.5 in by 2 in by (0.08–0.10 in) thick) stainless steel pad welded on its end with its face (and long axis) parallel to the T head of the burner. The foot pad shall be displaced about 10 mm to 12 mm from the longitudinal centerline of the burner head so that it does not rest on the test specimen in an area of peak heat flux. A short section (9.5 mm outer diameter (“OD”), about 80 mm long;  $\frac{3}{8}$  in OD, about 3.2 in long) of copper tubing shall be placed in the inlet gas line just before the burner to facilitate making the burner nominally parallel to the test specimen surface (by a procedure described below). The copper tube on the top surface burner should be protected from excessive heat and surface oxidation by wrapping it with a suitable layer of high temperature insulation to protect the equipment. Both copper tubes are to be bent by hand in the burner alignment process. They must be replaced if they become work-hardened or crimped in any way. The gas inlet lines (12.7 mm OD stainless steel tubing; 0.50 in) serve as arms leading back to the pivot points and beyond, as shown in Figure 6 of this part. The length to the pivot for the top burner shall be approximately 1000 mm (40 in).

(v) *Frame.* Figure 6 of this part shows the frame that holds the burners and their pivots, which are adjustable vertically in height. All adjustments (burner height, burner arm length from the pivot point, counterweight positions along the burner arm) are facilitated by the use of knobs or thumbscrews as the set screws. The three point footprint of the burner frame, with the two forward points on wheels, facilitates burner movement and burner stability when stationary.

(vi) *Arms.* The metal arms attached to the burners shall be attached to a separate gas control console by flexible, reinforced plastic tubing.<sup>1</sup> The gas control console is mounted separately so as to facilitate its safe placement outside of the test room throughout the test procedure. The propane gas lines running between the console and the burner assembly must be anchored on the assembly before running to the burner inlet arms. A  $1.5 \text{ m} \pm 25$  mm (58 in  $\pm 1$  in) length of flexible, reinforced tubing between the anchor point and the end of each burner inlet allows free movement of the top burner about its pivot point. The top burner arm shall have a pair of moveable cylindrical

<sup>1</sup> Fiber-reinforced plastic tubing (6 mm ID by 9.5 mm OD; 3 inch ID by inch OD) made of PVC should be used.

counterweights that are used, as described below, to adjust the downward force on the stand-off foot.

(vii) *Burner head.* Each burner head shall have a separate pilot light consisting of a 3 mm OD ( $\frac{1}{8}$  in OD) copper tube with an independently-controlled supply of propane gas. The tube terminates within 10 mm of the center of the burner head. Care must be taken to set the pilot flame size small enough so as not to heat the test specimen before the timed burner exposure is begun.

(viii) *Flow control system.* Each burner shall have a flow control system of the type shown in Figure 7 of this part. Propane gas from a source such as a bottle is reduced in pressure to approximately 70 kilopascals ("kPa") (20 pounds per square inch gage ("psig")) and fed to the system shown in Figure 8 of this part. The gas flow to the burner is delivered in a square-wave manner (constant flow with rapid onset and termination) by means of the solenoid valve upstream of the flowmeter. An interval timer (accurate to  $\pm 0.2$  s) determines the burner flame duration. The pilot light assures that the burner will ignite when the solenoid valve opens.<sup>2</sup> The gas flow shall be set using a rotameter type of flowmeter, with a 150 mm scale, calibrated for propane. When calibrating the flowmeter, take into account that the flow resistance of the burner holes causes a finite pressure increase in the flowmeter above ambient. (If a calibration at one atmosphere is provided by the manufacturer, the flowmeter reading, at the internal pressure existing in the meter, required to get the flow rates listed below must be corrected, typically by the square root of the absolute pressure ratio. This calls for measuring the actual pressure in the flow meters when set near the correct flow values. A value roughly in the range of 1 kPa to 3 kPa—5 in to 15 in of water—can be expected.) See information on calibration in paragraph (b) of this section.

(ix) *Gas flow rate.* Use propane gas: The propane shall be minimum 99% pure (often described by suppliers as CP or "chemically pure" grade, but this designation should not be relied on since the actual purity may vary by supplier). Each burner has a specific propane gas flow rate set with its respective, calibrated flowmeter. The gas flow rate to the top burner is 12.9

liters per minute ("L/min")  $\pm 0.1$  L/min at a pressure of  $101 \pm 5$  kPa (standard atmospheric pressure) and a temperature of  $22 \pm 3$  °C. The gas flow rate to the side burner is  $6.6 \pm 0.05$  L/min at a pressure of  $101 \pm 5$  kPa (standard atmospheric pressure) and a temperature of  $22 \pm 3$  °C. The total heat release rate of the burners is 27 kW.

(b) *Calibration of Propane Flowmeters.* (1) *Preparation.* Once the assembly of the burner is completed and all the connecting points are checked for gas leakage, the most critical task is ensuring the exact flow rates of propane into the top and side burners, as described in the test protocol. The gas flow rates are specified at 12.9 Liters per minute (LPM)  $\pm 0.1$  LPM and 6.6 LPM  $\pm 0.05$  LPM for the top and side burners (Burners 1 and 2), respectively, at a pressure of  $101 \pm 5$  kilopascal (kPa) (standard atmospheric pressure) and a temperature of  $22 \pm 3$  °C. The rotameters that are installed in the control box of the burner assembly need to be calibrated for accurate measurement of these flow rates.

(i) The most practical and accurate method of measuring and calibrating the flow rate of gases (including propane) is use of a diaphragm test meter (also called a dry test meter). A diaphragm test meter functions based on positive displacement of a fixed volume of gas per rotation and its reading is therefore independent of the type of the gas being used. The gas pressure and temperature, however, can have significant impact on the measurement of flow rate.

(ii) The gas pressure downstream of the rotameters that are installed in the control box of the burner assembly should be maintained near atmospheric pressure (only a few millimeters of water above atmosphere). Therefore, the best location to place the diaphragm test meter for gas flow calibration is right downstream of the control box. The pressure at the propane tank must be set at  $20 \pm 0.5$  pounds per square inch gage (psig).

(2) *Calibration Procedure.* Install the diaphragm test meter (DTM) downstream of the control box in the line for the top burner. Check all connecting points for gas leakage. Open the main valve on the propane tank and set a pressure of  $20 \pm 0.5$  psig. Set the timers in the control box for 999 seconds (or the maximum range possible). Record the barometric pressure. Turn the "Burner 1" switch to ON and ignite the top burner. Allow the gas to flow for 2–3 minutes until the DTM is stabilized. Record the pressure and temperature in the DTM. Use a stopwatch to record at least one minute worth of complete rotations while

counting the number of rotations.<sup>3</sup> Calculate the propane gas flow rate using the recorded time and number of rotations (total flow in that time). Use the pressure and temperature readings to convert to standard conditions. Repeat this measurement for two additional meter setting to allow for calibrating the flowmeter throughout the range of interest. Plot the flow versus meter reading, fit a best line (possibly quadratic) through these points to find the meter setting for a flow of 12.9 LPM at the above "standard conditions." Repeat this procedure for "Burner 2" using three meter readings to find the setting that gives a flow rate of 6.6 LPM at the standard conditions. After completion of the calibration, re-set the timers to 70 and 50 seconds.

(c) *Conditioning.* Remove the specimens from any packaging prior to conditioning. Specimens shall be conditioned in air at a temperature greater than 18 °C (65 °F) and less than 25 °C (77 °F) and a relative humidity less than 55 percent for at least 48 continuous hours prior to test. Specimens shall be supported in a manner to permit free movement of air around them during conditioning.

(d) *Test preparation.* (1) *General.* Horizontal air flow at a distance of 0.5 m (20 in) on all sides of the test specimen at the mattress top height shall be 0.5 m/s. If there is any visual evidence that the burner flames are disturbed by drafts during their exposure durations, the burner regions must be enclosed on two or more sides by at least a triple layer of screen wire. The screens shall be at least 25 cm tall. The screen(s) for the top burner shall sit on the mattress top and shall be wide enough to extend beyond the area of the burner impingement. All screens shall be far enough away (typically 30 cm or more) from the burner tubes so as not to interfere or interact with flame spread during the burner exposure. The screen for the side burner will require a separate support from below. All screens shall be removed at the end of the 70 second exposure interval.

(2) *Specimen.* Remove the test specimen from the conditioning room immediately before it is to be tested. Testing shall begin within 20 minutes after removal from the conditioning area. Be sure the bed frame is approximately centered on the catch surface. Place the specimen on the bed frame. Carefully center them on the bed

<sup>2</sup> If the side burner, or more commonly one half of the side burner, fails to ignite quickly, adjust the position of the igniter, bearing in mind that propane is heavier than air. The best burner behavior test assessment is done against an inert surface (to spread the gas as it would during an actual test).

<sup>3</sup> With a diaphragm test meter well-sized to this application, this should be more than five rotations. A one liter per rotation meter will require 10 to 15 rotations for the flow measurements and greater than the minimum of one minute recording time specified here.

frame and on each other. The mattress shall be centered on top of the foundation (see Figure 1 of this part). However, in order to keep the heat flux exposure the same for the sides of the two components, if the mattress is 1 cm to 2 cm narrower than the foundation, the mattress shall be shifted so that the side to be exposed is in the same plane as the foundation. Refer to Figure 8 of this part. A product having an intended sleep surface on only one side shall be tested with the sleeping side up so that the sleeping surface is exposed to the propane burner.

(e) *Burner flow rate/flow timer confirmation.* Just prior to moving the burner adjacent to the test specimen, briefly ignite each burner at the same time, and check that the propane flow to that burner is set at the appropriate level on its flowmeter to provide the flows listed in § 1633.7(a)(6)(ix). Check that the timers for the burner exposures are set to 70 seconds for the top burner and 50 seconds for the side burner. For a new burner assembly, check the accuracy of the gas flow timers against a stop watch at these standard time settings. Set pilot flows to a level that will not cause them to impinge on sample surfaces.

(f) *Location of the gas burners.* Place the burner heads so that they are within 300 mm (1 ft) of the mid-length of the mattress. If there are unique construction features (e.g., handles, zippers) within the burner placement zone, the burner shall impinge on this feature. The general layout for the room configuration is shown in Figure 2 of this part. For a quilted mattress top the stand-off foot pad must alight on a high, flat area between dimples or quilting thread runs. The same is to be true for the side burner if that surface is quilted. If a specimen design presents a conflict in placement such that both burners cannot be placed between local depressions in the surface, the top burner shall be placed at the highest flat surface.

(g) *Burner set-up.* The burners shall be placed in relation to the mattress and foundation surfaces in the manner shown in Figure 9 of this part, i.e., at the nominal spacings shown there and with the burner tubes nominally parallel<sup>4</sup> to the mattress surfaces on which they impinge. Since the heat flux levels seen by the test specimen surfaces depend on burner spacing, as well as gas flow rate,

<sup>4</sup> The top burner will tend to be tangential to the mattress surface at the burner mid-length; this orientation will not necessarily be parallel to the overall average mattress surface orientation nor will it necessarily be horizontal. This is a result of the shape of the mattress top surface.

care must be taken with the set-up process.

(h) *Burner alignment procedure.* (1) *Preparation.* Complete the following before starting the alignment procedure:

(i) Check that the pivot point for the mattress top burner feed tube and the two metal plates around it are clean and well-lubricated so as to allow smooth, free movement.

(ii) Set the two burners such that the 5° out-of-plane angling of the flame jets makes the jets on the two burners point slightly *toward* each other.

(iii) Check the burner stand-off feet for straightness and perpendicularity between foot pad and support rod and to see that they are clean of residue from a previous test.

(iv) Have at hand the following items to assist in burner set-up: The jig, shown in Figure 10 of this part, for setting the stand-off feet at their proper distances from the front of the burner tube; a 3 mm thick piece of flat stock (any material) to assist in checking the parallelness of the burners to the mattress surfaces; and a 24 gage stainless steel sheet metal platen that is 30 mm (12 in) wide, 610 mm (24 in) long and has a sharp, precise 90° bend 355 mm (14 in) from one 30 mm wide end. Refer to Figure 8 of this part.

(2) *Alignment.* (i) Place the burner assembly adjacent to the test specimen. Place the sheet metal platen on the mattress with the shorter side on top. The location shall be within 30 cm (1 ft) of the longitudinal center of the mattress. The intended location of the stand-off foot of the top burner shall not be in a dimple or crease caused by the quilting of the mattress top. Press the platen laterally inward from the edge of the mattress so that its side makes contact with either the top and bottom edge or the vertical side of the mattress.<sup>5</sup> Use a 20 cm (8 in) strip of duct tape (platen to mattress top) to hold the platen firmly inward in this position.

(ii) With both burner arms horizontal (pinned in this position), fully retract the stand-off feet of both burners and, if necessary, the pilot tubes as well.<sup>6</sup>

<sup>5</sup> Mattresses having a convex side are treated separately since the platen cannot be placed in the above manner. Use the platen only to set the top burner parallelness. Set the in/out distance of the top burner to the specification in paragraph (h)(1)(iii). Set the side burner so that it is approximately (visually) parallel to the flat side surface of the foundation below the mattress/foundation crevice once its foot is in contact with the materials in the crevice area. The burner will not be vertical in this case. If the foundation side is also non-flat, set the side burner vertical ( $\pm 3$  mm, as above) using a bubble level as a reference. The side surface convexities will then bring the bowed out sections of the specimen closer to the burner tube than the stand-off foot.

<sup>6</sup> The pilot tubes can normally be left with their ends just behind the plane of the front of the burner

(Neither is to protrude past the front face of the burner tubes at this point.) Move the burner assembly forward (perpendicular to the mattress) until the vertical burner lightly contacts the sheet metal platen. Adjust the height of the vertical burner on its vertical support column so as to center the tube on the crevice between the mattress and the foundation. (This holds also for pillow top mattress tops, i.e., ignore the crevice between the pillow top and the main body of the mattress.)<sup>7</sup> Adjust the height of the horizontal burner until it sits lightly on top of the sheet metal platen. Its burner arm should then be horizontal.

(iii) Move the horizontal burner in/out (loosen the thumb screw near the pivot point) until the outer end of the burner tube is 13 mm to 19 mm ( $\frac{1}{2}$  in to  $\frac{3}{4}$  in) from the corner bend in the platen (this is facilitated by putting a pair of lines on the top of the platen 13 mm and 19 mm from the bend and parallel to it). Tighten the thumb screw.

(iv) Make the horizontal burner parallel to the top of the platen (within 3 mm,  $\frac{1}{8}$  in over the burner tube length) by bending the copper tube section appropriately. Note: After the platen is removed (in paragraph (h)(2)(vii) of this section), the burner tube may not be horizontal; this is normal. For mattress/foundation combinations having nominally flat, vertical sides, the similar adjustment for the vertical burner is intended to make that burner parallel to the sides and vertical. Variations in the shape of mattresses and foundations can cause the platen section on the side to be non-flat and/or non-vertical. If the platen is flat and vertical, make the vertical burner parallel to the side of the platen ( $\pm 3$  mm) by bending its copper tube section as needed. If not, make the side burner parallel to the mattress/foundation sides by the best visual estimate after the platen has been removed.

(v) Move the burner assembly perpendicularly back away from the mattress about 30 cm (1 ft). Set the two stand-off feet to their respective distances using the jig designed for this purpose. Install the jig *fully* onto the burner tube (on the *same side* of the tube as the stand-off foot), with its side edges parallel to the burner feed arm, at

tube. This way they will not interfere with positioning of the tube but their flame will readily ignite the burner tubes.

<sup>7</sup> For tests of the mattress alone, set the center of the side burner at the lower edge of the mattress OR the top (upper tip) of the side burner 25 mm (1 in) below the top edge of the mattress, whichever is lower. This prevents inappropriate (excessive) exposure of the top surface of the mattress to the side burner.

about the position where one end of the foot will be. Loosen the set screw and slide the foot out to the point where it is flush with the bottom end of the jig. Tighten the set screw. Make sure the long axis of the foot is parallel to the burner tube. It is essential to use the correct side of the spacer jig with each burner. Double check this. The jig must be clearly marked.

(vi) Set the downward force of the horizontal burner. Remove the retainer pin near the pivot. While holding the burner feed arm horizontal using a spring scale<sup>8</sup> hooked onto the thumbscrew holding the stand-off foot, move the small and/or large weights on the feed tube appropriately so that the spring scale reads 170 g to 225 g (6 oz to 8 oz).

(vii) Remove the sheet metal platen (and tape holding it).

(viii) Hold the horizontal burner up while sliding the burner assembly forward until its stand-off foot just touches the mattress and/or the foundation,<sup>9</sup> then release the horizontal burner. The outer end of the burner tube should extend at least 6 mm to 12 mm ( $\frac{1}{4}$  in to  $\frac{1}{2}$  in) out beyond the uppermost corner/edge of the mattress so that the burner flames will hit the edge. (For a pillow top mattress, this means the outer edge of the pillow top portion and the distance may then be greater than 6 mm to 12 mm.) If this is not the case, move the burner assembly (perpendicular to the mattress side)—not the horizontal burner alone—until it is. Finally, move the vertical burner tube until its stand-off foot just touches the side of the mattress and/or the foundation. (Use the set screw near the vertical burner pivot.)

(ix) Make sure all thumbscrews are adequately tightened. Care must be taken, once this set-up is achieved, to avoid bumping the burner assembly or disturbing the flexible lines that bring propane to it.

(x) If there is *any* indication of flow disturbances in the test facility which

<sup>8</sup> An acceptable spring scale has a calibrated spring mounted within a holder and hooks on each end.

<sup>9</sup> The foot should depress the surface it first contacts by no more than 1 mm to 2 mm. This is best seen up close, not from the rear of the burner assembly. However, if a protruding edge is the first item contacted, compress it until the foot is in the plane of the mattress/foundation vertical sides. The intent here is that the burner be spaced a fixed distance from the vertical mattress/foundation sides, not from an incidental protrusion. Similarly, if there is a wide crevice in this area which would allow the foot to move inward and thereby place the burners too close to the vertical mattress/foundation sides, it will be necessary to use the spacer jig (rather than the stand-off foot) above or below this crevice to set the proper burner spacing. Compress the mattress/foundation surface 1 mm to 2 mm when using the jig for this purpose.

cause the burner flames or pilot flames to move around, place screens around the burners so as to minimize these disturbances.<sup>10</sup> These screens (and any holders) must be far enough away from the burners (about 30 cm or more for the top, less for the side) so that they do not interact with the flames growing on the specimen surfaces. For the top surface burner, at least a triple layer of window screen approximately 30 cm high sitting vertically on the mattress top (Figure 9 of this part) has proved satisfactory. For the side burner at least a triple layer of screen approximately 15 cm wide, formed into a square-bottom U-shape and held from below the burner has proved satisfactory. Individual laboratories will have to experiment with the best arrangement for suppressing flow disturbances in their facility.

(i) *Running the test.* (1) Charge the hose line to be used for fire suppression with water.

(2) *Burner Preparation.* (i) Turn AC power on; set propane pressure to 20 psig at bottle; set timers to 70 s (top burner) and 50 s (side burner); with burner assembly well-removed from test specimen, ignite burners and check that, **WHEN BOTH ARE ON AT THE SAME TIME**, the flowmeters are set to the values that give the requisite propane gas flow rates to each burner. Turn off burners. Set pilot tubes just behind front surface of burners; set pilot flow valves for ca. 2 cm flames. Turn off pilots.

(ii) Position burner on test specimen and remove sheet metal platen.

(iii) Place screens around both burners.

(3) *Start pilots.* Open pilot ball valves one at a time and ignite pilots with hand-held flame; adjust flame size if necessary being very careful to avoid a jet flame that could prematurely ignite the test specimen (Note that after a long interval between tests the low pilot flow rate will require a long time to displace air in the line and achieve the steady-state flame size.)

(4) *Start recording systems.* With the calorimetry system fully operational, after instrument zeroes and spans, start the video lights and video camera and data logging systems two minutes before burner ignition (or, if not using video, take a picture of the setup).

(5) *Initiate test.* Start test exposure by simultaneously turning on power to both timers (timers will turn off burners at appropriate times). Also start a 30 minute timer of the test duration.

<sup>10</sup> The goal here is to keep the burner flames impinging on a fixed area of the specimen surface rather than wandering back and forth over a larger area.

Check/adjust propane flow rates (DO THIS ESSENTIAL TASK IMMEDIATELY. Experience shows the flow will not remain the same from test-to-test in spite of fixed valve positions so adjustment is essential.) If not using video, one photo must be taken within the first 45 seconds of starting the burners.

(6) *End of burner exposure.* When the burners go out (after 70 seconds for the longer exposure), carefully lift the top burner tube away from the specimen surface, producing as little disturbance as possible to the specimen. Turn off power to both timers. Remove all screens. Turn off pilots at their ball valves. Remove the burner assembly from the specimen area to facilitate the video camera view of the full side of the specimen. In the case of the room-based configurations, remove the burner assembly from the room to protect it.

(j) *Video Recording/Photographs.* Place a video or still frame camera so as to have (when the lens is zoomed out) just slightly more than a full-length view of the side of the test specimen being ignited, including a view of the flame impingement area while the burner assembly is present. The view must also include the catch pan so that it is clear whether any melt pool fire in this pan participates significantly in the growth of fire on the test specimen. The camera shall include a measure of elapsed time to the nearest 1 second for video and 1 minute for still frame within its recorded field of view (preferably built into the camera). For the room-based configuration, the required full-length view of the sample may require an appropriately placed window, sealed with heat resistant glass, in one of the room walls. Place the camera at a height just sufficient to give a view of the top of the specimen while remaining under any smoke layer that may develop in the room. The specimen shall be brightly lit so that the image does not lose detail to over-exposed flames. This will require a pair or more of 1 kW photo flood lights illuminating the viewed side of the specimen. The lights may need to shine into the room from the outside via sealed windows.

(k) *Cessation of Test.* (1) The heat release rate shall be recorded and video/photographs taken until either 30 minutes has elapsed since the start of the burner exposure or a fire develops of such size as to require suppression for the safety of the facility.

(2) Note the time and nature of any unusual behavior that is not fully within the view of the video camera. This is most easily done by narration to a camcorder.

(3) Run the heat release rate system and datalogger until the fire has been fully out for several minutes to allow the system zero to be recorded.

(l) *Use of alternate apparatus.*

Mattress sets may be tested using test apparatus that differs from that described in this section if the manufacturer obtains and provides to the Commission data demonstrating that tests using the alternate apparatus during the procedures specified in this section yield failing results as often as, or more often than, tests using the apparatus specified in the standard. The manufacturer shall provide the supporting data to the Office of Compliance, Recalls & Compliance Division, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Staff will review the data and determine whether the alternate apparatus may be used.

**§ 1633.8 Findings.**

(a) *General.* In order to issue a flammability standard under the FFA, the FFA requires the Commission to make certain findings and to include these in the regulation, 15 U.S.C. 1193(j)(2). These findings are discussed in this section.

(b) *Voluntary standards.* No findings concerning compliance with and adequacy of a voluntary standard are necessary because no relevant voluntary standard addressing the risk of injury that is addressed by this regulation has been adopted and implemented.

(c) *Relationship of benefits to costs.* The Commission estimates the potential total lifetime benefits of a mattress that complies with this standard to range from \$45 to \$57 per mattress set (based on a 10 year mattress life and a 3% discount rate). The Commission estimates total resource costs of the standard to range from \$8 to \$22 per mattress. This yields net benefits of \$23 to \$50 per mattress set. The Commission estimates that aggregate lifetime benefits associated with all mattresses produced the first year the standard becomes effective range from \$1,024 to \$1,307 million, and that aggregate resource costs associated with these mattresses range from \$175 to \$511 million, yielding net benefits of about \$514 to \$1,132 million. Accordingly, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(d) *Least burdensome requirement.* The Commission considered the following alternatives: alternative maximum peak heat release rate and test duration, alternative total heat released in the first 10 minutes of the test, mandatory production testing, a longer

effective date, taking no action, relying on a voluntary standard, and requiring labeling alone (without any performance requirements). The alternatives of taking no action, relying on a voluntary standard (if one existed), and requiring labeling alone are unlikely to adequately reduce the risk. Requiring a criterion of 25 MJ total heat release during the first 10 minutes of the test instead of 15 MJ would likely reduce the estimated benefits (deaths and injuries reduced) without having much effect on costs. Both options of increasing the duration of the test from 30 minutes to 60 minutes and decreasing the peak rate of heat release from 200 kW to 150 kW would likely increase costs significantly without substantial increase in benefits. Requiring production testing would also likely increase costs. Therefore, the Commission finds that an open flame standard for mattresses with the testing requirements and criteria that are specified in the Commission rule is the least burdensome requirement that would prevent or adequately reduce the risk of injury for which the regulation is being promulgated.

**§ 1633.9 Glossary of terms.**

(a) *Absorbent pad.* Pad used on top of mattress. Designed to absorb moisture/body fluids thereby reducing skin irritation, can be one time use.

(b) *Basket pad.* Cushion for use in an infant basket.

(c) *Bunk beds.* A tier of beds, usually two or three, in a high frame complete with mattresses (see Figure 11 of this part).

(d) *Car bed.* Portable bed used to carry a baby in an automobile.

(e) *Carriage pad.* Cushion to go into a baby carriage.

(f) *Chaise lounge.* An upholstered couch chair or a couch with a chair back. It has a permanent back rest, no arms, and sleeps one (see Figure 11).

(g) *Convertible sofa.* An upholstered sofa that converts into an adult sized bed. Mattress unfolds out and up from under the seat cushioning (see Figure 11).

(h) *Corner groups.* Two twin size bedding sets on frames, usually slipcovered, and abutted to a corner table. They also usually have loose bolsters slipcovered (see Figure 11).

(i) *Crib bumper.* Padded cushion which goes around three or four sides inside a crib to protect the baby. Can also be used in a playpen.

(j) *Daybed.* Daybed has foundation, usually supported by coil or flat springs, mounted between arms on which mattress is placed. It has permanent arms, no backrest, and sleeps one (see Figure 11).

(k) *Dressing table pad.* Pad to cushion a baby on top of a dressing table.

(l) *Drop-arm loveseat.* When side arms are in vertical position, this piece is a loveseat. The adjustable arms can be lowered to one of four positions for a chaise lounge effect or a single sleeper. The vertical back support always remains upright and stationary (see Figure 11).

(m) *Futon.* A flexible mattress generally used on the floor that can be folded or rolled up for storage. It usually consists of resilient material covered by ticking.

(n) *High riser.* This is a frame of sofa seating height with two equal size mattresses without a backrest. The frame slides out with the lower mattress and rises to form a double or two single beds (see Figure 11).

(o) *Infant carrier and lounge pad.* Pad to cushion a baby in an infant carrier.

(p) *Mattress foundation.* This is a ticking covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs or other materials used alone or in combination.

(q) *Murphy bed.* A style of sleep system where the mattress and foundation are fastened to the wall and provide a means to retract or rotate the bed assembly into the wall to release more floor area for other uses.

(r) *Pillow.* Cloth bag filled with resilient material such as feathers, down, sponge rubber, urethane, or fiber used as the support for the head of a person.

(s) *Playpen pad.* Cushion used on the bottom of a playpen.

(t) *Portable crib.* Smaller size than a conventional crib. Can usually be converted into a playpen.

(u) *Quilted* means stitched with thread or by fusion through the ticking and one or more layers of material.

(v) *Roll-away-bed.* Portable bed which has frame that folds with the mattress for compact storage.

(w) *Sleep lounge.* Upholstered seating section which is mounted on a frame. May have bolster pillows along the wall as backrests or may have attached headrests (see Figure 11).

(x) *Stroller pad.* Cushion used in a baby stroller.

(y) *Sofa bed.* These are pieces in which the back of the sofa swings down flat with the seat to form the sleeping surface. Some sofa beds have bedding boxes for storage of bedding. There are two types: the one-piece, where the back and seat are upholstered as a unit, supplying an unbroken sleeping surface; and the two-piece, where back and seat are upholstered separately (see Figure 11 of this part).

(z) *Sofa lounge*—(includes glideouts). Upholstered seating section is mounted on springs and in a frame that permit it to be pulled out for sleeping. Has upholstered backrest bedding box that is hinged. Glideouts are single sleepers with sloping seats and backrests. Seat pulls out from beneath back and evens up to supply level sleeping surface (see Figure 11).

(aa) *Studio couch*. Consists of upholstered seating section on upholstered foundation. Many types convert to twin beds (see Figure 11).

(bb) *Studio divan*. Twin size upholstered seating section with foundation is mounted on metal bed frame. Has no arms or backrest, and sleeps one (see Figure 11 of this part).

(cc) *Trundle bed*. A low bed which is rolled under a larger bed. In some lines, the lower bed springs up to form a double or two single beds as in a high riser (see Figure 11).

(dd) *Tufted* means buttoned or laced through the ticking and upholstery material and/or core, or having the ticking and loft material and/or core drawn together at intervals by any other method which produces a series of depressions on the surface.

(ee) *Twin studio divan*. Frames which glide out (but not up) and use seat cushions, in addition to upholstered foundation to sleep two. Has neither arms nor back rest (see Figure 11).

(ff) *Flip or sleeper chair*. Chair that unfolds to be used for sleeping, typically has several connecting fabric covered, solid foam core segments.

## Subpart B—Rules and Regulations

### § 1633.10 Definitions.

(a) *Standard* means the Standard for the Flammability (Open-Flame) of Mattress Sets (16 CFR part 1633, subpart A).

(b) The definition of terms set forth in the § 1633.2 of the Standard shall also apply to this section.

### § 1633.11 Records.

(a) *Test and manufacturing records C general*. Every manufacturer and any other person initially introducing into commerce mattress sets subject to the standard, irrespective of whether guarantees are issued relative thereto, shall maintain the following records in English at a location in the United States:

(1) Test results and details of each test performed by or for that manufacturer (including failures), whether for qualification, confirmation, or production, in accordance with § 1633.7. Details shall include: name and complete physical address of test

facility, type of test room, test room conditions, time that sample spent out of conditioning area before starting test, prototype or production identification number, and test data including the peak rate of heat release, total heat release in first 10 minutes, a graphic depiction of the peak rate of heat release and total heat release over time. These records shall include the name and signature of person conducting the test, the date of the test, and a certification by the person overseeing the testing as to the test results and that the test was carried out in accordance with the Standard. For confirmation tests, the identification number must be that of the prototype tested.

(2) Video and/or a minimum of eight photographs of the testing of each mattress set, in accordance with § 1633.7 (one taken before the test starts, one taken within 45 seconds of the start of the test, and the remaining six taken at five minute intervals, starting at 5 minutes and ending at 30 minutes), with the prototype identification number or production lot identification number of the mattress set, date and time of test, and name and location of testing facility clearly displayed.

(b) *Prototype records*. In addition to the records specified in paragraph (a) of this section, the following records shall be maintained for each qualified, confirmed and subordinate prototype:

(1) Unique identification number for the qualified or confirmed prototype and a list of the unique identification numbers of each subordinate prototype based on the qualified or confirmed prototype. Subordinate prototypes that differ from each other only be length or width may share the same identification number.

(2) A detailed description of all materials, components, and methods of assembly for each qualified, confirmed and subordinate prototype. Such description shall include the specifications of all materials and components, and the name and complete physical address of each material and component supplier.

(3) A list of which models and production lots of mattress sets are represented by each qualified, confirmed and/or subordinate prototype identification number.

(4) For subordinate prototypes, the prototype identification number of the qualified or confirmed prototype on which the mattress set is based, and, at a minimum, the manufacturing specifications and a description of the materials substituted, photographs or physical specimens of the substituted materials, and documentation based on objectively reasonable criteria that the

change in any component, material, or method of assembly will not cause the subordinate prototype to exceed the test criteria specified in § 1633.3(b).

(5) Identification, composition, and details of the application of any flame retardant treatments and/or inherently flame resistant fibers or other materials employed in mattress components.

(c) *Pooling confirmation test records*.

In addition to the test and prototype records specified in paragraphs (a) and (b) of this section, the following records shall be maintained:

(1) The prototype identification number assigned by the qualified prototype manufacturer;

(2) Name and complete physical address of the qualified prototype manufacturer;

(3) Copy of qualified prototype test records, and records required by paragraph (b)(2) of this section; and

(4) In the case of imported mattress sets, the importer shall be responsible for maintaining the records specified in paragraph (b) of this section for confirmation testing that has been performed with respect to mattress sets produced by each foreign manufacturing facility whose mattress sets that importer is importing.

(d) *Quality assurance records*. In addition to the records required by paragraph (a) of this section, the following quality assurance records shall be maintained:

(1) A written copy of the manufacturer's quality assurance procedures;

(2) Records of any production tests performed. Production test records must be maintained and shall include, in addition to the requirements of paragraph (a) of this section, an assigned production lot identification number and the identification number of the qualified, confirmed or subordinate prototype associated with the specimen tested;

(3) For each qualified, confirmed and subordinate prototype, the number of mattress sets in each production lot based on that prototype;

(4) The start and end dates of production of that lot; and

(5) Component, material and assembly records. Every manufacturer conducting tests and/or technical evaluations of components and materials and/or methods of assembly must maintain detailed records of such tests and evaluations.

(e) *Record retention requirements*.

The records required under this Section shall be maintained by the manufacturer (including importers) for as long as mattress sets based on the prototype in question are in production and shall be

retained for 3 years thereafter. Records shall be available upon the request of Commission staff.

(f) Record location requirements. (1) For mattress sets produced in the United States, all records required by this section must be maintained at the plant or factory at which the mattress sets are manufactured or assembled.

(2) For mattress sets produced outside of the United States, a copy of all records required by this section must be maintained at a U.S. location, which must be identified on the mattress set label as specified in § 1633.12(a).

#### § 1633.12 Labeling.

(a) Each mattress set subject to the Standard shall bear a permanent, conspicuous, and legible label(s) containing the following information (and no other information) in English:

(1) Name of the manufacturer, or for imported mattress sets, the name of the foreign manufacturer and importer;

(2)(i) For mattress sets produced in the United States, the complete physical address of the manufacturer.

(ii) For imported mattress sets, the complete address of the foreign manufacturer, including country, and the complete physical address of the importer or the United States location where the required records are maintained if different from the importer;

(3) Month and year of manufacture;

(4) Model identification;

(5) Prototype identification number for the mattress set;

(6) A certification that the mattress complies with this standard.

(i) For mattresses intended to be sold without a foundation, a certification stating "This mattress meets the requirements of 16 CFR part 1633 (federal flammability (open flame) standard for mattresses) when used without a foundation"; or

(ii) For mattresses intended to be sold with a foundation, a certification stating "This mattress meets the requirements of 16 CFR part 1633 (federal flammability (open flame) standard for mattresses) when used with foundation <ID>." Such foundation(s) shall be clearly identified by a simple and distinct name and/or number on the mattress label; or

(iii) For mattresses intended to be sold both alone and with a foundation, a certification stating "This mattress meets the requirements of 16 CFR part 1633 (federal flammability (open flame) standard for mattresses) when used without a foundation or with foundation(s) <ID>."; and

(7) A statement identifying whether the manufacturer intends the mattress to be sold alone or with a foundation.

(i) For mattresses intended to be sold without a foundation, the label shall state "THIS MATTRESS IS INTENDED TO BE USED WITHOUT A FOUNDATION." See Figures 16 and 17 of this part; or

(ii) For mattresses intended to be sold with a foundation, the label shall state "THIS MATTRESS IS INTENDED TO BE USED WITH FOUNDATION(S): <Foundation ID>." See Figures 12 and 13 of this part; or

(iii) For mattresses intended to be sold both alone and with a foundation, the label shall state "THIS MATTRESS IS INTENDED TO BE USED WITHOUT A FOUNDATION OR WITH FOUNDATION(S): <Foundation ID>." See Figures 14 and 15 of this part.

(b) The mattress label required in paragraph (a) of this section must measure 2<sup>3</sup>/<sub>4</sub>" in width and the length can increase as needed for varying information. The label must be white with black text. The label text shall comply with the following format requirements:

(1) All information specified in paragraphs (a)(1) through (6) of this section must be in 6-point font or larger with mixed uppercase and lowercase letters. The text must be left justified and begin 1/4" from left edge of label. See Figure 12–17 of this part.

(2) The statement specified in paragraph (a)(7)(i) of this section must be in 10-point Arial/Helvetica font or larger, uppercase letters with the words "WITHOUT A FOUNDATION" bolded and the word "WITHOUT" in italics. The text shall be centered in a text box with the width measuring 2<sup>1</sup>/<sub>2</sub>" and the length increasing as needed. See Figures 16 and 17 of this part.

(3) The statement specified in paragraph (a)(7)(ii) of this section must be in 10-point Arial/Helvetica font or larger in uppercase letters. The foundation identifier should be in 12-point font or larger, bolded, and underlined. The text shall be centered in a text box with the width measuring 2<sup>1</sup>/<sub>2</sub>" and the length increasing as needed. See Figures 12 and 13 of this part.

(4) The statement specified in paragraph (a)(7)(iii) of this section must be in 10-point or larger Arial/Helvetica font, uppercase letters with the words "WITHOUT A FOUNDATION OR" bolded and the word "WITHOUT" in italics. The foundation identifier should be in 12-point font or larger, bolded, and underlined. The text shall be centered in a text box with the width measuring 2<sup>1</sup>/<sub>2</sub>" and the length increasing as needed. See Figures 14 and 15 of this part.

(c) The foundation label required in paragraph (a) of this section must measure 2<sup>3</sup>/<sub>4</sub>" in width and the length can increase as needed for varying information. The label must be white with black text. The label shall contain the following:

(1) The information specified in paragraphs (a)(1) through (5) of this section; and

(2) The words "Foundation ID:" followed by a distinct name and/or number that corresponds to the name and/or number used on the mattress. This text must be in 10-point or larger bold Arial/Helvetica font, and the foundation identifier must be underlined. See Figures 12 through 15 of this part.

(d) The statements specified in paragraphs (a)(7)(i) and (a)(7)(ii), and (a)(7)(iii) of this section may be translated into any other language and printed on the reverse (blank) side of the label.

(e) No person, other than the ultimate consumer, shall remove or mutilate, or cause or participate in the removal or mutilation of, any label required by this section to be affixed to any item.

#### § 1633.13 Tests for guaranty purposes, compliance with this section, and "one of a kind" exemption.

(a) *Tests for guaranty purposes.*

Reasonable and representative tests for the purpose of issuing a guaranty under section 8 of the Flammable Fabrics Act, 15 U.S.C. 1197, for mattress sets subject to the Standard shall be the tests performed to show compliance with the Standard.

(b) *Compliance with this section.* No person subject to the Flammable Fabrics Act shall manufacture for sale, import, distribute, or otherwise market or handle any mattress set which is not in compliance with the provisions under Subpart B.

(c) *"One of a kind" exemption for physician prescribed mattresses.* (1)(i) A mattress set manufactured in accordance with a physician's written prescription or manufactured in accordance with other comparable written medical therapeutic specification, to be used in connection with the treatment or management of a named individual's physical illness or injury, shall be considered a "one of a kind mattress" and shall be exempt from testing under the Standard pursuant to § 1633.7 thereof: Provided, that the mattress set bears a permanent, conspicuous and legible label which states:

WARNING: This mattress set may be subject to a large fire if exposed to an open flame. It was manufactured in accordance

with a physician's prescription and has not been tested under the Federal Standard for the Flammability (Open-Flame) of Mattress Sets (16 CFR part 1633).

(ii) Such labeling must be attached to the mattress set so as to remain on or affixed thereto for the useful life of the mattress set. The label must be at least 40 square inches (250 sq. cm) with no linear dimension less than 5 inches (12.5 cm). The letters in the word "WARNING" shall be no less than 0.5 inch (1.27 cm) in height and all letters

on the label shall be in a color which contrasts with the background of the label. The warning statement which appears on the label must also be conspicuously displayed on the invoice or other sales papers that accompany the mattress set in commerce from the manufacturer to the final point of sale to a consumer.

(2) The manufacturer of a mattress set exempted from testing under this paragraph (c) shall, in lieu of the records required to be kept by § 1633.10, retain

a copy of the written prescription or other comparable written medical therapeutic specification for such mattress set during a period of three years, measured from the date of manufacture.

(3) For purposes of this regulation the term physician shall mean a physician, chiropractor or osteopath licensed or otherwise permitted to practice by any State of the United States.

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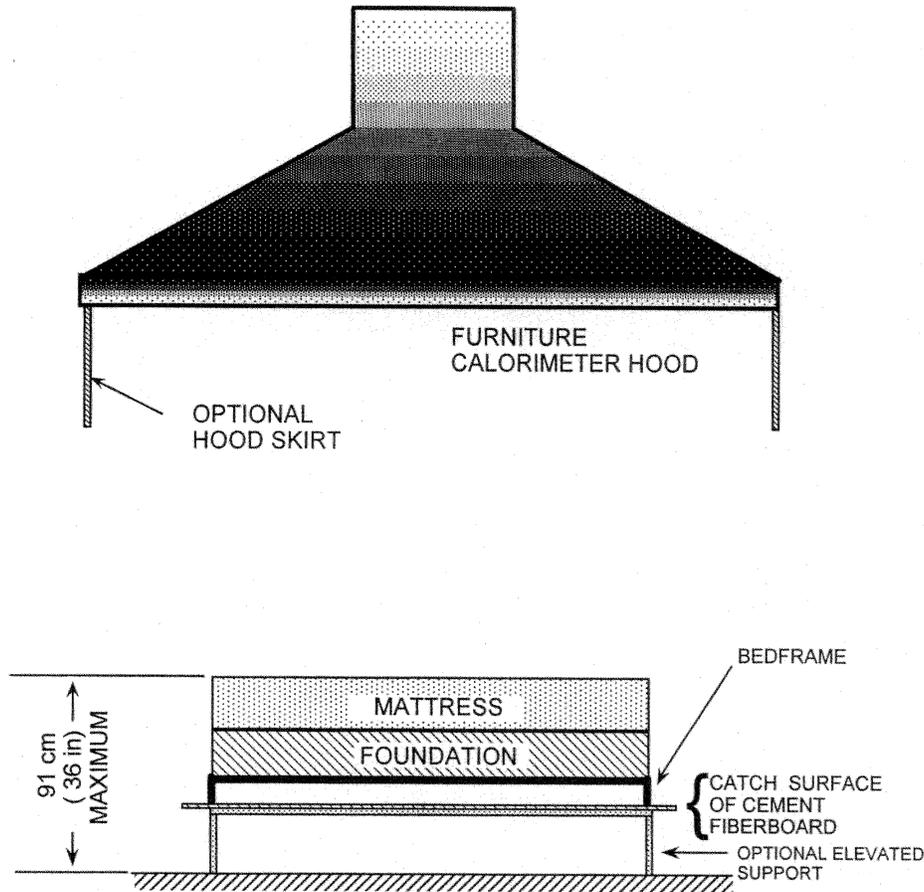


FIGURE 1. TEST ASSEMBLY, SHOWN IN FURNITURE CALORIMETER. (CONFIGURATION A.)

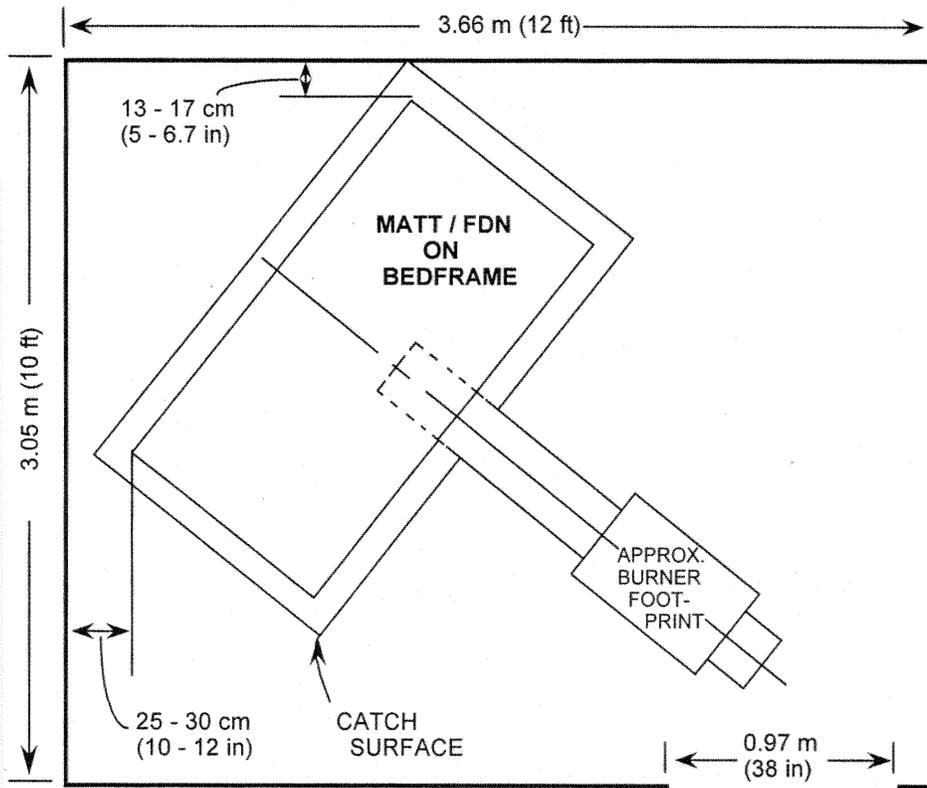


FIGURE 2. TEST ARRANGEMENT IN 3.05m X 3.66 m (10 ft x 12 ft) ROOM; CONFIGURATION B.

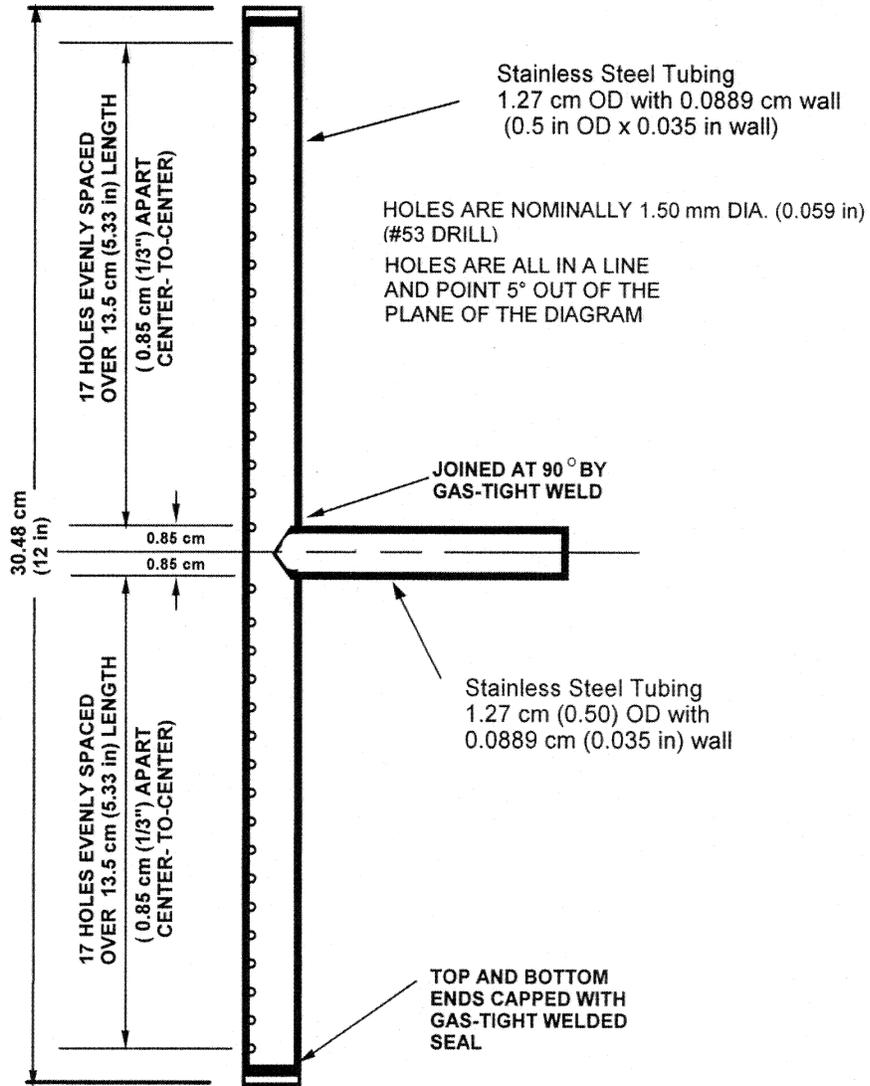


FIGURE 3. DETAILS OF HORIZONTAL BURNER HEAD.

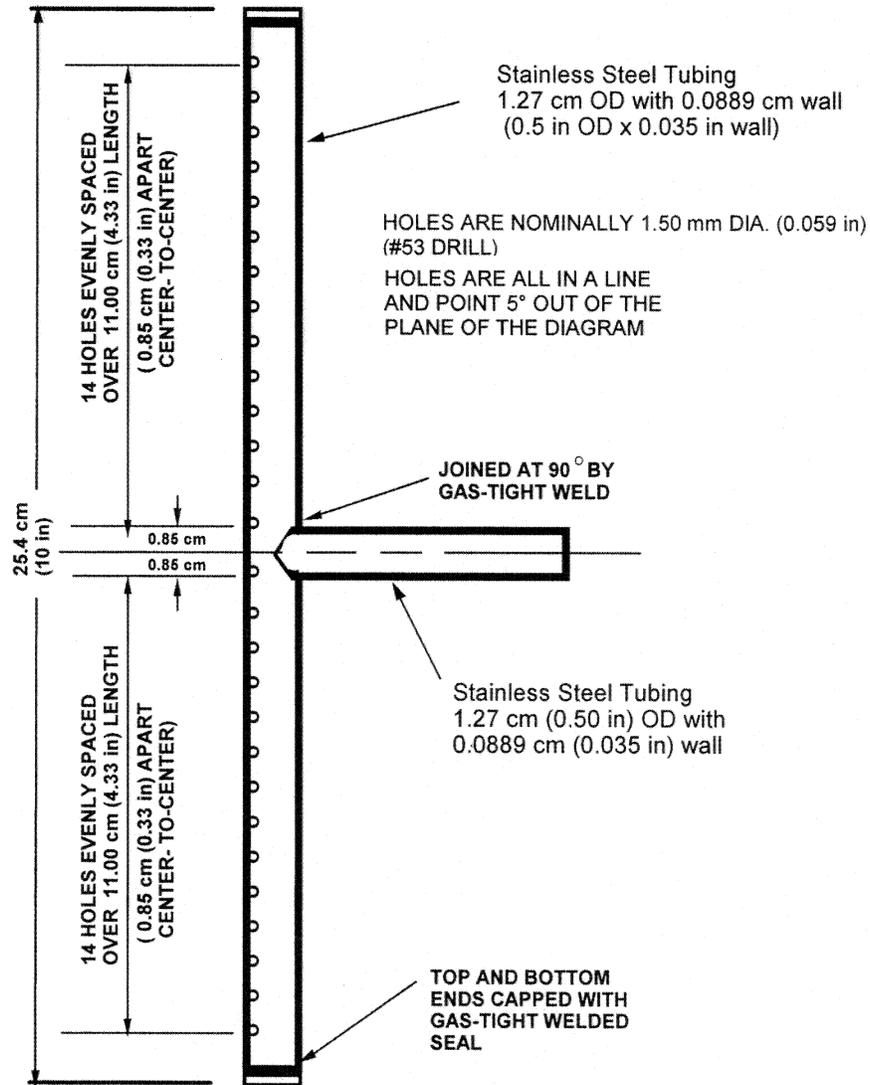


FIGURE 4. DETAILS OF VERTICAL BURNER HEAD.

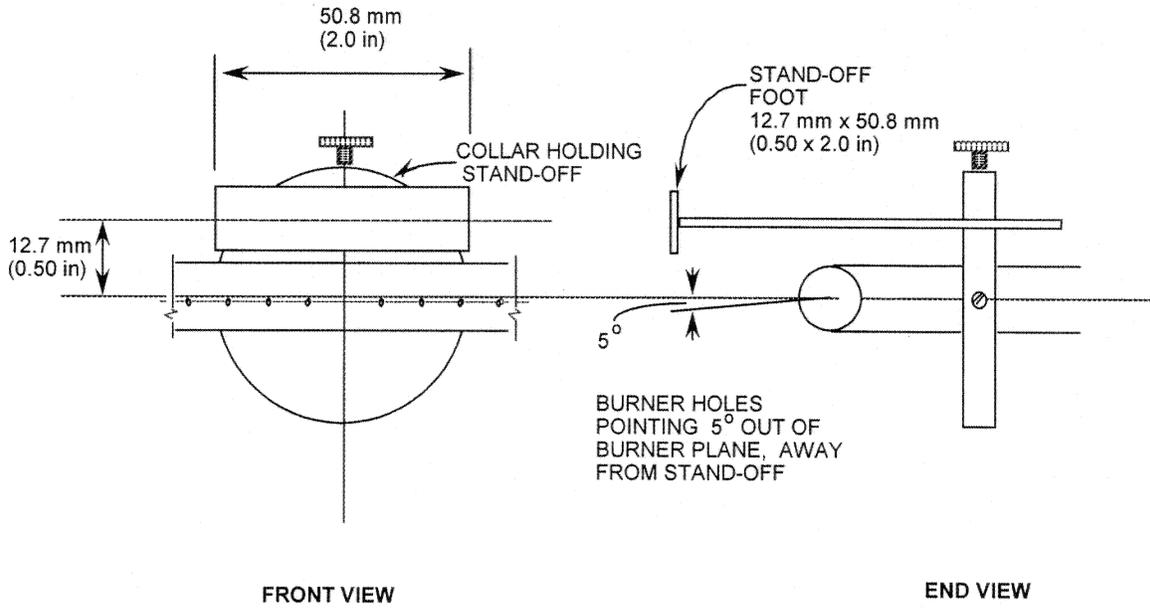
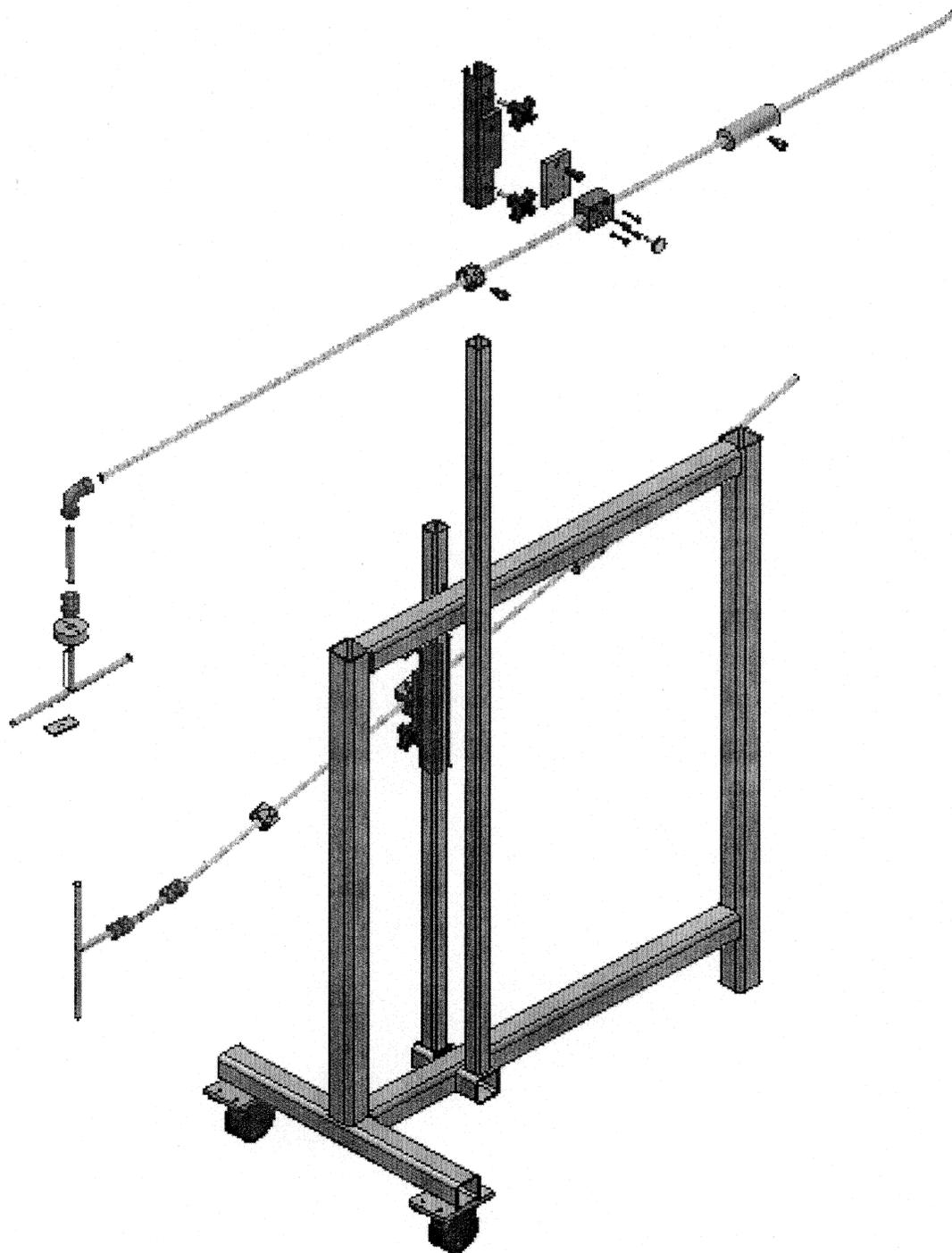


FIGURE 5. DETAILS OF BURNER STAND-OFF



**FIGURE 6. BURNER ASSEMBLY\* SHOWING ARMS AND PIVOTS (Shoulder Screws), IN RELATION TO, PORTABLE FRAME ALLOWING BURNER HEIGHT ADJUSTMENT.**

\*Note that the feed tube for the side burner will be horizontal when the side burner pivot is locked in place, as is usual during a test exposure.

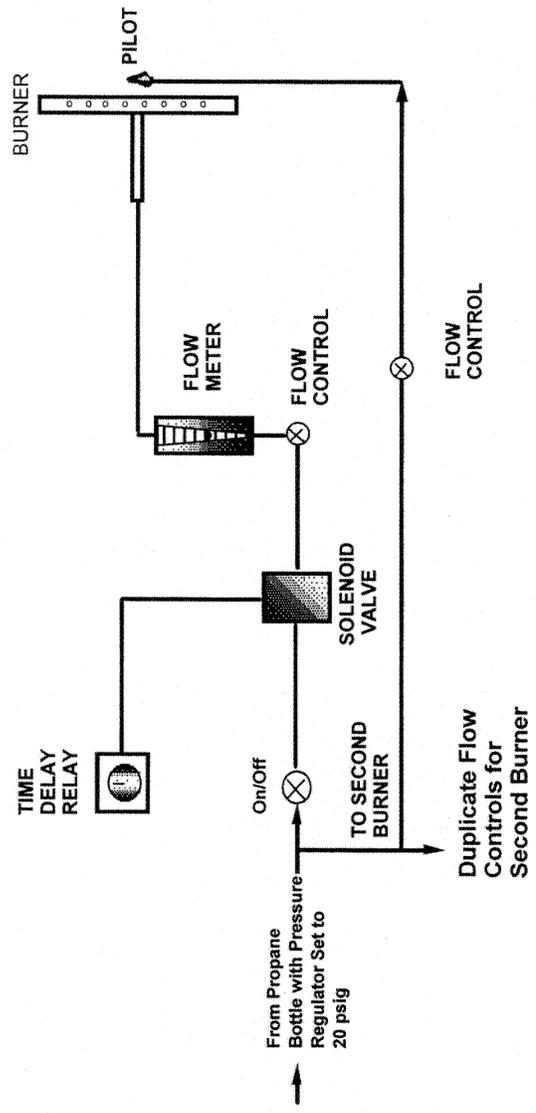


FIGURE 7. ELEMENTS OF PROPANE FLOW CONTROL FOR EACH BURNER

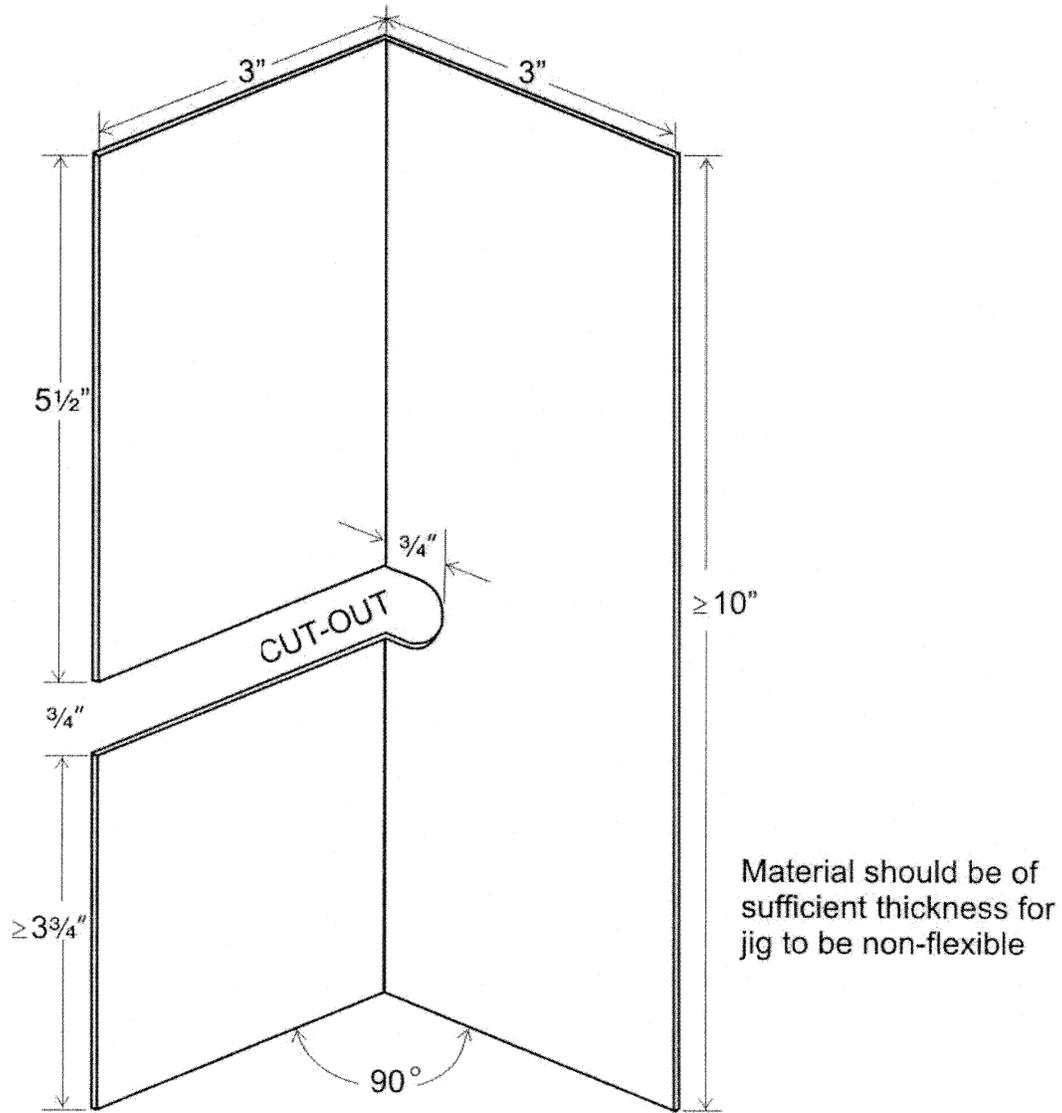


FIGURE 8 JIG FOR SETTING MATTRESS AND FOUNDATION SIDES IN SAME PLANE

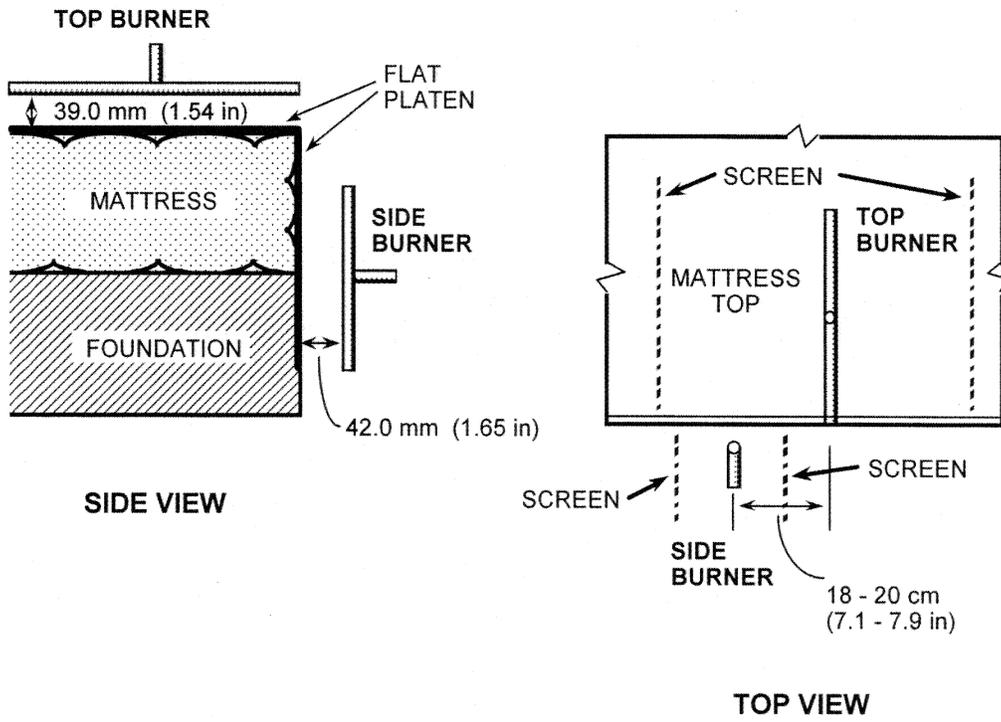
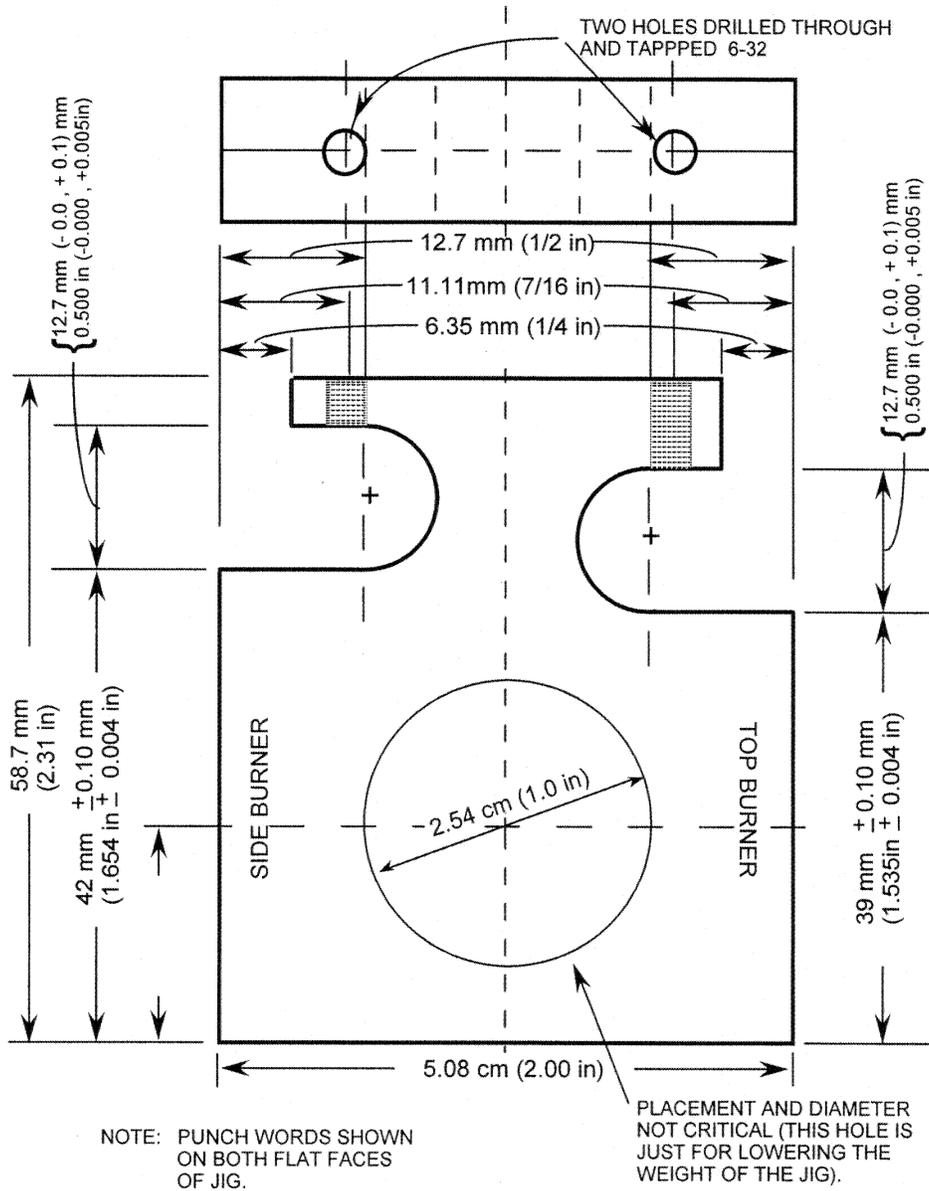


FIGURE 9. BURNER PLACEMENTS ON MATTRESS / FOUNDATION



**FIGURE 10. JIG FOR SETTING BURNERS AT PROPER DISTANCES FROM MATTRESS / FOUNDATION**

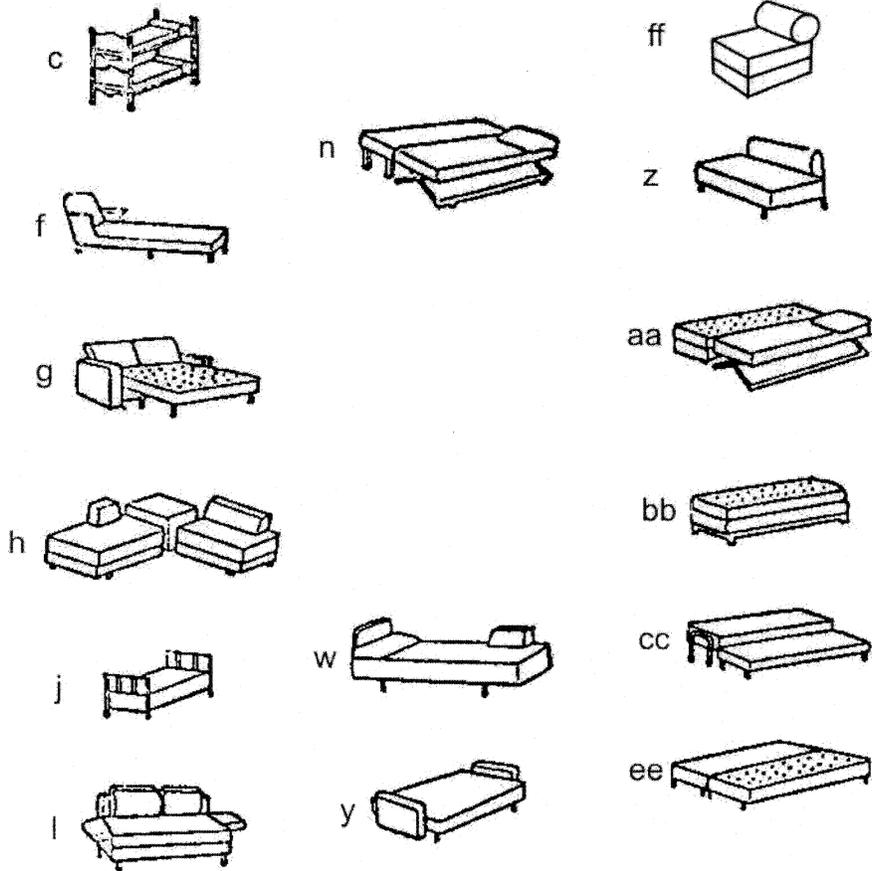
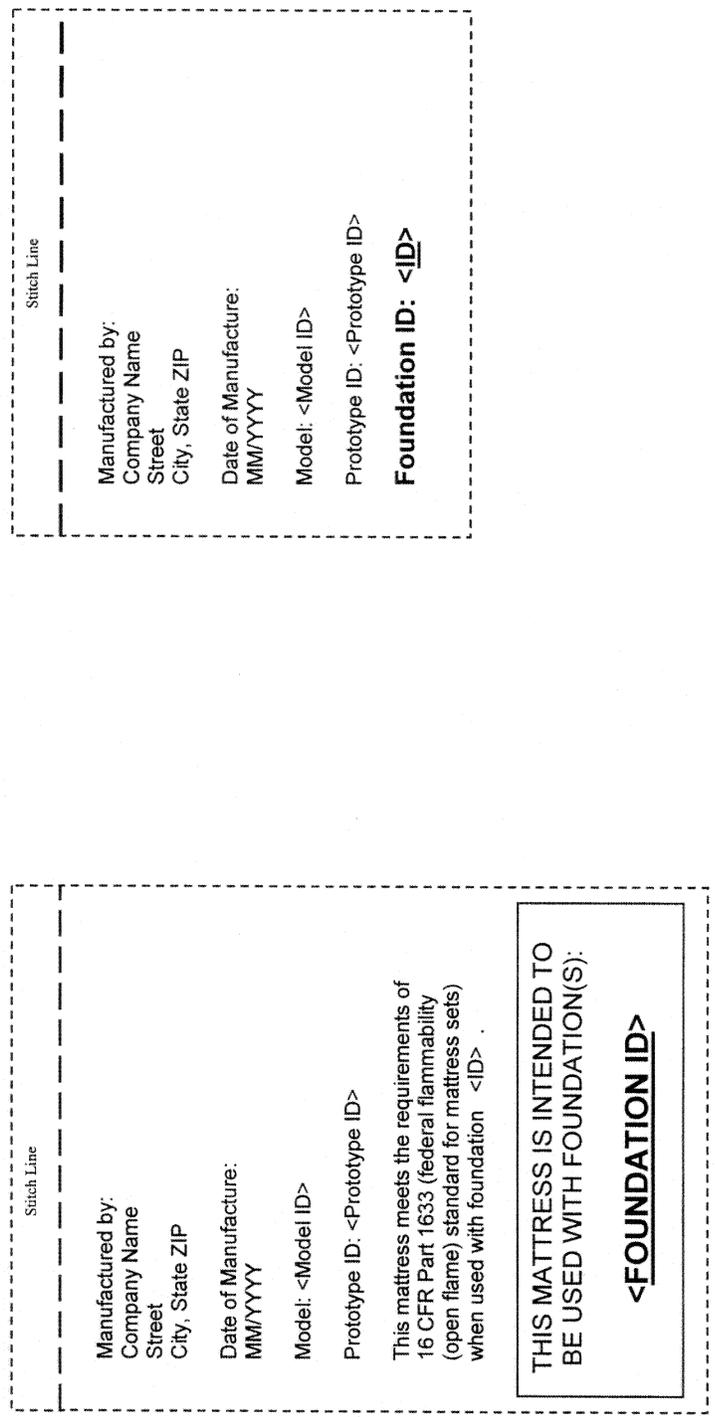


FIGURE 11. DIAGRAMS FOR GLOSSARY OF TERMS



**Figure 12. Labels for Domestic Mattress w/  
Foundation**

Stitch Line

Manufactured by:  
Foreign Company Name  
Street  
City, State  
Country

Date of Manufacture:  
MM/YYYY

Importer/U.S. Records Location:  
Importer Name  
Street  
City, State ZIP  
Model: <Model ID>

Prototype ID: <Prototype ID>

**Foundation ID: <ID>**

Stitch Line

Manufactured by:  
Foreign Company Name  
Street  
City, State  
Country

Date of Manufacture:  
MM/YYYY

Importer/U.S. Records Location:  
Importer Name  
Street  
City, State ZIP

Model: <Model ID>

Prototype ID: <Prototype ID>

This mattress meets the requirements of 16 CFR Part 1633 (federal flammability (open flame) standard for mattress sets) when used with foundation <ID>.

**THIS MATTRESS IS INTENDED TO BE USED WITH FOUNDATION(S):**  
**<FOUNDATION ID>**

**Figure 13. Labels for Imported Mattress w/  
Foundation**

Stitch Line

Manufactured by:  
Company Name  
Street  
City, State

Date of Manufacture:  
MM/YYYY

Model: <Model ID>

Prototype ID: <Prototype ID>  
<Prototype ID>

This mattress meets the requirements of 16 CFR Part 1633 (federal flammability (open flame) standard for mattress sets) when used without a foundation or with foundations <ID>.

THIS MATTRESS  
IS INTENDED TO BE USED  
**WITHOUT A FOUNDATION**  
OR  
WITH FOUNDATION(S):  
**<FOUNDATION ID>**

**Figure 14. Label for Domestic Mattress Alone and w/ Foundation**

Stitch Line

Manufactured by:  
Foreign Company Name  
Street  
City, State  
Country

Date of Manufacture:  
MM/YYYY

Importer/U.S. Records Location:  
Importer Name  
Street  
City, State ZIP

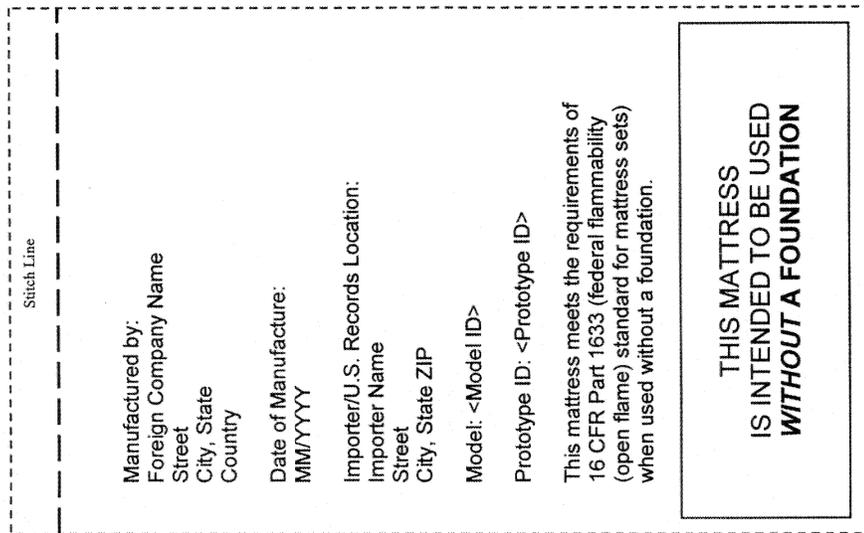
Model: <Model ID>

Prototype ID: <Prototype ID>  
<Prototype ID>

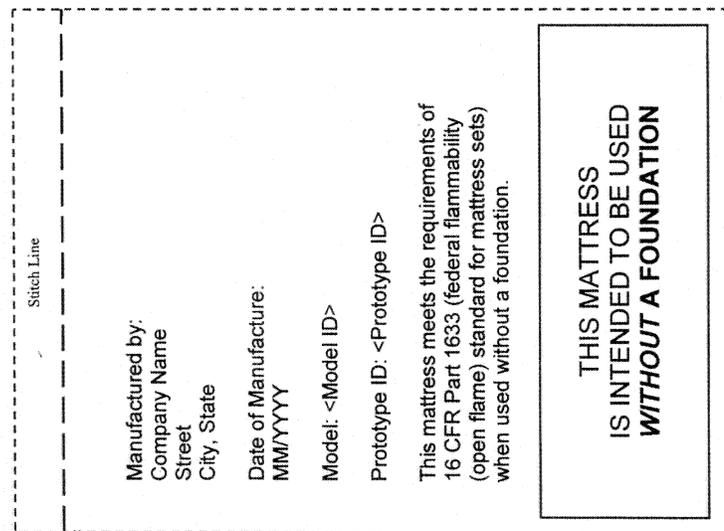
This mattress meets the requirements of 16 CFR Part 1633 (federal flammability (open flame) standard for mattress sets) when used without a foundation or with foundations <ID>.

THIS MATTRESS  
IS INTENDED TO BE USED  
**WITHOUT A FOUNDATION**  
OR  
WITH FOUNDATION(S):  
**<FOUNDATION ID>**

**Figure 15. Label for Imported Mattress Alone and w/ Foundation**



**Figure 17. Label for Imported Mattress Only**



**Figure 16. Label for Domestic Mattress Only**

**BILLING CODE 6355-01-C**

Dated: March 3, 2006.

**Todd Stevenson,**

*Secretary, Consumer Product Safety Commission.*

**List of Relevant Documents**

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“Final Rule for the Flammability (Open Flame) of Mattress Sets,” January 13, 2006.

2. Memorandum from Allyson Tenney, ES, to Margaret Neily, Engineering Sciences, “Technical Rationale for the Standard for the Flammability (Open Flame) of Mattress Sets and Responses to Related Public Comments,” January 6, 2006.

3. Memorandum from Linda Smith and David Miller, EPI, Updated Estimates of Residential Fire Losses Involving Mattresses and Bedding, December 2005.

4. Memorandum from David Cobb, LSC, to Allyson Tenney, ESFS, “Durability of Flame Retardant Chemicals in Mattress Barriers After Repeated Insults with Synthetic Urine,” December 12, 2005.

5. Memorandum from Diane Porter, LS, to Allyson Tenney, ES, “Mattress Flammability—Suggested Revisions to Proposed 16 CFR Part 1633 Standard for the Flammability (Open Flame) of Mattresses and Mattress/Foundation Sets,” January 6, 2006.

6. Terrance R. Karels, EC, to Margaret L. Neily, ES, "Mattress Update," December 7, 2005.

7. Memorandum from Soumaya Tohamy, EC, to Margaret Neily, Project Manager, "Final Regulatory Analysis Staff's Draft Final Standard to Address Open Flame Ignitions of Mattress Sets," January 10, 2006.

8. Memorandum from Soumaya Tohamy, EC, to Margaret Neily, Project Manager, "Final Regulatory Flexibility Analysis for Staff's Draft Final Standard to Address Open Flame Ignitions of Mattress Sets," January 10, 2006.

9. Memorandum from Soumaya M. Tohamy, EC, to Margaret L. Neily, ES, "Staff Response to Economic Comments on NPR for Open Flame Mattress Standard," January 10, 2006.

10. Memorandum from Robert Franklin, EC, to Margaret L. Neily, ES, "Updated Environmental Information," December 14, 2005.

11. Memorandum from Treye Thomas and Patricia Brundage, HS, "Quantitative Assessment of Health Effects from the Use of Flame Retardant (FR) Chemicals in Mattresses," January 9, 2006.

12. Memorandum from Treye A. Thomas and Patricia Brundage, HS, to Margaret Neily, "Response to TERA Comments on Mattresses—Toxicity of Flame Retardant Chemicals," January 9, 2006.

13. Memorandum from Michael Babich, HS, to Margaret Neily, "Response to Public Comments on Mattresses—Toxicity of Flame Retardant Chemicals," January 9, 2006.

14. Memorandum from Robert Franklin, EC, "Environmental Assessment of a Draft Proposed Open-Flame Ignition Resistance Standard for Mattresses," October 27, 2004.

15. Memorandum from Patricia Semple, Executive Director, CPSC, to the Commission, "Finding of No Significant Impact from Implementation of the Proposed Open-Flame Ignition Resistance Standard for Mattresses and Mattress/Foundation Sets," November 19, 2004.

16. Peer review comments on the CPSC Memo "Quantitative Assessment of Potential Health Effects From the Use of Fire Retardant Chemicals in Mattresses." Lead authors: Lynne Haber, TERA Mike Jayjock, The Lifeline Group.

17. Memorandum from Martha A. Kosh, OS, to ES, "Standard to Address Open Flame Ignition of Mattresses/Bedding; ANPR," List of comments on CF 02-1, December 13, 2001.

18. Memorandum from Martha A. Kosh, OS, to ES, "Standard for the Flammability (Open Flame) of Mattresses and Mattress/foundation Sets; Notice of Proposed Rulemaking," List of comments on CF 05-1, March 31, 2005.

19. Memorandum from Martha A. Kosh, OS, to ES, "Standard for the Flammability (Open Flame) of Mattresses and Mattress/

foundation Sets; Notice of Proposed Rulemaking," list of comments on CF 05-3-1, August 23, 2005.

20. Memorandum from Jason Hartman, CE, to Margaret Neily, Director ESFS, "Changes to the Labeling Provision of the Proposed Open Flame Mattress Standard," December 20, 2005.

21. Memorandum from Sarah B. Brown, ESHF, to Margaret Neily, Project Manager, "Mattress Label Format and Layout Justification," December 13, 2005.

22. Memorandum from Jason Hartman, CE, to Margaret Neily, Director ESFS, "Staff Response to Compliance-Related Comments on NPR for Open Flame Mattress Standard," December 14, 2005.

23. Memorandum from Jonathan D. Midgett, ESHF, to Margaret L. Neily, Project Manager, "Human Factors Affecting Sampling on Mattress Surfaces," December 12, 2005.

24. Memorandum from Bharat Bhooshan, LSC, to Treye Thomas, HS, "Vinylidene Chloride (VC) Testing in Mattress-barrier Samples," December 12, 2005.

25. Memorandum from David Cobb, LSC, to Treye Thomas, HS, "Migration of Flame Retardant Chemicals in Mattress Barriers," December 12, 2005.

[FR Doc. 06-2206 Filed 3-14-06; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**AGRICULTURE DEPARTMENT****Forest Service**

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California; reformulated gasoline oxygen content

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#### LIST OF PUBLIC LAWS

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#### S. 449/P.L. 109-179

To facilitate shareholder consideration of proposals to make Settlement Common Stock under the Alaska Native Claims Settlement Act available to missed enrollees, eligible elders, and eligible persons born after December 18, 1971, and for other purposes. (Mar. 13, 2006; 120 Stat. 283)

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